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ORIGINAL

July 23, 2007

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COMMISSION
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Ms. Ann Cole
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 050863-TP: dPi Teleconnect, L.L.C. v. BellSouth
Telecommunications, Inc.

Dear Ms. Cole:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc. d/b/a AT&T Florida's direct testimony of Pam Tipton, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. A copy is being provided to the parties of record shown on the attached Certificate of Service.

Sincerely,

J. Phillip Carver / RN
J. Phillip Carver

CMP _____
COM 3
CTR 1
ECR _____
GCL 1
OPC _____
RCA _____
SCR _____
SGA _____
SEC _____
OTH _____

cc: All parties of record
Chris Malish
Jerry Hendrix
James Meza III
E. Earl Edenfield, Jr.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
DOCKET NO. 050863-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and First Class U. S. Mail this 23rd day of July, 2007 to the following:

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J. Phillip Carver

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

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

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

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

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

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

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

15

16

17 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

18

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

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Q. BRIEFLY SUMMARIZE WHAT IS AT ISSUE.

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

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

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

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

5

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

10

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

16

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

20

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

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

3

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

7

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

13

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

18

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

22

23 A. Yes.

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

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

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

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

14

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

18

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

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

3
4 The LCCW provides for a credit of the applicable nonrecurring line
5 connection charge (installation charge) for the service requested
6 (e.g., a basic local flat-rate residential line). For an AT&T retail end
7 user to qualify for AT&T's retail LCCW promotion, the end user
8 customer must be a customer whose service is currently with a
9 carrier *other than* AT&T and who is now ordering service as an
10 AT&T "win-over", or reacquired, customer. In addition, the
11 customer must have purchased a minimum of basic local service
12 and a designated number of Custom Calling or TouchStar[®]
13 features. Thus, per the terms of the parties' Agreement, for dPi to
14 receive a credit under the LCCW promotion, its end user must
15 likewise be a customer that is not a current dPi customer, has
16 become a win-over or reacquired customer for dPi **and** the
17 customer must have purchased the designated number of Custom
18 Calling or TouchStar[®] features in accordance with the terms of the
19 promotion.

20
21 The second promotion for which dPi requested credit is the
22 Secondary Service Charge Waiver (SSCW). This promotional
23 waiver applies when changes are made to certain features or
24 services on an **existing** AT&T end user account. Thus, for a dPi
25 customer to qualify for the SSCW promotion the customer must

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

6

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

16

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

19

20 A. Depending on the promotional credit for which dPi applied, dPi's
21 non-qualifying requests generally fell into five categories:

- 22 • Less than the required number of features were purchased
- 23 • The promotion only applies to *new* customers and the credit
24 request was submitted for an existing dPi customer

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

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

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

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

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

4
5 Attached as Proprietary Exhibit PAT-3 are examples of accounts for
6 which dPi submitted promotional credit requests that AT&T denied
7 because the dPi end user did not meet the eligibility criteria for the
8 specified promotion. There are two examples each of the improper
9 credit claims described above for the Line Connection Waiver
10 promotion, the Secondary Service Charge promotion, and the Two
11 Features for Free promotion. A cover sheet provides a summary
12 description of each example. Attached thereto are copies of the
13 actual service orders for which dPi claimed credit. For each of the
14 examples, AT&T notes what was requested and the specific reason
15 for denial.

16
17 Q. HAS AT&T PERFORMED ANY OTHER REVIEW OF DPI'S
18 PROMOTIONAL CREDIT REQUESTS?

19
20 A. Yes. As described above, prior to the implementation of an
21 automated verification process, AT&T performed a sample audit of
22 credit requests. As part of the preparation for my testimony, AT&T
23 recently completed a review of the remaining requests in Florida
24 (those not originally sampled) for the period of January 2005
25 through December 2005.

1

2 Q. WHAT WAS THE RESULT OF THIS REVIEW?

3

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

9

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

12

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

17

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

21

22 A. The percentage actually denied was 71%.

23

24

25

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

3

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

11

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

14

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

20

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

23

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

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

4

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

8

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

19

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

24

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

15

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

18

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

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

5

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

9

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

15

16

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

20

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

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

7

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

11

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

14

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

19

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

24

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

27

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

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

3

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

5

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

11

12

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

16

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

22

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

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

3

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

10

11 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

12

13 A. Yes.

14

15

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25 DM #685128

Exhibit PAT-1

FPSC Docket 050863-TP
Interconnection Agreement Resale Summary
Exhibit PAT-1
Page 1 of 1

Attachment 1
Page 16
Exhibit A

EXCLUSIONS AND LIMITATIONS ON SERVICES AVAILABLE FOR RESALE (Note 3)

Type of Service	AL		FL		GA		KY		LA		MS		NC		SC		TN	
	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount
1 Grandfathered Services (Note 1)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2 Promotions - > 90 Days(Note 2)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3 Promotions - ≤ 90 Days (Note 2)	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
4 Lifeline/Link Up Services	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5 911/E911 Services	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6 N11 Services	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes
7 MemoryCall®Service	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
8 Mobile Services	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
9 Federal Subscriber Line Charges	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
10 Non-RecurCharges	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
11 End User Line Chg-Number Portability	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
12 Public Telephone Access Svc(PTAS)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
13 Inside Wire Maint Service Plan	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Applicable Notes:																		
1.	Grandfathered services can be resold only to existing subscribers of the grandfathered service.																	
2.	Where available for resale, promotions will be made available only to End Users who would have qualified for the promotion had it been provided by BellSouth directly.																	
3.	Some of BellSouth's local exchange and toll telecommunications services are not available in certain central offices and areas.																	

EXHIBIT PAT-2

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: December 10, 2004
BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 32.4
Cancels Original Page 32.4

EFFECTIVE: December 26, 2004

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.2 Descriptions (Cont'd)

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority	
BellSouth's Service Territory -- From Central Office where services are available	Line Connection Charge Waiver -- Customer must either not currently have local service with BellSouth or not have service with BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provisioned. -- The target customer for this promotion is a customer that switches service from either a facility based or reseller CLEC. This promotion is not valid for out-of-region customers who are new to BellSouth. -- Customer must have local service or equivalent (wireless in lieu of wire-line) at the same local service address on one or more of their existing lines. -- Customer must request service at the same address and in the same name, unless customer is planning an imminent move from one address in BellSouth territory to another address in BellSouth territory within 30 days of responding to the offer. In the case of an imminent move, the BellSouth rep can offer the customer the promotion and place the order at the new address. -- The customer must switch their local service to BellSouth and purchase any one of the following: BellSouth Complete Choice plan, BellSouth PreferredPack plan, or BellSouth basic service and <i>two</i> (2) custom calling (or Touchstar service) local features. -- The customer must place the order on or before <i>12/26/05</i> .	-- The line connection charge to reacquisition or winover residential customers who currently are not using BellSouth for local service and who purchase BellSouth Complete Choice service, BellSouth PreferredPack service, or basic service and <i>two</i> (2) features will be waived. -- Offer valid for only one (1) service line at the intended local service address. -- The customer must place their order through a BellSouth business office or outbound telemarketing vendor or alternate channels as indicated. -- BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice. -- Customer must have the eligible services on their new service order (N) in order to receive the promotional offer. -- Offer may be combined with other offers for the same service at the same time.	<i>12/26/04</i> to <i>12/26/05</i>	(C)
				(C)
				(C)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Fourteenth Revised Page 34.1
Cancels Thirteenth Revised Page 34.1

ISSUED: December 16, 2004
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: January 1, 2005

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.2 Descriptions (Cont'd)

A. The following promotions are approved by the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority	
BellSouth's Service Territory -From Central Offices where Designer Listings are available.	Designer Listings (residence)	Secondary Service Charge	<i>01/01/05 to 12/31/05</i>	(C)
BellSouth's Service Territory -From Central Offices where Message Waiting is available.	Message Waiting Indication (residence)	Secondary Service Charge	<i>01/01/05 to 12/31/05</i>	(C)
BellSouth's Service Territory -From Central Offices where Customized Code Restriction is available.	Customized Code Restriction (residence)	Secondary Service Charge	<i>01/01/05 to 12/31/05</i>	(C)
BellSouth's Service Territory -From Central Offices where Rotary Line Service is available.	Rotary Line Service (residence)	Secondary Service Charge	<i>01/01/05 to 12/31/05</i>	(C)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Thirty Fourth Revised Page 35
Cancels Thirty Third Revised Page 35

ISSUED: December 16, 2004
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: January 1, 2005

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.2 Descriptions (Cont'd)

A. The following promotions are approved by the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period	Authority
BellSouth's Service Territory -From Central Offices where Custom Calling services are available.	Custom Calling services (residence)	Secondary Service Charge	01/01/05 to 12/31/05	(C)
BellSouth's Service Territory-From Central Offices where TouchStar services are available.	TouchStar services (residence)	Secondary Service Charge	01/01/05 to 12/31/05	(C)
BellSouth's Service Territory -From Central Offices where RingMaster service is available.	RingMaster service (residence)	Secondary Service Charge	01/01/05 to 12/31/05	(C)
BellSouth's Service Territory -From Central Offices where Prestige Communications service is available.	Prestige Communications service (residence)	Secondary Service Charge	01/01/05 to 12/31/05	(C)
BellSouth's Service Territory -From Central Offices where Privacy Director service is available.	Privacy Director service (residence)	Secondary Service Charge	01/01/05 to 12/31/05	(C)
BellSouth's Service Territory -From Central Offices where Voice Mail Companion services package is available.	Voice Mail Companion services package (residence)	Secondary Service Charge	01/01/05 to 12/31/05	(C)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

~~Thirteenth~~ ~~Fourteenth~~ Revised Page 34.1
Cancels ~~Twelfth~~ ~~Thirteenth~~ Revised Page 34.1

ISSUED: ~~August 20, 2004~~ December 16, 2004

EFFECTIVE: ~~September 4, 2004~~ January 1, 2005

BY: Joseph P. Lacher, President -FL
Miami, Florida

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.2 Descriptions (Cont'd)

A. The following promotions are approved by the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period	Authority	
BellSouth's Service Territory -From Central Offices where Designer Listings are available.	Designer Listings (residence)	Secondary Service Charge	10/04/03 <u>01/01/05</u> to 12/31/04 <u>12/31/05</u>		(C)
BellSouth's Service Territory -From Central Offices where Message Waiting is available.	Message Waiting Indication (residence)	Secondary Service Charge	10/04/03 <u>01/01/05</u> to 12/31/04 <u>12/31/05</u>		(C)
BellSouth's Service Territory -From Central Offices where Customized Code Restriction is available.	Customized Code Restriction (residence)	Secondary Service Charge	10/04/03 <u>01/01/05</u> to 12/31/04 <u>12/31/05</u>		(C)
BellSouth's Service Territory -From Central Offices where Rotary Line Service is available.	Rotary Line Service (residence)	Secondary Service Charge	10/04/03 <u>01/01/05</u> to 12/31/04 <u>12/31/05</u>		(C)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Thirty ~~Third~~ Fourth Revised Page 35
Cancels Thirty ~~Second~~ Third Revised Page 35

ISSUED: ~~August 20, 2004~~ December 16, 2004
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: ~~September 4, 2004~~ January 1, 2005

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.2 Descriptions (Cont'd)

A. The following promotions are approved by the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period	Authority
BellSouth's Service Territory -From Central Offices where Custom Calling services are available.	Custom Calling services (residence)	Secondary Service Charge	10/04/03 <u>01/01/05</u> to 12/31/04 <u>12/31/05</u>	(C)
BellSouth's Service Territory-From Central Offices where TouchStar services are available.	TouchStar services (residence)	Secondary Service Charge	10/04/03 <u>01/01/05</u> to 12/31/04 <u>12/31/05</u>	(C)
BellSouth's Service Territory -From Central Offices where RingMaster service is available.	RingMaster service (residence)	Secondary Service Charge	10/04/03 <u>01/01/05</u> to 12/31/04 <u>12/31/05</u>	(C)
BellSouth's Service Territory -From Central Offices where Prestige Communications service is available.	Prestige Communications service (residence)	Secondary Service Charge	10/04/03 <u>01/01/05</u> to 12/31/04 <u>12/31/05</u>	(C)
BellSouth's Service Territory -From Central Offices where Privacy Director service is available.	Privacy Director service (residence)	Secondary Service Charge	10/04/03 <u>01/01/05</u> to 12/31/04 <u>12/31/05</u>	(C)
BellSouth's Service Territory -From Central Offices where Voice Mail Companion services package is available.	Voice Mail Companion services package (residence)	Secondary Service Charge	10/04/03 <u>01/01/05</u> to 12/31/04 <u>12/31/05</u>	(C)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: September 23, 2004
BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 35.5.8.3
Cancels Original Page 35.5.8.3
EFFECTIVE: October 9, 2004

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.2 Descriptions (Cont'd)

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority	
BellSouth's Service Territory -- From Central Office where services are available (Cont'd)	Basic Local Service with 2 Features At No Charge for 12 Months	--This promotion offers reacquisition or winover customers who purchase basic local service from BellSouth and who are currently not using BellSouth for local service two (2) features at no charge for 12 months.	10/09/04 to 3/31/05	(C)
	--Customer must either not currently have local service with BellSouth or not have service with BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provisioned. --Customer must have local service or equivalent (wireless in lieu of wire-line) at the same local service address on one or more of their existing lines. --Customer must request service at the same address and in the same name, unless customer is planning an imminent move from one address in BellSouth territory to another address in BellSouth territory within 30 days of responding to the offer. In the case of an imminent move, the BellSouth rep can offer the customer the promotion and place the order at the new address.	--Customer must have the eligible services on their new service order (N) in order to receive the promotional offer. --Offer valid for only one (1) service line at the intended local service address. --The customer must place the order on or before March 31, 2005 . --This promotion may not be combined with \$100 1FR + 2 Cash Back Offer.		(C)
	--Customer must have not had local service with BellSouth at least 10 days prior to the new service connection date. --The customer must switch their local service to BellSouth and purchase BellSouth basic service. --The customer must place their order through a BellSouth business office or outbound telemarketing vendor or alternate channels as indicated. --Once the customer completes the above requirements they will receive two local line features for free for 12 months. If the customer cancels or discontinues the qualifying service, he will be ineligible.	-- Offer may not be combined with cash back offers however, this offer may be combined with other promotional offers on the same services, as such offers may be concurrently available from time to time, provided that the Company reserves the right to prohibit the combination of this promotion with any other promotion, at the Company's sole discretion. -- BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.		(N) (C)

Exhibit PAT-3
Examples of Denied
Credits

(Entire Document Proprietary)

EXHIBIT PAT-4

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-55, SUB 1577

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Complaint of dPi Teleconnect, L.L.C. Against)
BellSouth Telecommunications, Inc. Regarding) ORDER DISMISSING
Credit for Resale of Services Subject to) COMPLAINT
Promotional Discounts)

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Wednesday, March 1, 2006, at 9:22 a.m.

BEFORE: Commissioner James Y. Kerr, II, Presiding, and Chair Jo Anne Sanford and Commissioner Sam J. Ervin, IV

APPEARANCES:

For dPi Teleconnect, L.L.C.:

Ralph McDonald, Bailey & Dixon, L.L.P., Post Office Box 1351, Raleigh, North Carolina 27602-1351

Christopher Malish, Foster, Malish, Blair & Cowan, L.L.P., 1403 West Sixth Street, Austin, Texas 78703

For BellSouth Telecommunications, Inc.:

Edward L. Rankin, III, BellSouth Telecommunications, Inc., Post Office Box 30188, Charlotte, North Carolina 28230

Andrew D. Shore, BellSouth Telecommunications, Inc., 675 W. Peachtree Street NE, Suite 4300, Atlanta, Georgia 30375

For the Using and Consuming Public:

Robert S. Gillam and Ralph J. Daigneault, Staff Attorneys, Public Staff - North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4326

BY THE COMMISSION: On August 25, 2005, dPi Teleconnect, L.L.C. (dPi) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) seeking credit for resale of services subject to promotional discounts resulting from their interconnection agreement and a hearing. Among other things, dPi resells BellSouth's retail residential telephone services, some of which are subject to BellSouth promotional discounts. On September 19, 2005, BellSouth filed an answer denying dPi's claims and requesting that the Commission dismiss the complaint.

On November 1, 2005, the Commission issued an Order Scheduling Docket for Hearing and Prefiling of Testimony. The hearing was scheduled for Tuesday, February 21, 2006. The Commission requested that the Public Staff participate as an intervenor. On January 4, 2006 the Commission issued an Order Canceling Hearing because of a scheduling conflict. On January 5, 2006, the Commission issued another Order Scheduling Docket for Hearing. The hearing was rescheduled for Wednesday, March 1, 2006. On January 20, 2006, the Commission issued an Order Granting Motion to Change Filing Dates.

As required by the Commission's November 1, 2005 and January 20, 2006 orders, BellSouth filed the testimony of Pam Tipton, a Director in BellSouth's regulatory organization on January 27, 2006. On that same day, dPi filed the testimony of Brian Bolinger, dPi's Vice President of legal and regulatory affairs, and Steve Watson of Lost Key Telecom, Inc., a consultant and billing agent for competing local providers of telecommunications service (CLPs). BellSouth and dPi filed the rebuttal testimony of their respective witnesses on February 10, 2006.

The Public Staff filed a Notice of Intervention on February 27, 2006, but did not file testimony or present witnesses.

An evidentiary hearing was held on March 1, 2006 in Raleigh, North Carolina with each of the above witnesses presenting direct and rebuttal testimony as well as exhibits.

Based on the foregoing, the evidence presented at the hearing, and the entire record in this matter, the Commission now makes the following

FINDINGS OF FACT

1. BellSouth is duly certified as an incumbent local exchange carrier (ILEC) providing retail and wholesale telecommunications service in its North Carolina service area. BellSouth has a duty to offer any telecommunications service that BellSouth offers to its retail customers to competing local providers (CLPs) at wholesale rates for resale. 47 USC 251(c)(4). Pursuant to this obligation, BellSouth permits CLPs to resell discount promotional plans that BellSouth offers to its retail customers.

2. dPi is duly certified as a CLP and purchases telephone service from BellSouth for resale to its end user customers in North Carolina on a prepaid basis.

3. Among the vertical features that BellSouth makes available to end users are call return, repeat dialing and call tracing. These features are available on a per-use basis, as well as a flat-rate monthly basis. The customer has the option to block the utilization of these features on a per-use basis.

4. As a prepaid service provider, dPi, when it purchases service from BellSouth, routinely directs BellSouth to block the per-use utilization of call return, repeat dialing and call tracing.

5. From January 2004 through November 2005, which is the period in issue in this proceeding, BellSouth had in effect a promotion known as the Line Connection Charge Waiver (LCCW). Under this promotion, when a residential customer established new local service with BellSouth and purchased basic service and at least two custom calling features, BellSouth would waive the Line Connection Charge.

6. Under BellSouth's customary procedure, end user customers who qualify for the LCCW promotion are identified at the time they purchase service and are not billed for the Line Connection Charge. However, resellers are required to pay the full wholesale price for any service they purchase, even if the service qualifies for a promotion, and then submit documentation of the promotional credits to which they are entitled. If BellSouth agrees that a reseller is entitled to benefit from a promotion, it will credit the reseller for the appropriate amount. The form that resellers are required to submit to BellSouth when they request promotional credits has been designated by BellSouth as the "BellSouth Interconnection Billing Adjustment Request Form (BAR)."

7. In reviewing dPi's BAR forms, BellSouth took the position that a customer is entitled to benefit from the LCCW only if the customer purchases basic service and two custom calling features for which a charge is made. BellSouth's position is that acquiring the free blocking services BCD, BRD and HBG does not qualify a customer for the LCCW. Accordingly, BellSouth determined that dPi should be given credit for the LCCW only for those of its end users who had purchased two or more paying features in addition to the free blocking services.

8. The BellSouth/dPi interconnection agreement provides that, "Where available for resale, promotions will be made available only to End Users who would have qualified for the promotion had it been provided by BellSouth directly."

9. BellSouth has applied its LCCW promotion as being applicable only to its own customers who purchase basic service and two or more "TouchStar features" for which a charge is made. As a result, given the provisions of the parties' interconnection agreement, dPi is not entitled to credit for customers who purchase only basic service and free blocking features.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT 1-2

These findings of fact are essentially informational, procedural, and jurisdictional in nature, and the matters which they involve are uncontroversial. They are supported by information contained in the parties' pleadings and testimony and the Commission's files and records regarding this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT 3-9

These findings of fact are supported by the testimony and exhibits of dPi witnesses Bolinger and Watson and BellSouth witness Tipton. In general, the witnesses did not contradict each other, but rather offered opposing perspectives on the transactions between the parties. The issues before the Commission involve the proper conclusions to be drawn from largely undisputed facts.

BellSouth is an ILEC. As an ILEC, BellSouth has a duty to offer any telecommunications service that BellSouth offers to its retail customers to dPi at wholesale rates for resale. The Federal Communication Commission (FCC) has determined that BellSouth's resale obligations extend to promotional discounts offered on retail communication services which extend for periods in excess of ninety days. dPi witness Bolinger testified that dPi is a CLP, operating in 28 states including North Carolina. (Tr. pp. 28, 34) dPi purchases BellSouth's service and resells that service to its own end-user customers on a prepaid basis. BellSouth makes certain promotions available to its retail customers, and dPi, as a reseller, is entitled to the benefit of these promotions (Tr. p. 34).

BellSouth's service includes a variety of vertical features; the ones at issue in this proceeding are also referred to as TouchStar features. Many of these features are listed on BellSouth Cross-Examination Exhibit 2, and they include call return, repeat dialing and call tracing. A customer may pay BellSouth a monthly fee for the right to use call return, repeat dialing or call tracing on an unlimited basis; alternatively, a customer may pay for any of these features on a per-use basis (Tr. p. 73). A customer may also block the utilization of call return, repeat dialing or call tracing on a per-use basis (Tr. p. 74). As shown on BellSouth Cross-Examination Exhibit 2, the blocking of per-use call return, repeat dialing and call tracing is referred to in BellSouth's system by the codes BCD, BRD and HBG, respectively, and BellSouth furnishes BCD, BRD and HBG to customers upon request, without charge.

Witness Bolinger further testified that, whenever dPi purchases telephone service for resale, it blocks all telephone functionalities that can be billed on a per-use basis (Tr. p. 81). This is common practice among prepaid resellers (Tr. p. 84). Accordingly, in purchasing service from BellSouth, dPi routinely blocks per-use call return, repeat dialing and call tracing.

Witness Bolinger stated that one of the promotions offered by BellSouth during the period at issue in this case was the LCCW (Tr. pp. 35-36). Under the terms of this promotion, which are shown in BellSouth Cross-Examination Exhibit 1, when a new customer establishes local service with BellSouth and purchases basic service with two or more custom calling features, BellSouth's Line Connection Charge is waived.

dPi witness Watson testified that he operates Lost Key Telecom Inc., a firm that provides billing services to CLPs (Tr. p. 101). dPi employed Lost Key to prepare and submit promotional credit claims to BellSouth (Tr. p. 101). Witness Watson stated that, when a retail customer is eligible for a promotion, BellSouth automatically reduces the customer's bill by the appropriate amount (Tr. p. 102). However, BellSouth requires resellers to follow a different procedure. Resellers must initially pay the full charges for the service they purchase; they may then submit a form to BellSouth documenting their eligibility for a particular promotion and requesting a credit for the amount associated with the promotion. BellSouth reviews the refund claim forms and determines whether or not it will provide the requested credit (Tr. p. 102). BellSouth Cross-Examination Exhibit 4 is an example of the form that a CLP must submit in order to obtain a promotional credit.

Witness Watson testified that he submitted BAR forms asserting that dPi was entitled to the LCCW, because it had established local service with three custom calling features – the three blocking features, BCD, BRD and HBG (Tr. pp. 102-04). BellSouth refused to credit dPi for the amount of the Line Connection Charge, contending that, because there was no charge for the blocking features, they were not the type of features that qualified for the LCCW (Tr. p. 104). According to witness Watson, if BellSouth had given dPi credit for the LCCW as it should have done, dPi would have received credits in the amount of at least \$185,719.49 (Tr. p. 105).

BellSouth witness Tipton testified that BellSouth properly refused to credit dPi for the Line Connection Charge for lines where dPi's customers received only basic service and blocking of per-use call return, repeat dialing and call tracing. According to witness Tipton, the only features that qualify for the LCCW are features for which a charge is made. Unless dPi purchases local service and two or more paying features for a given line, it is not entitled to the benefit of the LCCW (Tr. pp. 215-19). Witness Tipton stated that, in many instances dPi had submitted invalid promotional credit claims to which it was not entitled, such as claims for CREX charges, which are not the subject of any promotion (Tr. pp. 209-10).¹

None of the witnesses disputed the testimony of opposing witnesses relating to specific factual occurrences. As noted above, this case does not require the Commission to resolve conflicting accounts of the facts, but rather to determine the proper conclusions to be drawn from the facts. The Commission therefore finds the facts to be as set out above, based on the witnesses' un-contradicted testimony.

¹ dPi originally alleged that BellSouth improperly denied its requests for discount offered as a result of multiple BellSouth promotions. dPi has since limited its claims to the LCCW promotion. Both parties agree that 99 per cent of the disputes center on this promotion.

Beginning in December, 2003, BellSouth requested permission to offer the LCCW promotion. The letter states:

“During the promotional period, new residence customers who purchase a BellSouth Complete Choice Plan, BellSouth PreferredPack or Community Caller Plus with two custom calling or TouchStar features will receive a waiver of the Line Connection Charge (as found in Section A4 of the GSST).” dPi Exhibit 2, letter to Robert Bennink, General Counsel of the North Carolina Utilities Commission dated December 15, 2003.

Similarly, by letter dated January 12, 2004, BellSouth provided further clarification of the promotion by stating:

“During the promotional period, new residence customers who purchase a BellSouth Complete Choice Plan, BellSouth PreferredPack or Community Caller Plus with two custom calling or TouchStar features will receive a waiver of the Line Connection Charge (as found in Section A4 of the GSST). This letter is to advise that this promotion will be available only to customers who are returning their local service to BellSouth.” dPi Exhibit 2, Letter of January 12, 2004 to Robert Bennink.

Finally, in a letter dated December 17, 2004, which extends the promotion until December, 2005, BellSouth stated:

“During the promotional period, eligible customers who purchase a BellSouth Complete Choice Plan, BellSouth PreferredPack or Community Caller Plus with two custom calling or TouchStar features will receive a waiver of the Line Connection Charge. This letter is to advise that BellSouth would like to extend this promotion through December 26, 2005. In order to participate in the extension of the promotion, all orders must be placed on or before December 26, 2005.” dPi Exhibit 2, Letter of December 17, 2004 to Robert Bennink.

The executive summary for Line Connection Charge Waiver Extension states that, to be eligible for the LCCW, “the customer must switch their local service to BellSouth and purchase any one of the following: ... BellSouth Basic Service and two (2) custom calling (or TouchStar service) local features.” BellSouth Cr. Ex. 1. “TouchStar is a group of central office call management features offered in addition to basic telephone service.” BellSouth GSST A13.19.1., BellSouth Cr. Ex. 2. TouchStar service features include call return, repeat dialing, call tracing...² GSST A13.19.2., BellSouth Cr. Ex. 2. Call return, repeat dialing and call tracing are available on a monthly or subscription basis. GSST A13.19.2(A)(B) and (C), BellSouth Cr. Ex. 2. “Access to the usage option [i.e., call return, repeat dialing, or call tracing] can be

² Although there are more defined TouchStar service features defined in the tariff, only the three listed herein are applicable to this proceeding.

restricted at the customer's request at no charge." GSST A13.19.2(A)(B) and (C), BellSouth Cr. Ex. 2.

dPi restricts access to call return, repeat dialing, or call tracing as permitted by the tariff by including BCR, BCF and HBG (Blocking) features in every new order for basic telephone service. These blocks are not defined features in the TouchStar tariffs. Each block, however, is identified as a feature in the rates and charges section of the TouchStar tariff. GSST A13.19.4, BellSouth Cr. Ex. 2.

The parties to this proceeding have diametrically opposing positions on the interpretation of BellSouth's promotion. dPi argues that "all that is required to qualify for these promotions is the purchase of basic services with two TouchStar features." (Tr. p. 37). Further, dPi argues that it has done all that is necessary to qualify for the promotion discount by ordering at least two of the aforementioned blocks. BellSouth counters that blocks are not purchased features and do not qualify under the promotion. Further, BellSouth contends that dPi customers are ineligible for credits because dPi end users do not meet the same criteria that BellSouth retail customers must meet to benefit from the promotion as required by the interconnection agreement.

dPi urges the Commission to intervene in this dispute to divine the "proper" meaning of the promotion and require BellSouth to pay the appropriate credits. Were it to do so, the Commission would resort to various judicially acknowledged rules to assist it in interpreting the promotion. However, after careful consideration, the Commission concludes that we are not required to analyze and decide this case based on the language of the promotion. The fact is that BellSouth and dPi jointly agreed to methodology for determining the limits of any promotion in their voluntarily negotiated interconnection agreement. The following language governs this Commission's interpretation of this promotion:

"Where available for resale, promotions will be made available only to End Users who would have qualified for the promotion had it been provided by BellSouth directly." (Exhibit PAT-1).

Under the clear language of this provision, promotions are only available to the extent that end users would have qualified for the promotion if the promotion had been provided by BellSouth directly. In Witness Tipton's testimony, she stated emphatically that BellSouth does not authorize promotional discounts to its End Users who only order basic services and the blocks provided by dPi. (Tr. pp. 245-247). This fact was uncontested by dPi at the hearing and unrebutted in its post hearing brief. The Commission assumes that, if dPi had any contradictory evidence, it would have brought that evidence to our attention. This fact is dispositive. Under the clear terms of the interconnection agreement and the facts of this case, dPi end users who only order blocking features are not eligible for the credits because similarly situated BellSouth End Users are not entitled to such credits. dPi's complaint should therefore be denied.

In making this decision, the Commission acknowledges that dPi is at a disadvantage in the promotional process. Ultimately, however, the exact design and

contour of any promotion is completely within the vendor's discretion. BellSouth, like any other vendor, can choose to offer a promotion or not. BellSouth, like any other vendor, can establish terms that permit the consumer to benefit from the promotion or not. There is very little that dPi or this Commission can do to compel BellSouth to change or restructure any promotion unless the terms of the promotion are unconscionable, unconstitutional or violative of the laws or public policy of this State. In this case, there is no evidence that the LCCW promotion offered by BellSouth is unconscionable, unconstitutional or violative of the laws or public policy of this State.

One could argue that it is unconscionable to permit BellSouth to escape its financial responsibility in this case since BellSouth drafted an inherently ambiguous tariff which was reasonably subject to the interpretation adopted by dPi. Ordinarily, an ambiguity is construed against the drafter in situations such as the one at bar. However, dPi has waived its right to rely upon this rule through the bargaining process by agreeing to the aforementioned clause in the interconnection agreement. Thus, in order for us to reach the result that dPi desires, this Commission would be required to disregard the voluntarily negotiated interpretive aid found in the interconnection agreement and, in its place, substitute a judicially created interpretive aid. We decline to do so under these circumstances.

In issuing this Order today, we base our ruling on the unique facts of this case. We expressly decline to determine whether BellSouth's interpretation of the promotion, which prohibits credits being awarded when an end user purchases only basic service and no cost blocking features is correct as such a determination is unnecessary to finally and completely dispose of this case.

Finally, the Commission notes that the Public Staff discussed at length the shortcomings of BellSouth's process for determining which promotional credits dPi was entitled to receive. dPi witness Watson testified that BellSouth does not automatically calculate the promotional credits available to its resale customers at the time an order is submitted, as it does for its retail customers; instead, BellSouth requires resellers to audit their bills and apply for credits after the fact (Tr. p. 102). Moreover, witness Watson testified that BellSouth's system makes it extremely difficult for the reseller to apply for promotional credits. (Tr. p. 108). The credit request must be documented on forms created by BellSouth, listing details of every order for which credit is requested. The data supplied to BellSouth must come from BellSouth's own billing and ordering data, which are traditionally supplied to resellers in paper form or in a "DAB" file that is difficult to work with. Figuring out how to apply for the credits takes a significant amount of resources and time, and, as a result, many CLPs are not able to utilize the promotional credits and discounts.

The Public Staff viewed this process as cumbersome, difficult, and time-consuming to such an extent that the cost of qualifying for a promotion may be higher than the promotional benefit offered by the ILEC. Neither dPi nor BellSouth raised this issue as one to be decided in this proceeding. Nevertheless, the Public Staff invites this

Commission to modify the process to make it less burdensome. We decline the invitation in the context of this complaint proceeding.

If any party in this proceeding desires a more thorough inquiry into this issue, the issue would more appropriately be addressed in a generic proceeding. A generic proceeding would allow these parties and *any other parties with an interest* in the process an opportunity to fully explore BellSouth's process with an eye toward developing a global, universally applicable, solution to any problems identified. This approach is preferable to any limited solution which we could fashion in this proceeding. Thus, if any party, including the Public Staff, desires to resolve this issue, we would consider opening a generic docket upon an appropriate, factually supported petition being filed.

For the reasons set forth herein, dPi's complaint is dismissed.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of June, 2006.

NORTH CAROLINA UTILITIES COMMISSION



Patricia Swenson, Deputy Clerk