

State of Florida



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: August 7, 2008

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Tan)
Division of Regulatory Compliance (Trueblood)

RE: Docket No. 050863-TP – Complaint by DPI-Teleconnect, L.L.C. against BellSouth Telecommunications, Inc. for dispute arising under interconnection agreement.

AGENDA: 08/19/08 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: McMurrian, Argenziano, Skop

PREHEARING OFFICER: McMurrian

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050863.RCM.DOC

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Case Background

On November 8, 2005, dPi-Teleconnect, L.L.C. (dPi) filed a complaint against BellSouth Telecommunications, Inc. n/k/a AT&T Florida (AT&T) seeking resolution for a dispute arising under its interconnection agreement. On December 6, 2005, AT&T filed a response to dPi's complaint stating that dPi is not entitled to additional credits from AT&T as a result of dPi reselling AT&T services subject to promotional credits.

An administrative hearing was held on April 3, 2008. Post-hearing briefs were filed on April 30, 2008. On May 2, 2008 AT&T filed a Motion to Strike Appendices to dPi's post-hearing brief, which contained documents whose admission into the record had previously been denied by the Commission. On July 16, 2008, Order No. PSC-08-0457-PCO-TP was issued granting AT&T's Motion to Strike. This recommendation addresses the two issues stated in the complaint. Issue 1 asks whether dPi is entitled to credits for the AT&T Line Connection Charge Waiver promotion when dPi orders free blocks on resale lines. Issue 2 asks if dPi is entitled to credits for any other promotions. The Commission is vested with jurisdiction over this matter pursuant to Section 364.012, Florida Statutes, and Section 252 of the 1996 Federal Telecommunications Act.

Discussion of Issues

Issue 1A: Is dPi entitled to credits for the AT&T Florida line connection charge waiver promotion when dPi orders free blocks on resale lines?

Recommendation: No. Staff does not believe the TouchStar Service blocks that dPi orders for its resale lines that are provided by AT&T free of charge are “purchased” features that qualify for promotional credits. Staff recommends that dPi is entitled to credits for the Line Connection Charge Waiver promotion only when a dPi reacquisition or win-over customer purchases basic service and two features. **(Trueblood)**

Position of the Parties

dPi: dPi is entitled to promotional credits because dPi qualified under the promotion’s express terms by ordering basic service plus TouchStar Blocking Features; and because BellSouth interpreted and applied the LCCW promotion to waive Line Connection Charges for both other CLECs and its own retail customers with orders configured like dPi’s.

AT&T: No. The Line Connection Charge Waiver (“LCCW”) promotion requires the end user to purchase basic local service and two custom features. dPi failed to qualify for this Promotion because (1) there was no purchase; (2) there was no order of features; and (3) dPi’s end users did not order features.

Staff Analysis: The crux of this issue centers around the question of whether dPi is entitled to credits for the Line Connection Charge Waiver (LCCW) when dPi submits orders with free blocks. The language in AT&T’s General Subscriber Service Tariff (GSST) states that the line connection charge will be waived for reacquisition and win-over residential customers who currently are not using AT&T for local service and who purchase AT&T Complete Choice, AT&T PreferredPack service, or basic service and two (2) features. dPi contends that the qualifications are met when dPi submits orders for reacquisition or win-over customers that include basic service and a combination of two free TouchStar service blocks, i.e., BCR (Denial of Per Activation of Call Return), BRD (Denial of Per Activation of Repeat Dialing), and HBG (Denial of Per Activation of Call Tracing). AT&T asserts that the qualifications are met when dPi submits orders for the purchase of basic service and two TouchStar Service features that have a monthly or per usage fee.

PARTIES’ ARGUMENTS

dPi

dPi witness Watson devotes the majority of his testimony to explaining his role as the billing agent for dPi’s promotional credits in 2004. The witness explains the methodology that AT&T had in place for processing credit requests from dPi and other CLECs, and argues why AT&T should be required to pay dPi the credits sought for the Line Connection Charge Waiver. dPi witness Bolinger’s testimony primarily reiterates arguments made by witness Watson.

Witness Watson asserts that his company, Lost Key Telecom, was hired by dPi to apply for credits that dPi was entitled to receive from AT&T for promotions being offered by AT&T. The witness states that as dPi's billing and collections agent in the promotional credit process, his company reviewed data provided by dPi for resold AT&T services and determined for which promotions dPi was entitled to receive promotional credits. He asserts that once the promotions had been identified, Lost Key Telecom would submit promotional credit requests to AT&T on dPi's behalf. (Watson TR 158-159)

dPi witness Watson testifies that when he first started applying for credits for CLECs in 2003, the process was long and the staff at AT&T consisted of one person, who was subsequently replaced by another person in the second half of 2005. (Watson TR 159) The witness asserts that the staff at AT&T who were responsible for processing the promotional credits were helpful, but it was clear that when he first started talking to them about the credit process that AT&T was not receiving many requests from CLECs. He states that AT&T's staff was unable to answer many of his questions regarding promotions, and when they did answer questions the response was often later reversed. The witness opines that at times it seemed that policies were made on the spot, on an ad hoc basis. (Watson TR 159)

Witness Watson asserts that AT&T Florida has offered a promotion called the Line Connection Charge Waiver that essentially waives the line connection charge for customers who switch to AT&T and purchase basic service and two TouchStar features. He states that in August 2004 Lost Key Telecom started submitting credit requests for dPi and other clients that consisted of new basic service and two or more TouchStar features. Witness Watson states that AT&T paid all the claims that he submitted for Budget Phone, another CLEC that had a claim twice the size of dPi's. He also notes that AT&T paid Teleconnect in full for promotional credits for claims that were very similar to dPi's. (Watson TR 160)

Witness Watson testifies that from September 2004 to April 2005 AT&T stopped paying dPi's promotional credit requests, but did not give a reason for not paying the credits; dPi was often promised that the payments were forthcoming. The witness states that in April 2005 AT&T informed dPi that credits would not be paid because dPi's orders did not include the purchase of basic service and two features. He states that dPi was told that the BCR, BRD, and HBG blocks that were included in dPi's orders did not meet the qualifications because they were provided by AT&T at no additional charge. (TR Watson 160-161) The dPi witness notes that in basically every instance where AT&T denied credit for the line connection charge waiver, dPi orders included basic service and at least two TouchStar features, such as the BCR and BRD blocks.¹ Witness Watson contends that there is no dispute that the BCR and BRD blocks are TouchStar features, and that AT&T Florida previously paid credits to other carriers with service orders consisting of basic service and TouchStar blocks. (TR 161)

According to witness Watson, AT&T initially agreed that orders consisting of basic service and the TouchStar blocks, BRD and BCR and HBG, were valid because for a while it

¹ AT&T contends that the TouchStar BCR, BRD, and HBG blocking features are not features at all. However, they are described in the TouchStar feature portion of AT&T's tariff, where they are listed with other features, and are specifically referred to as features. See EXH 17, an excerpt from the tariff. Furthermore, AT&T employees repeatedly referred to these features as features during communications between the parties; see EXH 21.

paid credits to other CLECs for orders identical to those of dPi. The witness opines that once AT&T realized that the majority of dPi's orders would qualify for the promotion because the typical order for a dPi customer with poor credit includes at least two blocks, AT&T changed its interpretation of the promotion to keep from having to pay credits to dPi and other CLECs for the line connection charge waiver for a promotion for which most of AT&T customers with good credit would not qualify. (Watson TR 161-162) dPi witness Bolinger asserts that Lost Key developed an automated system for processing promotional credits that was evaluated and approved by AT&T, prior to large batches of orders being submitted for credits. The witness asserts that AT&T approved the test orders for the LCCW credits that included basic service and blocking features. (Bolinger TR 60)

AT&T

The majority of AT&T witness Tipton's testimony addresses the issues raised about the Line Connection Charge Waiver and explains why dPi is not entitled to the credits for the promotion when it submits orders consisting of basic service and two or more of the free TouchStar Service blocks, such as BCR, BRD, or HBG.

Witness Tipton asserts that AT&T offers its retail promotions, such as the Line Connection Charge Waiver, to dPi by granting credits for the value of the promotion when dPi meets the same criteria that an AT&T customer must meet to qualify for the promotion. (TR 192) According to witness Tipton, dPi is requesting credits for the promotion, in some instances, for end users who do not meet the eligibility criteria for the promotion. She states that the LCCW promotion requires an end user to purchase basic service and two features. The witness also disputes dPi's contention that the free blocks that dPi includes on most of its end user orders qualify as "purchased features" even though neither dPi nor its end users pay anything for these features. (TR 192)

Witness Tipton testifies that AT&T does not seek to avoid payment of promotional credits to dPi for claims that meet the qualifying criteria, but AT&T does seek to deny payment of claims to dPi and other CLECs that do not meet the conditions stated in the interconnection agreement for promotions. The witness asserts that by the April 2007 billing cycle AT&T had issued credits totaling \$83,000 to dPi's Florida end users. The witness states that the line connection charge waiver credit is paid when a request meets the eligibility criteria, and it is denied when a request does not. (TR 193-194) She cites the parties' interconnection agreement (Agreement) as the document that governs the issuance of promotional credits. The Agreement reads:

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.²

Witness Tipton asserts that the language in the agreement is clear, and dPi is only entitled to promotional credits when dPi's end users meet the same promotional criteria that AT&T retail end users must meet in order to qualify for the credit. (TR 194)

² This language was included in the original ICA between dPi and AT&T Florida.

According to witness Tipton each month CLEC resellers submit credit request forms with accompanying spreadsheets for end user accounts which the CLECs claim qualify for promotional credits. Witness Tipton asserts that when requests are submitted by a CLEC, the CLEC has represented to AT&T that the CLEC's end users meet the criteria to qualify for the credit. (TR 195) She states that when AT&T first started processing promotional credits from CLECs, it assumed that the requests met the promotion's requirements listed in the tariff and the interconnection agreement between AT&T and the respective CLEC, and did not attempt to verify their eligibility. The witness asserts that in 2004 it appeared that some of the requests submitted by CLECs were not valid and ineligible for a promotional credit. As a result, AT&T started sampling the requests from CLECs in early 2005 to verify that the credit requests were valid and eligible for the promotion. (TR 195)

In witness Tipton's direct testimony she explains that the majority of dPi's claims are for the Line Connection Charge Waiver promotion, but there are actually three promotions at issue in the original complaint. Regarding the LCCW promotion, the witness asserts that the LCCW provides a credit of the applicable nonrecurring line connection charge (installation charge) when a customer purchases a basic local flat-rate residential line and two features. (TR 197) Witness Tipton explains that an AT&T retail end user qualifies for the LCCW if the end user is a customer whose service is currently with another carrier and the customer orders service as an AT&T "win-over," or reacquired customer. She asserts that the customer must also have purchased a minimum of basic service and a specified number of Custom Calling or TouchStar features. Witness Tipton testifies further that per the terms of the parties' Agreement, for dPi to qualify for a credit under the LCCW promotion, a dPi end user must likewise be a customer that is not a current dPi customer, has become a win-over or reacquired customer for dPi, and the customer must have purchased the specified number of Custom Calling or TouchStar features in accordance with the terms of the promotion. (TR 197)

Witness Tipton contends that the majority of the customer orders for which dPi requested credits under the LCCW promotion were denied by AT&T because the orders did not contain the required number of purchased features. The AT&T witness states that many of dPi's end users did not purchase any features, and thus were not eligible for the credit because AT&T retail end users with similar orders are not eligible for the LCCW promotion. She asserts that some of dPi's requests were also denied because the request was a duplicate request. (TR 199) Witness Tipton testifies that prior to implementing its automated verification process in April 2006, AT&T performed a sample audit of the credit requests submitted by dPi. The witness states that a subsequent review of 100% of the promotional credit requests was conducted for requests that were submitted in Florida for the period January 2005 through December 2005 that were not included in the original sample. (TR 200) The witness asserts that the review that was performed on the remainder of the requests (1) confirms the outcome of the initial sample, (2) indicates that AT&T most likely overpaid credits to dPi, and (3) reflects that dPi's process for submitting requests lacked a method to ensure that only valid requests were submitted. Witness Tipton states that when AT&T verified 100% of the requests for credits that dPi submitted for the LCCW promotion for January 2005 to December 2005, it was determined that 84% of the requests did not meet the qualifications for the LCCW promotion. She notes that initially 82% of dPi's LCCW requests for this period were denied, which indicates that dPi was overpaid for the LCCW promotion during the period January 2005 to December 2005. (TR 201-202)

Based upon the results of the verification conducted by AT&T for requests that dPi submitted between January 2005 and December 2005, the AT&T witness believes that dPi systematically inflated claims by submitting duplicate claims for credit without applying the most basic verification. (TR 203) Witness Tipton testifies that dPi submitted requests for some promotions that did not meet the qualifications because existing customer accounts were submitted for promotions that were only available to new customers, and those same new customers were also submitted for promotions that only applied to existing customers. (TR 204) According to witness Tipton, a review conducted by AT&T of claims submitted by dPi indicates that requests for credit were made in the same month, for the same end user telephone number, for both the LCCW and the Secondary Service Charge Waiver (SCCW)³ promotion. The witness asserts that claims were submitted in this manner even though the LCCW promotion requires that the customer be a newly reacquired or win-over customer, while the SCCW promotion requires that the customer be an existing customer. (TR 204) Witness Tipton asserts that a random review performed by AT&T of the credit requests submitted for January 2005 reveals that dPi submitted requests for credit and attempted to “double-dip” by applying for the LCCW and the SCCW promotion using the same customer information. (TR 204-205) The witness states that AT&T has informed dPi on numerous occasions of the number of accounts that dPi has submitted that did not meet the eligibility criteria. (TR 205)

In her rebuttal testimony witness Tipton asserts that dPi witness Watson discusses at length the process that AT&T used to review CLEC requests for promotional credits, which is not at issue in this proceeding. Witness Tipton states that the Commission’s Order⁴ only identified two issues:

- (1) Is dPi entitled to credits for the AT&T Florida Line Connection Charge Waiver promotion when dPi orders free blocks on resale lines? and
- (2) Is dPi entitled to any other promotional resale credits from AT&T Florida?

Witness Tipton argues that even though dPi claims that AT&T has not granted dPi credits for valid requests for the LCCW promotion, in most cases dPi no longer submits such requests for credits. (TR 211) The witness also states that the majority of dPi’s requests that were denied, were denied because it appears that most of dPi’s orders were based on the assumption that nonchargeable calling blocks are features. Witness Tipton testifies that calling blocks enable end users to prevent the activation of certain features that have a per-usage charge. (TR 213) The witness believes that a review of AT&T’s tariff illustrates the distinction between a feature and a call block by referring to the applicable Rates and Charges for TouchStar Services. (TR 213) She asserts that the blocking capability described as “Denial of Per Activation” in the GSST Tariff is available to a customer at no charge if the customer wants to ensure that certain chargeable features are not utilized. (TR 214)

³ The complaint listed three promotions. The SCCW promotion is addressed in Issue 2 and the governing language is stated in Section A2.10.2(A) of the GSST. (EXH 23)

⁴ Order No. PSC-07-0322-PCO-TP, issued April 13, 2007.

Witness Tipton states that dPi does not purchase call blocks from AT&T, and dPi does not charge its end users for the call blocks because the blocks are not purchased features. (TR 216) The witness asserts that in the North Carolina proceeding on the same issue, dPi witness Bolinger stated that dPi places blocks on all of its end user lines to ensure that its customers do not incur per activation charges on their accounts because that is standard industry practice for prepaid customers. (TR 216)

In response to dPi witnesses Watson and Bolinger's testimony that accuses AT&T of crediting CLECs in an unfair manner in 2004, AT&T witness Tipton counters that these allegations are not true. She states that in August and September 2004, dPi witness Watson from Lost Key Telecom began submitting thousands of requests for promotional credits for several CLECs' clients, and while AT&T was trying to determine how best to process the voluminous number of requests, witness Watson contacted AT&T and requested that AT&T process the requests from Budget Phone as soon as possible. Witness Tipton asserts that witness Watson told her that his business had been severely damaged as a result of Hurricane Ivan and that he needed the credits processed quickly in order to continue his business operations. (TR 219) She states AT&T assumed that witness Watson's requests were valid, and AT&T processed almost 100% of the credits for Budget Phone. Witness Tipton asserts that after the requests were processed for Budget Phone, AT&T realized that Budget Phone and many of the other CLECs for whom Lost Key Telecom had submitted claims had received credit for promotions that did not meet the terms of the promotion, and AT&T immediately suspended granting credits to all CLECs for a time. (TR 219)

In AT&T witness Tipton's direct testimony she states that after AT&T verified 100% of the promotional credit requests that dPi submitted between January 2005 and December 2005 it was determined that dPi was overpaid by 2% for the 2005 LCCW promotional credit requests. (TR 202) In her rebuttal testimony witness Tipton testifies that after additional reviews were conducted by AT&T for 100% of the promotional credit requests submitted by dPi for the LCCW promotion for the period January through March 2006 and August through December 2004, it was also determined that dPi had been overpaid for the LCCW promotion. dPi was overpaid by 3% for the period January through March 2006, and by 19% for the period August 2004 through December 2004. (TR 222-223) In her supplemental rebuttal testimony, the witness notes that neither Lost Key Telecom nor dPi assisted in the development of AT&T's process for approving promotional credits, and no small test batches of claims were ever submitted to AT&T for approval before AT&T was inundated with the requests from Lost Key Telecom. (TR 228)

At hearing, witness Tipton testified that it was not AT&T's practice to grant the LCCW promotion to its retail customers that requested basic service and free blocks, as dPi contends that the data in EXH 13 proves. (TR 295-299) The witness asserts that there are several reasons why AT&T might have waived the line connection charge for some of its retail customers but it was never waived because of the LCCW promotion when its customers only ordered basic service and free blocks. (TR 303-304) She states that the data in EXH 13 reflects that in some instances the line connection charge was waived for some of AT&T's retail customers, but it cannot be determined in many instances why the charge was waived. (TR 319-320) Witness Tipton asserts that based on the data in EXH 13 and the analysis of that data, it is impossible for

dPi or AT&T to determine whether a particular retail customer received a waiver of the line connection charge pursuant to the LCCW promotion. (TR 331)

ANALYSIS

The treatment of promotions is addressed in the parties' Agreement entered into on February 28, 2003. The language states that promotions lasting more than 90 days will be provided to dPi end users who would have qualified for the promotion had it been provided by AT&T directly. AT&T acknowledges its obligation to offer the LCCW promotion to dPi and asserts that the promotion is offered to dPi when dPi's orders meet the conditions and qualifications of the promotion. AT&T testifies that all requests for credits by dPi have been granted for claims that met the qualifications. To the contrary, dPi contends that AT&T has not extended its promotional pricing for all orders that met the qualifications. dPi asserts that AT&T originally interpreted its tariff language the way dPi states that it should be interpreted, but changed its interpretation after it paid a substantial amount of credits to two CLECs with identical claims as dPi. dPi contends that AT&T changed its interpretation so that it would not have to pay the requested credits to dPi and other CLECs. (TR 61) In its brief, dPi claims that AT&T interpreted the qualifying language and awarded promotional credits for the LCCW promotion in a manner consistent with dPi's interpretation. (BR at 12) AT&T witness Tipton counters that dPi's claims were not valid. Witness Tipton also asserts that the claims that were submitted by Lost Key Telecom on behalf of other CLECs, such as Budget Phone, that were paid in 2003 and 2004 were also invalid. These claims were inadvertently paid because AT&T did not independently verify them, instead assuming that they satisfied the promotion's requirements.

dPi argues that dPi is AT&T's customer and if dPi's customers order dPi's basic service and dPi places a combination of the BRD, BCR, or HBG blocks on the orders, the orders qualify for the line connection charge waiver. However, AT&T contends that dPi's customers or end users must purchase basic service and two TouchStar features to qualify for the promotion, just as AT&T's end users must do to qualify for the promotion. AT&T asserts that it does not provide the LCCW to its end users on orders consisting of basic service and a combination of the free blocks, and thus dPi is not entitled to the waiver when it submits orders for its end users with basic service and a combination of the free blocks.

In its brief, dPi contends that its analysis of the data produced by AT&T in Exhibit 13 shows that AT&T retail customers with orders consisting of basic service and two of the blocks (BCR, BRD, or HBG) received waivers of the line connection charge. (BR at 14) AT&T's witness Tipton acknowledges that some of AT&T's retail customers received waivers for the line connection charge for several reasons. (TR 303-304) She states that the data in EXH 13 reflect that in some instances the line connection charge was waived for some of AT&T's retail customers, but it cannot be determined in many instances why the charge was waived. (TR 319-320) Witness Tipton asserts that based on the data in EXH 13 and the analysis of that data, it is impossible for dPi or AT&T to determine whether a particular retail customer received a waiver of the line connection charge pursuant to the LCCW promotion. (TR 331) Staff agrees that it cannot be confirmed that when the line connection charge was waived for some of AT&T's retail customers, it was waived pursuant to the LCCW promotion.

Although there is only one primary issue and the parties agree that certain terms and conditions must be met in order to qualify the promotional credit for the LCCW, they tend to disagree on the application and interpretation of the language regarding (1) purchased features, (2) end users, (3) the process for requesting credits, and (4) parity. As a result, most of the parties' arguments address secondary issues that they assert are relevant to the LCCW promotion. AT&T's GSST⁵ describes the terms and conditions that must be met to qualify for the promotion. The language in the GSST states:

The line connection charge to reacquisition or win-over 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 two (2) features will be waived. (EXH 23)

In their Agreement AT&T and dPi have defined certain terms and conditions that must be met regarding parity in order to qualify for promotional offerings. The Online Merriam-Webster Dictionary defines parity as the quality or state of being equal or equivalent.⁶ Accordingly, staff believes that parity is achieved in this case when AT&T's retail customers (end users) and dPi's retail customers (end users) are treated equally when it comes to requirements that must be met to qualify for the LCCW promotion. First, the Agreement defines "end user" in both the general terms and conditions section, and the section on Resale. The definition reads:

End User means the ultimate user of the Telecommunications Service.⁷

Staff believes the definition of end user is crucial in determining parity. Staff believes that "end user" refers to dPi's end users, not to dPi as dPi asserts. Second, the Agreement addresses parity on Page 4 of the General Terms and Conditions section. The language states:

When dPi purchases Telecommunication Services from BellSouth for the purpose of resale to End Users, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time interval that BellSouth provides to its Affiliates, subsidiaries and End Users.⁸

Staff believes that the above language supports AT&T's argument that while dPi is AT&T's customer, it is dPi's end users who are the recipient of the services, and therefore they must meet the same criteria that AT&T's end users must meet to qualify for the LCCW promotion. Third, the Agreement addresses the conditions under which services will be available for resale by dPi. That language is addressed in the Agreement in Attachment 1, which includes a page that states exclusions and limitations on services available for resale. (EXH 22) Under the Exclusion and Limitations Section of the Resale portion of the ICA, on Page 16 of Attachment 1, Applicable Note 2 states:

⁵ Section A2.10.2(A) of AT&T Florida's General Subscriber Services Tariff that was in effect at the time the promotion credits were requested by dPi.

⁶ The URL for this definition is <http://www.merriam-webster.com/dictionary>

⁷ Negotiated Interconnection Agreement between dPi Teleconnect and BellSouth Telecommunications, Inc., dated March 11, 2003 and March 20, 2003, respectively.

⁸ Id.

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

In its brief, dPi argues that the BCR, BRD, and HBG are identified in the tariff as features and AT&T staff members have referred to them previously as features in communications with dPi. (BR at 7) dPi further notes these blocks are features that have USOC codes listed in the rates and charges section of the tariff. (BR at 8) Witness Tipton asserts that BCR, BRD, and HBG are listed under TouchStar Service but they are not TouchStar features and, more importantly, they are not purchased TouchStar features. (TR 216) In its brief, AT&T points out that dPi end users do not order the BCR, BRD, and HBG blocks that dPi places on their lines. (BR at 4) Staff agrees with witness Tipton that the references made to the BCR, BRD, and HBG in footnotes in the GSST are ambiguous and somewhat confusing, but even if they are features, they are not purchased by dPi or dPi's end users. (TR 231-232) Pursuant to the language in the Agreement, staff agrees with AT&T that in order for dPi to qualify for the LCCW promotion, features must be purchased. Based upon the record evidence in this proceeding, staff believes that dPi's interpretation of the language in the tariff lacks merit and dPi also has not shown that its customers purchased the denial of activation blocks.

CONCLUSION

Staff does not believe the TouchStar Service blocks that dPi orders for its resale lines that are provided by AT&T free of charge are "purchased" features that qualify for promotional credits. Staff recommends that dPi is entitled to credits for the Line Connection Charge Waiver promotion only when a dPi reacquisition or win-over customer purchases basic service and two features.

⁹ Id. The wording of this footnote was included in the parties' original ICA, and this provision was applicable to all claims submitted on dPi's behalf in 2004 and 2005. During cross-examination AT&T's witness testified that dPi is not considered the end user in this footnote.

Issue 1B: If so, in what amount?

Recommendation: If staff's recommendation in Issue 1A is approved, dPi is not entitled to any credits. If staff's recommendation is denied in Issue 1A, dPi is entitled to credits in the amount of \$59,210 for the Line Connection Charge Waiver promotion. **(Trueblood)**

Position of the Parties

dPi: dPi is entitled to \$59,210

AT&T: For the reasons stated in Issue 1A, dPi is not entitled to any credit.

Staff Analysis: This issue essentially is a fall-out of Issue 1A. If the Commission approves staff's recommendation in Issue 1A, dPi is owed no additional promotional credits. In the alternative, dPi has claimed it is owed \$59, 210. Although AT&T does not believe dPi is owed additional credits for claims consisting of a 1FR and free blocks, if the Commission should determine otherwise, dPi's figure of \$59,210 is the only amount supported by the record.

CONCLUSION

If staff's recommendation in Issue 1A is approved, dPi is not entitled to any credits. If staff's recommendation is denied, staff believes dPi is entitled to credits in the amount of \$59,210 for the Line Connection Charge Waiver promotion.

Issue 2A: Is dPi entitled to any other promotional resale credits from AT&T Florida?

Recommendation: No. dPi is not entitled to any other promotional credits from AT&T Florida.
(Trueblood)

Position of the Parties

dPi: No position was provided in post-hearing brief.

AT&T: No. The Secondary Service Charge Waiver promotion is available only to existing customers. dPi submitted requests for new customers. The Two Features For Free promotion is available only to new customers. dPi submitted requests for existing customers, and also submitted requests beyond the time frame [sic] of the promotion.

Staff Analysis: While in their pre-filed direct testimonies dPi witnesses Bolinger and Watson initially stated that these promotions were in dispute, dPi chose not to provide any record evidence to substantiate a claim for Issue 2A. (TR 59) On the other hand, AT&T witness Tipton testifies that credits sought by dPi for the promotions addressed in this issue that were denied by AT&T, were denied because dPi did not meet the qualifications for the promotion. (TR 197-200)

PARTIES' ARGUMENTS

dPi

dPi witnesses Bolinger and Watson did not present arguments for credits initially sought from AT&T for the SSCW and the TFFF promotions. Witness Bolinger did, however, state that dPi has a number of promotion-related disputes but will only focus on the dispute about the LCCW promotion. (TR 55) Witness Watson also states that dPi has been denied credits for the SSCW and TFFF promotions. (TR 161)

During cross-examination, witness Watson testified that in January, February, March and April 2004, while employed by Teleconnect, he submitted credit requests similar to dPi's requests for the SSCW and the TFFF promotions that were paid by AT&T within 30 days. Witness Watson testifies that in the summer of 2004 he left Teleconnect and started his own business. He asserts that after starting his business, Lost Key Telecom, he met with AT&T staff regarding promotions that his company was going to submit for two of his clients, Budget Phone and dPi. He states that Budget Phone's claims were paid and dPi's claims were denied, without any explanation. (TR 173-174)

AT&T

Witness Tipton asserts that in some instances dPi requested credits that did not meet the eligibility criteria. (TR 192-193) Witness Tipton states that AT&T extends its promotional pricing to dPi when dPi submits claims that meet the qualifications for a promotion as stated in the GSST. (EXH 23) The witness testifies that a dPi end user qualifies for the SSCW promotion

when the end user requests to add or change features or service on his accounts. Witness Tipton asserts that the TFFF promotion only applies to reacquisition or win-over customers and AT&T and dPi end users must purchase basic local service plus two Custom Calling or TouchStar features to receive the credit during the 12-month period following the installation of the qualifying service. (TR 198-199)

Witness Tipton asserts that before AT&T implemented its automated verification process in April 2006, a sampling method was used to verify claims submitted for the period January 2005 through December 2005 for the SSCW promotion and TFFF promotion. The witness states that combined data from AT&T's reviews indicated that 87% of the credit requests that dPi submitted for the period January 2005 through December 2005 did not qualify for the SSCW promotion, and that AT&T had only denied 68% of these credits. Witness Tipton also testifies that the results from the combined review indicate that 19% of the credit requests that dPi submitted for the TFFF promotion did not meet the qualifications, but AT&T only denied 5% of the requests for that period. The witness states that in both instances dPi had been overpaid for these promotions. (TR 202-203) Witness Tipton asserts that a random review of credit requests submitted in January 2005 indicated that dPi submitted the same requests for both the SSCW and LCCW promotions, even though the qualifications are different for each promotion. (TR 204-205) The witness asserts that AT&T communicated its concerns to dPi regarding the number of accounts submitted that were invalid. (TR 205)

Witness Tipton asserts in her rebuttal testimony that unlike Issue 1, dPi's witnesses did not provide any testimony to support dPi's contention that AT&T owes dPi credits for the SSCW and the TFFF promotions. The witness states that credit requests submitted by dPi and subsequently denied by AT&T, were denied because they did not meet the qualifications for the promotion. (TR 217) Witness Tipton testifies that before going to hearing in the North Carolina case dPi agreed to drop the SSCW promotion and the TFFF promotion because dPi felt Issue 2 had been addressed satisfactorily. (TR 218) The AT&T witness states that additional reviews have been completed that validates AT&T's claim that dPi is not entitled to any credit requests for the SSCW promotion and the TFFF promotion. (TR 222-223).

ANALYSIS

Staff notes that dPi did not address or provide a position on Issue 2A in its post-hearing brief. Staff further notes that the Order Establishing Procedure, Order No. PSC-07-0322-PCO-TP, and the Order Modifying Procedure, Order No. PSC-07-0959-PCO-TP, provide that failure to submit a position on an established issue in a post-hearing brief, results in that party having waived the specific issue. Therefore, staff notes that dPi has waived Issue 2A in its entirety. Accordingly, absent any evidence or arguments to the contrary, staff believes that dPi is not entitled to any other promotional credits from AT&T.

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Issue 2B: If so, in what amount?

Recommendation: Since dPi waived its position on Issue 2A, dPi is not entitled to any credits.
(Trueblood)

Position of the Parties

dPi: No position provided in post-hearing brief.

AT&T: For the reasons stated in Issue 2A, dPi is not entitled to any credit.

Staff Analysis: This issue essentially is a fall-out of Issue 2A. Since dPi waived its position on Issue 2A, staff believes dPi is not entitled to any credits.

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Date: August 7, 2008

Issue 3: Should this docket be closed?

Recommendation: Yes. The docket should be closed after the time for filing an appeal has run.
(Tan)

Staff Analysis: The docket should be closed 32 days after issuance of the order, to allow the time for filing an appeal to run.