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Sent: Monday, March 31, 2008 4:21 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 050863-TP
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Docket No. 050863-TP - Complaint by DPI-Teleconnect, L.L.C. against BellSouth Telecommunications, Inc. for dispute arising under interconnection agreement
This filing is being made on behalf of dPi Teleconnect, L.L.C.

Total Number of Pages is 45

dPi Teleconnect, L.L.C.'s Motion for Reconsideration.

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March 31, 2008

VIA ELECTRONIC FILING
Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 050863-TP

Dear Ms. Cole:

Enclosed for filing on behalf of dPi Teleconnect, LLC are the following documents:

1. An electronic version of dPi Teleconnect, L.L.C.'s Motion for Reconsideration; and

2. An electronic version of dPi Teleconnect, L.L.C.'s Request for Oral Argument.

Thank you for your assistance with this filing.

Sincerely yours,

Norman H. Horton, Jr.

NHH/amb
Enclosures
cc: Chris Malish, Esq.
Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint by DPI-Teleconnect, L.L.C. against BellSouth Telecommunications, Inc. for dispute arising under interconnection agreement	)))))	Docket No. 050863-TP Filed: March 31, 2008

MOTION FOR RECONSIDERATION

COMES NOW dPi Teleconnect, L.L.C. ("dPi) through undersigned counsel and pursuant to Rule 25-22.0376, Florida Administrative Code, files this Motion for Reconsideration seeking reconsideration of a ruling by the Prehearing Officer by the panel assigned to this case. Reconsideration is appropriate in this instance because:

- In issuing this order the Prehearing Officer has misconstrued the purpose of the testimony, has misapplied the rules so as to deny dPi of an opportunity to present its case, and has misconstrued the law and rules as to the effect of motion practice;
- the testimony will simplify the Commission's review of the evidence in this case and is essential to fair administration of justice in this case; and
- AT&T will not be ***unfairly*** prejudiced by the introduction of this evidence, as it has seen and prepared responses to this material already in companion cases in sister states.

BACKGROUND

1. On March 7, 2008, dPi filed a Motion for Leave to File Supplemental Testimony and Additional Direct Testimony of Steven Tepera. This testimony provides in 8 pages and three graphs an analysis and summary of ***over 1000 pages of spreadsheets*** which was provided to dPi by AT&T in response to discovery requests on the brink of the originally scheduled date for the Hearing on the Merits, October 1, 2007, and supplemented on November 9, 2007 -- in other words, the data being evaluated was not available until after the initial direct and rebuttal

testimony was filed. The supplemental testimony and additional direct contradicts AT&T's positions and it is essential to a fair disposition of this case that the testimony be heard. The proferred testimony is almost identical to affidavits, pleadings, and testimony filed in sister cases in neighboring jurisdictions, including:

- the charts and materials analyzing and explaining AT&T's discovery materials and showing that AT&T systematically granted a waiver of the Line Connection Charge to its end users taking just basic service and Blocking Features with the North Carolina Commission filed with the North Carolina PUC and copied to AT&T on Nov. 19, 2007;

- the Affidavit of Steven Tepera verifying under oath the information supplied in the Nov. 19, 2007 filing with North Carolina is filed in the North Carolina Commission. AT&T is copied. This affidavit, filed Dec. 17, 2007, or 108 days before the hearing in this case, is substantively the same as Tepera's testimony offered in FLA;

- the Affidavit of Steven Tepera filed in Alabama, substantively the same as the December 17, 2007, affidavit filed in North Carolina. This affidavit, filed Feb. 13, 2008, or more than 7 weeks before the hearing in this case, is substantively the same as Tepera's testimony offered in FLA.

2. Thus, AT&T has seen this analysis of what is, after all, their own material, well in advance of this hearing. In fact, on Dec. 17, 2007 AT&T filed an 18 page response to dPi's analysis, to which is attached an 18 page affidavit from Pam Tipton and a further 122 pages of exhibits attempting to refute information provided in dPi's Nov. 19, 2007 filing with the NC PUC. Copies of these materials, less the attachments, are attached as Exhibit A.

3. On March 14, 2008, AT&T filed Objections to the Motion. AT&T objected to the testimony citing four reasons; the testimony could have been filed earlier; the filing at this time is intended to disadvantage AT&T; AT&T will be prejudiced if the testimony is allowed; and, the information is irrelevant to the real issues.

4. By e-mail, sent after 5:00 on March 24, 2008 to all parties, Staff counsel advised parties that the Prehearing Officer had denied the Motion in its entirety and that an order would be forthcoming. On March 16, dPi provided an e-mail to all parties advising that dPi intended to seek reconsideration of the ruling. dPi received a written ruling on the Motion late Friday afternoon, March 21, 2008.

5. In the written ruling, the Prehearing Office concluded that allowing the testimony would be prejudicial to AT&T but more importantly appears to give more weight to the fact that numerous motions have been filed in this proceeding requiring ". . . an inordinate amount of the parties and the Commission's resources." (Order PSC-08-0209 at 3), and thus presumably the testimony will somehow result in a delay in the proceedings. In issuing this order the Prehearing Officer has misconstrued the purpose of the testimony, has misapplied the rules so as to deny dPi of an opportunity to present its case, and has misconstrued the law and rules as to the effect of motion practice.

ANALYSIS

The Prehearing Officer has misconstrued the purpose of the testimony, has misapplied the rules so as to deny dPi of an opportunity to present its case, and has misconstrued the law and rules as to the effect of motion practice

6. As noted above, the Prehearing Office appears to be denying the testimony because it is prejudicial to AT&T and because there have been numerous motions have been filed in this proceeding requiring ". . . an inordinate amount of the parties and the Commission's resources." (Order PSC-08-0209 at 3), and thus presumably the testimony will somehow result in a delay in the proceedings.

7. First, note that dPi is not asking for a continuance at all or any other modification to the scheduling order. It simply asks that the all the evidence in this case be considered at the hearing so that justice may be based on facts of the case.

8. In fact, far from wasting the Commission's time, Steven Tepera's testimony makes sense of over 1000 pages of spreadsheets provided by AT&T in discovery which are exhibits in this case. In essentially eight pages and three graphs, his analysis sorts the wheat from the chaff and lays out before the Commission the kernels of truth buried in these exhibits. His analysis took scores of man-hours, and it his testimony is not admitted, it will take just as many to rebuild that analysis through cross examination, and will take further hours of independent analysis by staff.

9. In any event, past motion practice in this case is not really relevant to the decision to accept or reject this material. While the Prehearing Officer is correct in her observation that there have been several motions filed in this case, that is not a reasonable basis to use for denying dPi an opportunity to present relevant testimony: the timing and number of *past* motions is not relevant to the proper disposition of a motion properly and currently before the Prehearing Officer for ruling.

10. For example, the Prehearing Officer also notes that dPi has filed motions "close" to the scheduled hearing dates on prior occasions in her ruling. The Prehearing Officer references the timing of the motion for a revision to the hearing date of March 12, 2008. But that request was filed January 23, 2008, or approximately *six weeks* before the March 12, 2008 scheduled date. The timing of motions is not sufficient basis upon which to base a denial of an opportunity to be heard and the Prehearing Officer has misconstrued the impact of these motions.

11. As another example, the Prehearing Officer notes that dPi requested a continuance of the September 28, 2007 hearing, (sic) (Order No. PSC-07-0571 established a hearing date of October 1, 2007) on September 26, 2007, but failed to recognize that the basis of the request was that AT&T filed a 600+ pages of discovery responses on September 26, the very day the continuance was requested – a situation not subject to dPi's control.

12. Ultimately, it is ironic that the testimony denied by the most recent ruling addresses that very discovery and it is now AT&T that is claiming it is prejudiced by the late submission even though it is AT&T's exhibit. The Prehearing Officer did not appear to consider two days' opportunity to review the discovery as a basis for a continuance in September of 2007, but now appears to consider 27 days – nearly four full weeks -- to review testimony evaluating that discovery as insufficient time for review by AT&T, and therefore prejudicial to AT&T to the point that it cannot be admitted.

AT&T will not be *unfairly* prejudiced by the introduction of this evidence, as it has seen and prepared responses to this material already in companion cases in sister states.

13. The Prehearing Officer has misconstrued and misapplied applicable rules as to whether allowing this testimony is prejudicial to AT&T. Of course the testimony is prejudicial to AT&T; all testimony that tends to disprove or prove issues in contention is prejudicial to one party or another. The correct inquiry is not whether the information is *prejudicial*, but whether its presentation is ***unfairly*** prejudicial – i.e., whether AT&T is unfairly surprised by the contents of the testimony . Presenting this material is not an unfair surprise to AT&T for the following reasons:

- dPi is presenting an analysis of AT&T's ***OWN DATA*** – material that AT&T has had in its possession for years;

- the testimony was provided not hours or minutes before the hearing, by 27 days, nearly four full weeks before hand;

- AT&T has had in its possession dPi's analysis of the data since December 2007, more than 100 days prior to the hearing in this cause;

- AT&T has already prepared a response to this analysis and has its own "spin" on these matters "in the can": its Dec. 17, 2007 filing in North Carolina, consisting of an 18 page response to dPi's analysis, an 18 page affidavit from Pam Tipton and a further 122 pages of exhibits attempting to refute information provided in dPi's Nov. 19, 2007 filing with the NC PUC.;

- by AT&T's own admission in this case AT&T is familiar with the topics addressed in the testimony; and

- Furthermore, AT&T comes to this Commission seeking equitable relief with unclean hands: note that AT&T is the one that provided the materials analyzed and summarized by Tepera after the close of the testimony period – in fact, after the original hearing date set for this case itself. Note that first AT&T argues that the timing of the filing is questionable because dPi had presented substantially the same evaluations much earlier in another jurisdiction. Then they voice an objection that allowing such testimony here at this date would be prejudicial to them because they would need to address the testimony rather than focus on hearing preparation. That did not seem to be of concern to AT&T when they filed approximately 700 pages of discovery responses 5 days before the original hearing.

CONCLUSION

14. In denying the Motion filed by dPi the Prehearing Officer has misapplied and misconstrued the applicable rules and statute. Her ruling is based on incorrect presentations and denies the petitioner, dPi, of an opportunity to be heard on all aspects of its case. She fails to cite any rule or statutes that has been violated by dPi but appears to base her decision on the fact that there have been numerous motions in this case and that AT&T has been prejudiced. The number of motions is not basis to deny a fair hearing and by AT&T's own admissions throughout this is not *unfairly* prejudicial since it has already been made aware of the materials and prepared responsive materials in other states.

Based on the foregoing, dPi respectfully requests the panel to reconsider the ruling of the Prehearing Officer denying the Motion to File Supplemental and Additional Direct Testimony and on reconsideration to grant the Motion.

Respectfully Submitted,

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Attorneys for dPi Teleconnect, LLC

NORTH CAROINA

BEFORE THE UTILITIES COMMISSION

In the matter of:	)	
	)	
dPi Teleconnect, L.L.C	)	
v.	)	Docket No. P-55, Sub 1577
AT&T North Carolina	)	
	)	

AFFIDAVIT OF PAM TIPTON

1. My name is Pam Tipton. The following statements are made under oath and are based on personal knowledge.

2. I am currently 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.

3. I have 20 years experience in telecommunications, with my primary focus in the areas of process development, services implementation, product management, marketing strategy and regulatory policy implementation. In my role as Director, I am responsible for implementing state and federal regulatory mandates for AT&T Wholesale and determining the impact of such mandates on the Wholesale business unit.

4. On August 25, 2005, dPi Teleconnect, L.L.C. ("dPi") filed a complaint with the North Carolina Utilities Commission (the "Commission") alleging that AT&T (which, at the time of dPi's complaint, was BellSouth) was

EXHIBIT "A"

withholding promotional credits that were due to dPi under the Line Connection Charge Waiver ("LCCW"), Secondary Service Charge Waiver ("SSCW") and the Two Features for Free ("TFFF") promotions. On June 7, 2006, the Commission issued its Order Dismissing Complaint, ruling in AT&T's favor. After receiving certain data from AT&T in another proceeding in another state, dPi filed a Motion for Reconsideration with the Commission on November 19, 2007 ("Motion for Reconsideration").

5. In its Motion for Reconsideration, dPi asks the Commission to reconsider its previous findings because dPi asserts that the testimony I provided during the hearing was incorrect. dPi bases its claim upon discovery produced in a similar proceeding in the state of Florida.

6. The purpose of my affidavit is to address issues raised by dPi in its Motion for Reconsideration. I also explain: (1) what data AT&T produced in Florida; (2) why dPi's analysis of the data is incorrect; and (3) how dPi's conclusions are inaccurate and misleading. I will also provide additional information that contradicts dPi's assertions.

I. Data Provided to dPi by AT&T

7. dPi requested AT&T to "identify any and all occurrences, on a month to month basis beginning January, 2002, on an end user ordering BellSouth basic service plus any two of the three following features: ...call return block...repeat dialing block...call tracing block..." (See Footnote 3, Motion for Reconsideration.) Because dPi's request focused on how retail customers order their service, AT&T attempted to fulfill the request based on data from its retail

service ordering system. AT&T developed a methodology to extract certain data from service orders that met the parameters of dPi's data request. However, pursuant to AT&T's standard record retention guidelines, actual service order data is only retained for a period of 24 months. Thus, on September 26, 2007, AT&T provided dPi the first set of data, which closely matched dPi's request and was compiled from service order data from January 2005 through August 2007 ("Service Order Data").[1]

8. For time periods extending beyond 24 months, only partial data is retained. The data that is retained is in a format that is not readily searchable and that may be contained in different source files, depending on the nature of the data. Therefore, the information that dPi sought could not be extracted from the service ordering systems from which the Service Order Data was taken. However, in an abundance of caution and in an effort to be responsive, AT&T developed a second methodology to provide a surrogate to the Service Order Data for the time period prior to January 2005. This second methodology required extensive programming to extract the pertinent information from customers' accounts. On November 7, 2007, AT&T provided dPi the second set of data for May 2003 through December 2005 based on extracts from billing records and a financial database ("Billing Data") that, together, provided a close surrogate to the Service Order Data.[2]

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[1] AT&T was able to provide an additional six months of service order data because the extra data (January 2005 – July 2005) had been maintained for other business needs.

[2] Although dPi's request asked for charges billed to AT&T's customers, neither set of data contains the amount customers were actually charged for the

9. While AT&T has made every attempt to provide dPi the information dPi requested, AT&T's legacy systems were not designed to produce data to be used in forensic analysis as dPi has attempted. The service order system is designed to accept customer telecommunications and billing request information, translate that information into a service order that contains: (i) a Bill Section (containing administrative information); (ii) a Service and Equipment section (containing Universal Service Order Codes ("USOCs"), Field Identifiers ("FIDs"), other information that enables telecommunications services to be provisioned and billed); and (iii) a Remarks section for any special instructions. A service order flows from the front end interfaces, through the network provisioning and inventory systems, and when completed, posts to the billing system. The billing system is designed for the express purpose of rendering consumer and business customer bills. Certain portions of the information contained on rendered bills are retained in AT&T's systems. Separately, revenue information, classified by product code and certain billing phrase codes, is retained in AT&T's financial systems. Some of this data is retained, and some is not. The bottom line is the service ordering system and the billing records are not designed to provide a permanent record as to why certain activities, such as the waiving of charges, took place. Trying to recreate service order activity from data stored in multiple systems based upon service requests that were processed in the past, in an

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services, due to the limitations in data retained in AT&T's systems. Instead, the data sets contain a table-driven entry that contains the revenue associated with the particular service. The table is refreshed on the last Friday of every month and could result in information that was relevant at the time the customer placed their order to be dropped from the reports provided to dPi.

attempt to determine the circumstances surrounding the order, will not provide meaningful results. AT&T tried to explain this to dPi, but dPi was insistent on receiving the data. The problem is not with the data or AT&T's systems: the problem is that dPi has requested information thinking that it would provide a definitive answer about what customers ordered and why certain waivers were given. The systems are not designed to provide that level of information, so any conclusions drawn from the data are purely conjecture.

A. Detail of What the Service Order Data Contained and Shortcomings of Data

10. The Service Order Data provided to dPi contained all "new" type service orders (referred to as "N" orders, as explained below) for AT&T retail end users that had two or more of the free call blocking USOCs (i.e., BCR, BRD and/or HBG) for the time period of January 2005 through August 2007.[3] Specifically, the report contained the following data: 1) the month and year the service order posted to the bill; 2) the billing account number; 3) the service order number; 4) an indicator regarding whether a non-recurring charge waiver code was present on the service order, either in the billing section or adjacent to a particular USOC; 5) the basic class of service and certain other USOCs , such as certain TouchStar® or Custom Calling features that might have qualified the order for the LCCW promotion; and 6) an indicator for monthly recurring revenue associated with the particular USOC service. AT&T believes that the Service

[3] BCR is the USOC for blocking the TouchStar® Call Return Feature. BRD is the USOC for blocking the TouchStar® Repeat Dialing Feature and HBG is the USOC that blocks the TouchStar® Call Tracing Feature.

Order Data comes closer to providing the information dPi requested than does the Billing Data. It provides a snapshot picture in time of the services a customer ordered when establishing service. dPi attached AT&T's responsive documents to its Motion for Reconsideration. See Appendix 3: 9/26/07 Supplemental Item 1-19, pages 000001-000685.

11. On October 8, 2007, dPi sent AT&T a letter requesting clarification regarding the Service Order Data. On October 29, 2007, AT&T provided dPi a written explanation of the data. Both dPi's October 8th letter and AT&T's October 29th letter are attached hereto as Exhibit A.

12. In its letter to dPi, AT&T explained that it was able to identify "new" service orders because AT&T's ordering systems utilize an order number naming nomenclature that aligns with the activity being performed. Order numbers beginning with an "N" indicate a "new account" and are used anytime a billing account is being established. This may include either a brand new account (e.g. new customer, split billing of an existing account, or reacquisition/win-back) or the re-establishment of a previously disconnected account (e.g. disconnection in error, re-establishment after force majeure, or re-establishment following disconnect for non-pay). Importantly, AT&T also highlighted that not all new "N" orders are reacquisition or win-back customers and that A&T had not yet determined a method to identify separately this class of customers. Further, from the data AT&T provided, there is no way for AT&T (or for dPi) to determine whether a particular service order is for a reacquisition customer or for some other activity as described above.

B. Detail of What the Billing Data Contained and Shortcomings of Data

13. Because service order data was not available prior to 2005 and dPi insisted that AT&T produce data for 2003 and 2004, AT&T had to reconstruct the data by extracting certain information from different sources. Thus, AT&T recreated data from billing and financial database records. Extracting data from different databases that are not designed to store the information in the manner dPi requested and then combining the data into one report results in data that is not as complete or as accurate as the Service Order Data.

14. Unlike service order data in which an "N" service order constitutes a new service account, AT&T had to develop a surrogate methodology to filter its billing systems for *potential* new accounts. AT&T isolated accounts by searching the field "Date of Installation" to determine the first month a billing account might have been established. Then, AT&T cross-referenced such accounts with its financial database records to ensure that during the month when "Date of Installation" occurred, the customer was only billed for a partial month ("fractional billing"). The two filtering searches were the only way AT&T could have isolated potential "new accounts". Once AT&T determined which accounts met those parameters, AT&T provided relevant data that had been retained regarding these accounts. This included whether the accounts had the call block USOCs (i.e., BCR, BRD and/or HBG), whether any revenue-generating TouchStar® or Custom Calling Feature USOCs that might have qualified the account for the LCCW promotion appeared on the account, and whether any non-recurring charges

("NRCs") were retained in the database. AT&T used NRCs since it did not have service order records that showed whether a waiver had been applied to the order. If an account showed "$--" in the "Non-Recurring Charges Billed" column, it can be *assumed* that a waiver of certain charges had been placed on the account, but it cannot be concluded with certainty.

15. However, dPi's "analysis" of the data supplied by AT&T called into question the comparability of the billing data to the service order data. Prior to supplying the data to dPi, AT&T had made little or no attempt to perform a side by side comparison of the overlapping year of data provided (2005), primarily because AT&T did not know how dPi planned to use the data. Since the filing of dPi's Motion, AT&T's billing and IT managers have compared the two sets of 2005 data and determined that not only were there a significant number of discrepancies between the two sources, but there was clear evidence that the billing and financial data were missing components, thus distorting the number of accounts with no non-recurring charges.

16. dPi attached a portion of the Billing Data to its Motion for Reconsideration. See Appendix 3: 11/09/07 Supplemental Item 1-19, pages 000001-000295.

II. EXAMINATION OF DPI'S ANALYSIS OF DATA

17. dPi represents that the data AT&T produced shows that AT&T has been providing its reacquisition/win-back customers who subscribe to basic service and two or more call blocks with the LCCW promotion since 2003.[4] AT&T has previously informed dPi of the limitations in the data, which, in the form that dPi requested, is not sufficient for the analytical purposes that would lead to a reliable conclusion. Nevertheless, dPi has presented its conclusions to the Commission in a way that mischaracterizes the data. For the reasons explained below, dPi has presented invalid conclusions based on a combination of faulty analyses and misrepresentations.

18. First, the data itself cannot be used to perform the analysis dPi is trying to perform. The "N" orders represent all new billing accounts that are established, whether for completely new accounts, for re-established accounts or for reacquisition/win-back accounts. There is no way to distinguish among these various activities without reviewing the actual service order issued – and in some cases, the service order information proves inconclusive. Thus it is impossible to determine from the data supplied if a particular customer's account qualifies for the LCCW promotion.

19. In addition, the waiver codes listed in the data set are used for multiple applications and/or promotions and do not represent just the LCCW promotion. In fact, AT&T's use of these waiver codes pre-dates the

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[4] In order to qualify for the LCCW promotion, an AT&T retail customer must be coming back to AT&T (reacquisition or win/back) and purchase Complete Choice, PreferredPack or basic service and two features.

implementation of the LCCW promotion. An example of waiving certain non-recurring charges as provided for in the tariff are restoration of service following a natural disaster or disconnection in error. During 2004 and 2005 (a time period essential to dPi's argument), Florida was severely impacted by hurricanes and many customers' service was temporarily disconnected. Based on AT&T's tariff, when a customer's home is destroyed, AT&T waives the line connection charge when the customer establishes service (thus initiating an "N" order) (i) at their temporary location and (ii) then again when they return to their permanent location and reestablish service. Another example of a waiver that is unrelated to the LCCW promotion is a split-bill situation where roommates are dividing one billing account with two existing lines into two separate billing accounts. In that case, the service representative initiates an "N" order, makes the notation of the billing change and places a waiver code to waive any non-recurring charges that might typically apply to a new order. Regardless of the reason for waiving a non-recurring charge, one or more of the universal waiver codes (WNR, WSO and/or WLC) would appear on the service order.

20. Contrary to dPi's statements, there is no way that dPi could have analyzed the Service Order Data and properly concluded that AT&T was inappropriately giving its retail customers the LCCW promotion every time a waiver code appeared on an account. Yet, dPi misrepresents the data with authoritative statements such as, "BellSouth ***had*** been awarding the LCCW promotion to its end users who had ordered ... basic service and two of the three call blocks..." and "[t]hose not receiving [the] LCCW promotion include, for

example: new accounts as opposed to reacquisitions and winovers, splitting of existing accounts, and re-establishment of previously disconnected service." (Motion for Reconsideration, page 4 and Appendix 1, page 2 and 3.) Such conclusions simply cannot be drawn from the data AT&T provided. In fact, it is impossible to tell from this data whether the line connection charges were waived under the LCCW promotion or given for some other reason.

21. Second, the two different data sets (the Service Order Data (2005-2007) and the Billing Data (2003-2005)) cannot be combined and analyzed as if they were comparable to each other. The two sets of data were pulled from completely different sources and do not provide comparable results. A comparison of the Service Order Data and the Billing Data reveals that there are a total of 5,063 unique accounts listed for January 2005 through December 2005. Of those, 946 accounts are included in the Service Order Data that are not included in the Billing Data and 724 accounts are included in the Billing Data that are not included in the Service Order Data. One explanation for the difference is that a customer could have placed a service order, which was included in the Service Order Data, but then modified his or her service before the end of the month when the billing data was updated. (See footnote 2 above.) Such change could impact whether the account was captured in the Billing Data because any modifications during this window (from the service order date until the end of the month) could affect the class of service associated with the customer or any features either added or dropped. Without reviewing each instance of why an

account was captured in one set of data and not in the other, there is no way to know for sure what caused the discrepancies in the data.

22. In addition, when comparing the two sets of data, it would be appropriate that when a waiver is included on the service order, the "Non-Recurring Charges Billed" column would have a "$--". However, after running a comparison, AT&T found that there are 8 accounts that had waiver codes (based on Service Order Data), but non-recurring charges appeared in the Billing Data, while 438 accounts appeared to not have a non-recurring charge, but no waiver was associated with the same account. Non-recurring charges can only be waived in the billing system using a billing instruction waiver code. Such discrepancies raise significant concerns about the data and its comparability.

23. The data sets conflict with each other in such a way as to highlight AT&T's concern about (a) the reliability of the Billing Data in determining whether any waivers were actually granted and (b) the data's use for dPi's purpose. The difference between the data sets also demonstrates that despite AT&T's best efforts, the data was not consistently captured using both methodologies. Trying to draw conclusions by comparing the results from the Billing Data and the Service Order data cannot provide anything but faulty conclusions.

24. To provide a better understanding of why the two sets should not be compared, attached hereto as Exhibit B is a side-by-side comparison of the 2005 percentages for each set of data. Using dPi's apparent methodology of

analyzing the Billing Data,[5] the percentage of accounts with no non-recurring charges for 2005 appears to average approximately 29%. Conversely, the Service Order Data, a significantly more reliable source of data for the same time period, demonstrates that approximately 14% of accounts had waivers present. Thus, dPi's graphic depiction on page 1 of its Appendix 1 is an inaccurate depiction of the data provided to dPi. The top line should not stop at the end of 2004, but should continue into 2005 with everything else remaining the same.

25. In fact, dPi would lead this Commission to believe that AT&T only provided the Billing Data for 2003-2004. However, when dPi filed its Motion and attached its Appendix 3, it failed to include the Billing Data supplied by AT&T for January 2005 to December 2005, instead representing that Appendix 3 consisted of the totality of AT&T's data production. It is difficult to believe that dPi mistakenly neglected to file over 100 pages with the Commission, especially given that the missing data represents an omission of exactly one year of data: *the one year of data that undercuts dPi's theory and analysis.* Additionally, it is inconceivable that someone could look at the two sets of data and not question its reliability. Yet, dPi never asked AT&T to clarify the data; it simply asked for a general explanation about what was included. In order to ensure that the Commission has a complete record of the data produced in this case, attached

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[5] dPi did not include an explanation on the methodology used in analyzing the Service Order Data or the Billing Data. However, in reviewing dPi's numbers, it appears that dPi limited the number of accounts to just those with 2 or more blocks and no other features and then counted the number of accounts with zero in the "Non-Recurring Charges Billed" column.

as Exhibit C are the pages from the Billing Data that represent the missing year of data (January 2005-December 2005; Bates Pages 000295-000403).

26. Finally, dPi has misinterpreted the data provided and has drawn erroneous conclusions. dPi performed an "analysis" of the data (i.e., a count of waiver codes) claiming that approximately 15% of the service orders issued from January 2005 through August 2007 had waivers associated with those accounts and that those waivers were granted as a result of the LCCW promotion. dPi then concludes that 100% of the 15% were granted the LCCW because they were reacquisition customers. Such conclusion cannot be found in the facts presented, nor is it even remotely true. As previously explained, there are many reasons why a waiver may be applied to an account. Just because an account may have a waiver code does not mean that the waiver is the result of the LCCW promotion. Yet, dPi provides no explanation regarding its methodology or it conclusion. Conversely, dPi appears to assume 85% of AT&T's retail customers are denied a waiver because they are not reacquisition customers. dPi appears to believe that, for each new retail account for basic service that has two or more call blocks and a waiver, it means that the customer is a reacquisition and that AT&T granted the waiver because of the LCCW promotion. None of these conclusions can be found in the facts of the data provided.

27. Based on the above analysis, it is clear that dPi: (i) ignored information from AT&T that indicated that the data could not result in any reliable analysis; (ii) proceeded with an analysis based on data it mischaracterized; (iii) presented evidence to this Commission that was incomplete and misleading; and

(iv) provided conclusions that are based on speculation and faulty data. Based on these reasons, dPi's analysis has no merit and should be ignored.

III. AT&T's Analysis of the Data

28. In response to dPi's claims, I performed an analysis of the data provided to dPi using appropriate assumptions and taking into consideration the data limitations noted above. My analysis focused primarily on the Service Order Data since it more closely aligns to dPi's initial discovery request and because of the issues associated with the Billing Data discussed above. Attached hereto as Exhibit D is a matrix summarizing the Service Order Data. The matrix demonstrates the scale of orders at issue in this proceeding. In particular, the matrix shows that AT&T processed almost 1,650,000 new orders from January 2005 to August 2007. Of those, only 18,621 service orders were for basic service with two or more free blocks, meaning, only 1.13% of all "N" orders initiated by AT&T are in the pool of orders that dPi is analyzing. Further, of those 18,621 orders, only 2,571 had waivers associated with the order but did not have TouchStar® feature USOCs, thus reducing the percentage of orders that dPi claims AT&T should not have granted the waiver to to 0.16% of AT&T's retail "N" orders.

29. The 2,571 orders identified above represent approximately 14% of a universe of 18,621, the orders for basic service with two or more call blocks. This is consistent with the number reflected in dPi's Appendix 1. However, contrary to dPi's assumptions, I recognize that there are multiple reasons for

waivers to appear on service orders. Thus, in order to understand the reason for the waivers on the accounts and to determine if all 14% received the LCCW promotion, as dPi suggests, I reviewed a random sample of 136 service orders that fell into dPi's classification of waived charges.

30. My review revealed that many of the service orders did not provide a significant amount of new information. However, I was able to ascertain that a significant number of service orders did have explainable reasons for the waiver and these were not a result of the LCCW promotion as dPi claims. There were many orders that contained the waiver because the retail customer 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. dPi's claim that all of the approximately 14-15% of service orders that received a waiver were for reacquisition customers receiving the LCCW promotion was proven to be inaccurate. The fact is there were no specific indicators that any of the waivers were given as a direct result of the LCCW promotion.

IV. Conclusion

31. In February 2006, I represented AT&T before the Commission in this proceeding and provided specific information based upon my knowledge at the time. Commissioner Kerr asked me several questions about whether AT&T granted the LCCW promotions to its reacquired or win-back end user customers who were similarly situated with dPi's customers. I responded that AT&T had not

and does not grant the LCCW promotion to any reacquired or win-back customers who only order basic service and two or more free call blocks. It *was not* and still *is not* AT&T's policy to grant the LCCW to customers similarly situated to dPi's customers, that is, customers with only basic service and two or more free call blocks. Our promotions are not designed to provide financial rewards, such as billing credits, as an incentive for requesting free items. As previously noted, nothing submitted in dPi's Motion for Reconsideration supports the conclusion that AT&T has deviated from its policies. Nevertheless, in an abundance of caution, AT&T has developed additional training materials for service representatives to ensure that promotions are properly administered.

32. As I have demonstrated, the data dPi asked AT&T to produce in discovery cannot lead to valid conclusions about AT&T's application of waivers to service orders. The data does not reveal which customers qualified for the LCCW promotion nor does it reveal whether customers received the promotion. dPi attempts to avoid this fundamental issue by mischaracterizing the data through its "analysis" and by misrepresenting to the Commission what AT&T actually produced in Florida by redacting an entire year's worth of data. dPi's contention that all of the waivers are attributable to the LCCW promotion is incorrect. The data AT&T provided in response to discovery is not what dPi claims, and it does not support dPi's conclusions. AT&T has properly applied the

waiver of non-recurring charges for force majeure, split billing, and reconnection following disconnection in error among other valid reasons. AT&T has not made a practice of granting the line connection charge waiver to customers who only purchase basic service and two or more free call blocks.

This concludes my affidavit.

This 17th day of December, 2007.

Pamela A. Tipton

Sworn to and subscribed before me this 17th day of December, 2007.

NOTARY PUBLIC

MICHEALE F. BIXLER
Notary Public, Douglas County, Georgia
My Commission Expires November 3, 2009

at&t

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December 17, 2007

Ms. Renne Vance
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

Re: Docket No. P-55, Sub 1577

Dear Ms. Vance:

I enclose for filing in the above-referenced docket the original and 25 copies of AT&T North Carolina's Response in Opposition to dPi's Motion for Reconsideration, along with 25 copies of the Affidavit of Pam Tipton, including Exhibits A through D; Exhibit C and D are to be filed under seal.

AT&T also wishes to inform the Commission that dPi chose to serve AT&T with the affidavit of Attorney Steve Tepera today, in which the affiant purports to further explain matters associated with the dPi's Motion for Reconsideration. Mr. Tepera represents himself to be an attorney for the same Texas law firm that represents dPi in this matter. Obviously, AT&T was not in a position to incorporate its reaction to Attorney Tepera's affidavit in the instant filing. Therefore, AT&T informs the Commission and dPi that it reserves the right to file a response to Attorney Tepera's affidavit after it has had the time to thoroughly review it.

Please stamp the extra copy of this letter "Filed" and return it to me in the usual manner. Thank you for your assistance in this matter.

Sincerely,

Edward L. Rankin, III

Edward L. Rankin, III

ELR/sam

Enclosures

cc: Parties of record

BEFORE THE

NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:	)	
	)	
Complaint of dPi Teleconnect, L.L.C.	)	Docket No. P-55, Sub 1577
Against BellSouth Telecommunications, Inc.	)	
Regarding Credit for Resale of Services Subject	)	
To Promotional Discounts	)	

AT&T'S REPONSE IN OPPOSITION TO
dPi's MOTION FOR RECONSIDERATION

BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina ("AT&T") hereby files its Response in Opposition to the Motion for Reconsideration of Decision Based On Testimony Now Known To Be Incorrect ("Motion for Reconsideration" or "Motion") filed by dPi on November 19, 2007, and states as grounds in support thereof the following:

I. INTRODUCTION AND SUMMARY OF AT&T'S POSITION

In its Motion for Reconsideration, dPi requests that the North Carolina Utilities Commission ("Commission") reconsider its *Order Dismissing Complaint* ("Order") entered in the above-styled proceeding (which is currently on appeal before the Fourth Circuit Court of Appeals). The fundamental assertion of dPi's Motion is that the testimony of BellSouth's witness, Pam Tipton, upon which the Commission relied, is now "known to be incorrect." This assertion is based on dPi's strained, and ultimately unsupportable, interpretation of discovery responses that AT&T filed in a parallel proceeding between the parties before the Florida Public Service Commission. dPi's Motion should be denied because the materials upon which dPi relies do not in any way

invalidate the testimony of Ms. Tipton. dPi's request for oral argument should also be denied.

As quoted by dPi at length in its Motion, Ms. Tipton testified that AT&T's policy is not to waive the line connection charge for retail customers who order only basic local service and two call blocks because these customers do not qualify for the Line Connection Charge Waiver ("LCCW") promotion (Motion, p. 3). Ms. Tipton also testified that, based on the information she had been provided at that time, she had seen nothing to indicate that AT&T had deviated from this policy. There is absolutely nothing in dPi's Motion to support an argument that either of these statements reflects, in dPi's words, "at best . . . [a] . . . negligent disregard of the truth" (Motion, p. 7). dPi's Motion is based on responses that AT&T filed to discovery propounded by dPi in Florida. dPi's discovery requests in Florida were propounded well over a year after the proceeding before this Commission had concluded. If these discovery responses were, in fact, what dPi claims they are, then, at most, they would support the conclusion that AT&T does not follow its stated policy. The discovery responses, however, are not as dPi represents them to be, and dPi's Motion must be denied for this reason.

dPi's Motion and the attachments thereto fail entirely to establish dPi's allegation that Ms. Tipton gave incorrect testimony for four separate reasons. First, dPi is, in effect, requesting rehearing on the basis of "newly discovered evidence." dPi, however, has submitted no evidence. Instead, it has submitted cursory, vague, largely unexplained, and completely unverified documents that would not be accepted by the Commission as evidence in a hearing. As a matter of law, the fact that these documents are insufficient

to constitute evidence means that they also cannot be relied upon as "newly discovered evidence" sufficient to mandate reconsideration of the Commission's Order.

Second, as will be explained below, the information upon which dPi relies is inherently unreliable, and simply cannot be utilized (even if it were evidence) to prove the contentions of dPi's Motion. The information produced by AT&T is not information that AT&T keeps in the normal course of its business. Instead, this information was generated specifically in response to a request by dPi, and it conforms to the parameters of that request. The information dPi requested, however, does not provide any insight as to how the LCCW promotion was applied to AT&T's retail customers. Specifically, one cannot discern from this information on retail customer accounts whether these customers qualified for the LCCW promotion, or if any of them received a waiver of the line connection charge as a result of the LCCW promotion.

Third, even if the information were reliable, dPi attempts to use this information in a way that is untenable and misleading. Specifically, dPi has attempted to fill in the considerable gaps in the subject information by stating unsupported allegations as if they were facts. Finally, in at least in one instance, dPi appears to have selectively withheld information from this Commission which, if revealed, would contradict dPi's claims.

Fourth, even if one were to accept this information as reliable (with all of its flaws and inadequacies), it still would not tell the entire story. To get a better grasp of what transpired, Ms. Tipton analyzed a sample of the service orders that correspond to these accounts. The results of this review provide additional reasons to conclude that dPi's assertions about the subject information are incorrect and misleading. (Ms. Tipton's

Affidavit is being filed along with the Motion, and will be referred to hereinafter as "Tipton Aff.").

II. BACKGROUND FACTS

In this proceeding, the determinative question was whether call blocks constitute "features" that, assuming all other applicable criteria is met, can qualify an end user for the LCCW promotion. Ms. Tipton testified that, consistent with AT&T's policy, a retail end user ordering only call blocks would not qualify for this promotion. dPi did not explore this issue through either written discovery[1] or during Ms. Tipton's deposition. Instead, dPi first pursued this line of discovery in other States, well after this Commission had entered the Order dismissing dPi's Complaint. In the Motion, dPi contends that, in Florida, "AT&T was forced to disclose" the subject information (Motion, p. 4). However, as with many matters, dPi's rendition of what occurred in Florida is less than accurate. Further, an accurate depiction of what occurred in Florida is essential to understanding what AT&T produced there, what this information shows (or does not show), and why this information does not support dPi's Motion.

On July 20, 2007, dPi propounded upon AT&T a voluminous set of discovery requests that included, in pertinent part, the following:

> [No. 1-19] Please identify any and all occurrences, on a month to month basis, beginning January 2002 of an end user ordering from BellSouth basic service plus any two of the three following features: the call return block . . .; the repeat dialing block ("BRD"); and the call tracing block, and "HDG" block.

AT&T initially responded by objecting because this information is irrelevant, and because the effort required to produce this information would be tremendously time

[1] Although dPi states that testimony that contained this statement was received after the close of written discovery, dPi could have requested leave to conduct additional discovery.

consuming. Subsequently, AT&T offered as a compromise that it would produce the data for the years 2005 through 2007. As AT&T stated during its argument on dPi's Motion to Compel, it was not able to produce documents prior to this time, because that information no longer existed in the ordering system from which the information would be extracted.

Although dPi abandoned its request for data from 2002, it continued to argue that it needed the data for 2003 and 2004, based on a theory that had, and continues to have, no factual support whatsoever. Specifically, dPi contended in Florida that "AT&T originally awarded its end users the promotional rates, then reinterpreted the promotion and ceased awarding promotional rates to its own end users when it discovered that a disproportionate amount of those qualifying under the original interpretation were CLECs' (such as dPi) end users" (dPi Motion to Compel, p. 2). Under dPi's fabricated theory, this policy change occurred sometime in 2004.

The Florida Commission ruled on dPi's Motion as follows:

> AT&T asserted that it can provide the information from July 2005 through July 2007, as currently available on the billing[2] system. Given the difficulty and burden that production of the entire 2002 through 2007 time frame initially requested by dPi would present to AT&T, AT&T shall provide the requested information for the period of July 2005 through July 2007, in a sampling format to be determined by AT&T (PreHearing Order, p. 10).

AT&T produced these documents within days. After AT&T made this production, it was bombarded with a variety of subsequent questions from dPi, which claimed that it was unable to understand what AT&T had produced. Even though discovery had closed and AT&T was under no obligation to do so, it provided dPi with an explanation of the production in a letter dated October 29, 2007 (a copy of the letter of October 29, 2007 is

[2] In actuality, the available information for 2005-2007 was in AT&T's ordering system.

attached to Ms. Tipton's affidavit). Thus, at this juncture, there can be no question but that dPi understands exactly what it received in Florida.

Even though it was under no obligation to do so, AT&T continued after the entry of the Florida Commission's Order to try to develop some way to produce the older data that no longer existed in its ordering systems. Although AT&T was not able to develop programming methodology that could exactly duplicate the production of information for 2005-07, it was able to extract somewhat comparable information from a billing system that keeps older data for a longer period of time. (See, Tipton Aff., pp. 5-7). Thus, AT&T supplemented its production by producing on November 9, 2007 documents from 2003 through 2005, which were taken from the billing system.

III. ARGUMENT

A. dPi's Motion Must Be Rejected Because dPi Has Not Submitted Evidence Upon Which the Commission Can Rely.

G.S. § 62-80 gives the Commission broad authority to reconsider or rehear its prior Orders. This authority, however, is not limitless. Specifically, G.S. § 62-85 states that the Commission shall proceed in matters such as the instant one under the applicable rules of evidence, and that "no decision or order of the Commission shall be made or entered in any such proceeding unless the same is supported by competent material and substantial evidence upon consideration of the whole record." The requirement that decisions of the Commission be based on competent, substantial evidence, of course, applies not only to matters that come before the Commission in the normal course of a hearing, but also to matters on reconsideration.

This principle was established more than forty years ago in *North Carolina vs. Carolina Coach Company*, 132 SE 2d 249 (Sup. Ct. North Carolina, 1963). In *Carolina*

Coach, the Commission entered an Order approving a lease by which one common carrier had transferred to another the authority to transport interstate passengers over certain routes. The carriers subsequently sought a modification of that Order, and the Commission granted this request. Although the North Carolina Supreme Court left undisturbed the Commission's decision to reconsider its earlier Order, it did reverse the Commission's ruling because it found that the particular relief that the Commission granted was not supported by substantial competent evidence (*Id.*, at 260).

Thus, whether in a hearing before the Commission or in the virtually unique instant circumstance, decisions by the Commission must be supported by substantial, competent evidence. This principle provides the first reason why dPi's Motion cannot be granted. It is inherent in the concept of "newly discovered evidence" that the material in question must actually constitute evidence. As to dPi's submission, however, this is not the case. dPi has attached to its Motion three appendices. Appendix 3 purports to be the raw data that AT&T submitted to dPi in response to discovery requests in Florida. Although, as will be explained later, it is actually a copy of AT&T's response that has been edited so as to disguise one of the central fallacies in dPi's argument. Putting aside for now this point, the raw data, without some sort of explanation or analysis, is meaningless. Appendix 2 purports to be a summary of this data. Neither the appendix itself nor the Motion describes how the summary was done or by whom.

Finally, the Appendix 1 to the Motion contains three charts that purport to show the conclusions of dPi's "analysis." However, these charts do not explain in any length how dPi's analysis was performed or by whom. Most importantly, this information is not verified, contained in an affidavit, or handled in any other way that could make it rise to

the level of evidence. Instead, dPi has simply provided a series of unexplained, largely inexplicable, and completely unverified conclusory statements. If a party were to appear at a hearing and try to place into evidence information of this sort--without proper authentication or any of the other necessary requirements for information to be placed into evidence--then certainly the Commission would reject this information as inadmissible. This same evidentiary standard requires that the Commission reject dPi's submissions as inadequate to constitute evidence and deny dPi's Motion.

B. The Information Upon Which dPi Relies Is (1) Inherently Reliable And (2) Irrelevant.

dPi contends that the information it submitted along with its Motion shows that when AT&T retail customers ordered basic local service plus two call blocks (and otherwise qualified for the LCCW promotion), AT&T gave them the LCCW promotional discount that AT&T has denied dPi. In fact, none of the submitted information supports this contention, and the billing data provided for 2003-05 is especially unreliable as a basis for dPi's contentions.

dPi's Florida discovery request sought information on all new orders ("N" orders). Thus, dPi appeared to be under the misapprehension that all new customers who purchased basic local service and two blocks composed the appropriate group to compare to the dPi end users whom dPi claims qualified for the promotion. However, as AT&T stated in the clarifying letter of October 29, 2007, this is not the case. Specifically, the letter stated the following:

> Not all new orders are reacquisitions. Further, AT&T has not yet been able to determine which of the new orders are submitted by reacquisition or win-over customers. We have produced all new orders because that is what you requested. However, the new orders that were not submitted by

> reacquisition or win over customers are not part of the universe of retail orders that would qualify for the Line Connection Waiver Charger.
>
> (Letter, p. 2).

Thus, as AT&T made clear to dPi, it is impossible to know which of the customers for whom information was provided actually qualified for the LCCW promotion.

It is also impossible to know which of the customers who received a waiver of the line connection charge *actually received this waiver as a result of the LCCW promotion.* As was also made plain in the letter to dPi, numerous waiver codes can be used to waive the line connection charge. In the documents submitted, a very small percentage of the waivers were coded as "WLC," which means that only the line connection charge was waived. Other accounts bear the code "WSO," which waives the line connection charge or the secondary service order charge. Still others are coded "WRC," which indicates that all recurring charges have been waived. (Letter, p. 5). Each of these codes can be used to waive the line connection charge pursuant to the LCCW promotion. Each code can also be used to waive the line connection charge, the secondary service order charge or other non-recurring charges for reasons that are entirely unrelated to the LCCW promotion. It is impossible to tell from the information dPi requested (and AT&T provided) whether these waivers resulted from an application of the LCCW promotion.

Further, even if dPi had made a more artful request, it is still not possible to discern from these codes, or any record in AT&T's possession, whether these waivers were granted as part of the LCCW promotion or for some other reason. (See, Tipton Aff., p. 8). Given this, this information has no probative value whatsoever.

The fundamental problem with dPi's request is that dPi has attempted to assign to AT&T the task of extracting from its systems information that these systems do not retain. This is not a deficiency in AT&T's systems, but rather an inherent problem with dPi's request.

AT&T's ordering system, for example, is designed to process customers' orders in the normal course of business. It is not designed to capture every detail of a customer's order and to preserve it for years after the business need for the information has ended. Thus, for example, there is no systematic problem with having the line connection charge waived by a number of codes that can be used for other purposes. The use of the codes functions within the system perfectly well. The use of multiple codes, however, may make it difficult (or impossible) to tell, years after the fact, the precise reason for the waiver of a particular charge. Again, there would be no business reason to capture this information and retain it for many years.

The ordering system is designed to insure that orders are properly processed, not to create some sort of permanent forensic record that would be unlikely to ever be used. For this reason, from the time that dPi first made its request, AT&T has clearly communicated that the chances of finding the precise information dPi sought were remote at best. After months of labor by AT&T, its initial assessment has been proven accurate. This is not a problem with AT&T's system, or with the way it retains data, but rather the result of dPi's unreasonable expectations and demands.

Although the above-described deficiencies make *all* the data submitted by dPi essentially meaningless, the older data is even less reliable. As explained by Ms. Tipton in her affidavit, some of the systematic difficulties in extracting the information for 2003-

2004 make it inherently unreliable. (Tipton Aff., pp. 5-6). Further, even if the data were absolutely accurate, it still cannot be used for the comparison that dPi attempts to make between 2003-04 data and 2005-07 data. As discussed in Ms. Tipton's affidavit (and as will be discussed further below), AT&T produced information for 2005 from both the billing system and the ordering system, and the information from these two sources was markedly different (Tipton Affidavit, pp. 10-11). Specifically, the data drawn from the ordering system shows that a line connection waiver was granted for approximately 15 percent of retail customer accounts, while the data extracted from the billing system for the same time period shows that approximately 30 percent of retail customer accounts received this same waiver. The fact that the data drawn from two different sources is not only inconsistent, but irreconcilably so, speaks volumes about the unreliability of this data.

C. dPi Misinterprets And/Or Misrepresents The Data To Attempt To Buttress Its Unsupportable Conclusions.

Despite the fact that the data submitted by dPi is patently unreliable, dPi attempts to create the contrary impression by presenting untenable assumptions as facts and, at least in one instance, editing the data submitted in an apparent attempt to disguise the fact that the data directly rebuts its contentions. At first blush, dPi's charts in Appendix 1 appear to substantially undercut its argument. Specifically, dPi claims that AT&T gave the LCCW promotional discount to its customers who ordered basic service with call blocks. However, the pertinent chart in Appendix 1 clearly shows that in 2005-07 the line connection charge waiver was given, on average, 15 percent of the time, and that it was denied 85 percent of the time. Thus, it appears to show that a result that dPi claims occurred 100 percent of the time really occurred only 15 percent of the time. dPi

apparently attempts to explain this anomaly with this statement, which appears in dPi's Motion: "those orders for basic service and TouchStar blocking features which did not receive a waiver included orders which were not eligible for other reasons, i.e., they were *not* winback customers . . .." (dPi Motion, p. 5).

Thus, dPi appears to assume that every single one of the 85 percent of the retail customers who were denied the line connection waiver were denied this credit because they were new customers, as opposed to reacquisition or other non-qualifying customers. dPi further assumes that every single one of the 15 percent of the customers that were given a waiver of the line connection charge were reacquisition customers who received the waiver as part of the LCCW promotion. Neither of these fundamental assumptions is in any way supported by the actual data, Again, the data does not distinguish between new customers and reacquisition customers. Thus, the central premise of dPi's position is an assumption about the composition of the retail customer pool that has no support whatsoever. Moreover, as stated previously, dPi is well aware of this fact because AT&T's letter of October 29, 2007 stated this point with unmistakable clarity. dPi has taken the clarification by AT&T that it is not possible to distinguish qualifying win-back customers from non-qualifying new customers and twisted it to give precisely the opposite impression.

Also, of the 15 percent of the retail customers who received the waiver, it is impossible to know if these customers received the waiver of the line connection charge because of the LCCW promotion or for some other reason. Nevertheless, dPi assumes, without any basis, that every one of the end users who received a waiver of the line connection charge received it under the LCCW promotion.

Moreover, dPi states that, on average, AT&T granted the promotional discounts 30 percent of the time in the 2003-2004 timeframe (Appendix 1). Again, dPi appears to assume, with no support whatsoever, that the 70 percent that were denied were denied because they did not have qualifying status, and that the 30 percent that were granted were granted pursuant to the LCCW promotion. These assumptions are equally invalid for this older data.

When one considers dPi's position as to the trends in AT&T's granting of waivers, dPi's arguments devolve from baseless conjecture and misleading rhetoric to outright dissembling. The most troublesome aspect of dPi's submission is the way that it has chosen to handle 2005 data. As addressed in the affidavit of Ms. Tipton, the data AT&T produced to dPi that was extracted from its billing system showed that 29 percent of AT&T's new customers received a waiver of the line connection charge in 2005. (Tipton Aff., pp. 10-11). The 2005 data extracted from the ordering system, which AT&T also produced to dPi, showed that 14 percent of AT&T's new customers received the discount. The only logical conclusion that can be drawn from this incongruence is that at least one set of data, and probably both sets of data, are unreliable. At the very least, this crucial disparity would call for additional scrutiny by anyone truly trying to obtain from the data an accurate representation of what transpired. dPi, however, took a different approach.

dPi relied solely upon the ordering system data for 2005, which is addressed in the conclusory charts of Appendix 1. At the same time, dPi simply ignored the billing system data for 2005, i.e., it is not addressed in any way by dPi's analysis. Even worse, dPi removed the 2005 billing information that AT&T produced and provided only the

remainder of the data to the Commission in Appendix 3 to the Motion. Finally, dPi misrepresented to the Commission that its Appendix 3 contains *all* the information AT&T provided in response to dPi's discovery request in Florida (See, dPi Motion, p. 5).

It is almost impossible to believe that dPi accidentally removed exactly one year's worth of data from what was produced by AT&T. Thus, dPi appears to have intentionally redacted the data that undercut its theory before it submitted it to the Commission. Even if dPi's submission otherwise supported its arguments (and it should be clear at this juncture that it does not), the fact that dPi made the apparent conscious election to handle the information in this way, and to make the representations it did, should certainly draw into question all of dPi's ostensible conclusions from the data.

D. AT&T's Additional Analysis Revealed Even More Evidence That dPi's Interpretation Of The Data Is Wrong.

Again, AT&T believes that the information submitted by dPi is inherently unreliable as support for dPi's arguments, and that it should not be relied upon by the Commission for any purpose. Nevertheless, AT&T conducted further analysis of the service orders related to these customer accounts and found additional information that undercuts dPi's contentions.

As described in her affidavit, Ms. Tipton conducted an analysis of a sample of the service orders related to the customer accounts. As Ms. Tipton states, of the 18,621 orders that were submitted during the 2005 to 2007 timeframe that had basic local service and two blocks but no other features, credit was granted about 14 percent of the time, i.e., on 2571 orders (Tipton Aff., p. 13). Ms. Tipton reviewed a sample of the service orders of the retail customers who make up this 14 percent. After completing the review, which is explained in detail in Ms. Tipton's affidavit, she did not find a single instance in which

it can be confirmed that the line connection charge was waived pursuant to the LCCW promotion.

Moreover, she found that a significant percentage of the service orders had sufficient information to conclude that (1) the waivers were properly granted, and (2) they were granted for reasons that were unrelated to the LCCW promotion. (Tipton Aff., p. 14). This analysis, although limited, provides additional evidence that dPi's contention that all waivers relate to the LCCW promotion is simply wrong.

IV. DPI'S REQUEST FOR ORAL ARGUMENT SHOULD BE DENIED

At this juncture, the Commission has dismissed dPi's Complaint and denied its first Motion for Reconsideration, and the Federal District Court has upheld the decision of this Commission. dPi's latest gambit is to file yet another Motion for Reconsideration, which is devoid of merit and based on misrepresentations of unreliable data. There is nothing in dPi's Motion to warrant taking up any more of the Commission's time than dPi has already with its specious arguments. dPi's request for oral argument should be denied.

V. CONCLUSION

dPi's Motion fails to support its request for reconsideration for four reasons. First, dPi has failed to present competent evidence upon which the Commission can reply. Second, the information submitted by dPi is inherently unreliable because it is impossible to discern from this information which retail customers qualified for the promotion and which received promotional credit (as opposed to a waiver for some other reason). Third, dPi has attempted to fill in the informational gaps with groundless conjecture and disingenuous manipulation of the data. Fourth, Ms. Tipton's analysis of

service orders related to the subject accounts contradicts dPi's claims. For all these reasons, dPi's Motion for Reconsideration should be denied.

AT&T NORTH CAROLINA

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all parties of record by electronic mail or placing a copy of same in the U.S. mail, first class postage prepaid, this 17th day of December, 2007.

Edward L. Rankin, III FB

PC Docs: 699239

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and U.S. Mail this 31st day of March, 2008.

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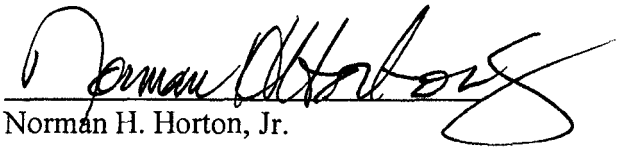

Norman H. Horton, Jr.