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March 4, 2010

The Honorable Jocelyn Boyd
Interim Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: dPi Teleconnect, LLC, Complainant/Petitioner v. BellSouth Telecommunications, Incorporated, Defendant/Respondent
Docket No.: 2005-358-C

Dear Ms. Boyd:

Enclosed for filing is AT&T South Carolina's Surrebuttal Testimony of P.L. (Scot) Ferguson in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this pleading as indicated on the attached Certificate of Service.

Sincerely,

Patrick W. Turner / by nml

Patrick W. Turner

PWT/nml
Enclosure
cc: All Parties of Record
787653

AT&T SOUTH CAROLINA

SURREBUTTAL TESTIMONY OF P.L. (SCOT) FERGUSON

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2005-358-C

MARCH 4, 2010

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH AT&T OPERATIONS, INC., AND YOUR BUSINESS ADDRESS.

A. My name is Scot Ferguson. I am an Associate Director in AT&T Operations' Wholesale organization. As such, I am responsible for certain issues related to wholesale policy, primarily related to the terms and conditions of interconnection agreements throughout AT&T's operating regions, including South Carolina. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME P.L. (SCOT) FERGUSON WHO PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?

A. Yes. On February 5, 2010, I filed 39 pages of Direct Testimony and 24 exhibits in this Docket.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I have reviewed the Rebuttal Testimony filed in this Docket on February 19, 2010 by dPi Teleconnect's ("dPi") witness, Mr. Tom O'Roark. My Surrebuttal Testimony addresses a number of erroneous assertions made by Mr. O'Roark in his testimony, specifically with respect to policy positions at issue in this proceeding.

As I stated in my Direct Testimony, AT&T South Carolina's counsel will present legal arguments supporting these positions in post-hearing briefs and, if necessary, in oral argument.

I. PROMOTIONS OTHER THAN LCCW

Q. DO YOU AGREE WITH MR. O'ROARK THAT DPI'S CLAIMS FOR CREDITS UNDER THE SECONDARY SERVICE CHARGE WAIVER ("SCCW") AND TWO FEATURES FOR FREE ("TFFF") PROMOTIONS "ARE IRRELEVANT" (O'ROARK REBUTTAL TESTIMONY AT PAGE 1)?

A. No. dPi claims to be entitled to credits for the SSCW and TFFF promotions in its Complaint, and it has failed to present any evidence supporting those claims. Rather than simply ignoring those claims as dPi seems to suggests, AT&T South Carolina believes the Commission should reject all relief dPi is seeking regarding these promotions.

Q. WOULD AT&T SOUTH CAROLINA BE CONCERNED IF THE COMMISSION SIMPLY DECLINED TO ADDRESS DPI'S CLAIMS UNDER THE SCCW AND TFFF PROMOTIONS IN THIS DOCKET?

A. Yes. AT&T South Carolina is concerned that if the Commission either allows dPi to withdraw these claims from this proceeding or does not address these claims, dPi will continue to claim it was owed credits under these promotions and will continue to wrongfully withhold payment from AT&T South Carolina on that basis.[1]

Q. IN OTHER STATES, HAS DPI ATTEMPTED TO WITHDRAW ITS CLAIMS UNDER THE SCCW AND TFFF PROMOTIONS?

A. Yes. In North Carolina, dPi abandoned its claim for SCCW and TFFF credits. Subsequently, both the Florida and Alabama Commissions rejected dPi's requests to remove its claims under the SSCW and TFFF promotions from those proceedings. The Florida Commission found that dPi was not entitled to credits for the SSCW, the TFFF promotions, or the LCCW promotions, and the Alabama Commission has not yet reached the merits of the case. *See* PLF-16 at 9-11.

II. AT&T SOUTH CAROLINA HAS PAID VALID REQUESTS FOR LCCW, SSCW AND TFFF CREDITS SUBMITTED BY DPI

[1] AT&T South Carolina recently filed a Complaint with the Commission in an attempt to recover amounts which dPi has inappropriately withheld. *See* AT&T South Carolina's Complaint filed against dPi in Docket No. 2010-18-C.

Q. DID AT&T SOUTH CAROLINA HONOR DPI'S VALID PROMOTIONAL CREDIT REQUESTS?

A. Yes. As I stated on page 9 of my direct testimony, AT&T South Carolina has paid promotional credits to dPi when its (dPi's) end users met the criteria that AT&T South Carolina's customers had to meet in order to receive the benefits of a promotion. Further, as I stated on page 4 of my direct testimony, AT&T South Carolina has paid to dPi (as of December 2009), approximately $895,000 in credits for LCCW, and approximately $21,000 in credits together for SSCW and TFFF – credits to which dPi was actually entitled per the criteria under which AT&T South Carolina has paid its own customers. Mr. O'Roark's testimony does not acknowledge that fact, but it is the test as to whether AT&T South Carolina has met its obligation of making promotions available to CLECs.

III. THE PROMOTIONAL CREDIT PROCESS

Q. AT PAGE 2 OF HIS REBUTTAL TESTIMONY, MR. O'ROARK PRESENTS HIS VIEWS OF THE PROCESS BY WHICH DPI REQUESTS PROMOTIONAL CREDITS. DOES THAT TESTIMONY HAVE ANYTHING TO DO WITH WHETHER DPI IS ENTITLED TO THE PROMOTIONAL CREDITS IT SEEKS IN THIS DOCKET?

A. No. In this Docket, as discussed on pages 3-6 of my direct testimony, dPi is seeking a determination that it is owed a specific amount of credits. The manner in which the companies exchange information and process credits has no bearing on whether dPi qualifies for the credits it seeks (and it does not).

Q. MR. O'ROARK SEEMS TO SUGGEST (AT PAGE 2) THAT AT&T SOUTH CAROLINA SHOULD PROVIDE PROMOTIONAL CREDIT REQUESTS TO DPI AT THE TIME DPI SUBMITS THE ASSOCIATED SERVICE ORDER. HOW DO YOU RESPOND TO THAT?

A. First, AT&T South Carolina's systems are not set up to handle processing of the promotional credits when dPi initially submits an order. Second, as I explained at pages 26 through 29 of my direct testimony, AT&T's experience with the "honor system" revealed that a number of CLECs were submitting requests for credits to which they were not entitled. That experience supports AT&T South Carolina's process for handling promotional credit requests.

IV. MANUAL VALIDATION OF DENIALS

Q. HAS DPI SUBMITTED REQUESTS FOR LCCW, SCCW, AND TFFF PROMOTIONAL CREDITS TO WHICH IT IS NOT ENTITED?

1 A. Yes. dPi is not entitled to a significant percentage of the credit requests it
2 submitted for these promotions.
3
4 Q. HOW DID AT&T SOUTH CAROLINA DETERMINE THAT?
5
6 A. AT&T South Carolina originally reviewed data associated with a sample of
7 the promotional credit requests dPi submitted, and AT&T South Carolina
8 used the results of that review to determine what percentage of dPi's
9 promotional credit requests to grant or deny. As a result of this first analysis,
10 from February 2004 to November 2005, AT&T South Carolina denied 92%
11 of dPi's LCCW credit requests, 89% of dPi's SSCW credit requests, and 10%
12 of dPi's TFFF requests.[2]
13
14 Q. DID AT&T SOUTH CAROLINA PERFORM ANY ADDITIONAL
15 ANALYSIS ON DPI'S CREDIT REQUESTS?
16
17 A. Yes. At my direction, AT&T South Carolina has reviewed data associated
18 with the remaining promotional credit requests (that were not in the original
19 sample) from February 2004 to November 2005.
20
21 Q. WHAT DID THE SECOND ANALYSIS SHOW WITH REGARD TO THE
22 LCCW PROMOTION?

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[2] In 2004, dPi submitted a minimal amount of SSCW and TFFF credit requests. Accordingly, AT&T South Carolina credited 100% of these requests without using a validation process (sampling or otherwise).

1

2 A. With regard to the LCCW promotion, 86% of the requests in the second
3 analysis were denied, compared to 92% of the requests in the first analysis.
4

5 Q. WHAT DID THE SECOND ANALYSIS SHOW WITH REGARD TO THE
6 TFFF PROMOTION?
7

8 A. With regard to the TFFF promotion, 47% of the requests in the second
9 analysis were denied, compared to 10% of the requests in the first analysis.
10

11 Q. WHAT DID THE SECOND ANALYSIS SHOW WITH REGARD TO THE
12 SSCW PROMOTION?
13

14 A. With regard to SSCW promotion, 87% of the requests in the second analysis
15 were denied, compared to 89% of the requests in the first analysis.
16

17 Q. WHY WERE SUCH A HIGH PERCENTAGE OF DPI'S PROMOTIONAL
18 CREDIT REQUESTS DENIED?
19

20 A. As I explained in my direct testimony on pages 14-17, a high percentage of dPi's
21 orders simply do not qualify for promotions for at least one of several reasons.
22 By far the most common reason is dPi's erroneous assertion that it is entitled to
23 credits under the LCCW promotion for orders that include a line and 2 free calling

blocks. This is the bulk of Mr. O'Roark's rebuttal testimony, and I previously covered that issue fully on pages 17-26 of my direct testimony.

V. FLORIDA DISCOVERY

Q. AT PAGE 5 OF MR. O'ROARK'S REBUTTAL TESTIMONY, HE SAYS "THAT [AT&T SOUTH CAROLINA] DID CREDIT ITS OWN RETAIL USERS WHO ... TAKE ONLY BASIC SERVICE PLUS THE ... TOUCHSTAR BLOCKING FEATURES." FURTHER, HE BASES THAT ASSESSMENT ON DPI'S "REVIEW OF [AT&T SOUTH CAROLINA'S] OWN RETAIL ORDERING DATA." IS DPI'S ASSESSMENT CORRECT?

A. Absolutely not. The "retail ordering data" to which Mr. O'Roark refers is the Florida discovery that I discussed in detail on pages 30-39 of my direct testimony. As I explained, the Florida discovery simply does not support dPi's speculative claim that AT&T South Carolina granted the LCCW promotion to its customers who did not meet the eligibility criteria. In other words, while the Florida discovery shows that a line connection charge was waived on a particular account, it does not show why it was waived. At the North Carolina Commission's hearing on this discovery, dPi's witness conceded this fact.

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

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

Exhibit PLF- 21.

Moreover, in my direct testimony, I presented a number of reasons, other than the LCCW promotion, why an AT&T South Carolina customer might properly receive a line connection charge waiver. I explained why dPi's reliance on the Florida discovery is misplaced and that the commissions and courts[3] in North Carolina and Florida did not find dPi's claims on this discovery persuasive.

VI. BASIC SERVICE AND TWO FREE BLOCKS

Q. DOES MR. O'ROARK'S REBUTTAL TESTIMONY (AT PAGE 3) SUPPORT YOUR TESTIMONY THAT DPI SEEKING LCCW CREDITS WHEN IT MERELY PURCHASED A BASIC LINE FOR RESALE AND ADDED TWO[4] FREE BLOCKS TO THAT LINE?

A. Yes. Mr. O'Roark testifies that "dPi was denied the [LCCW] credit under [the LCCW] promotion because [AT&T South Carolina] refused to 'count' as

[3] The North Carolina and Florida commission and court decisions are Exhibits PLF-16, PLF-18, PLF-23 and PLF-24 to my Direct Testimony.

[4] For a short time, the LCCW promotion required the purchase of only one feature, but it is the modified version of the promotion that required the purchase of two features that was in effect during most of the time period involved in this dispute.

Touchstar features" the blocks that dPi placed on their customers' lines, and he acknowledges that "every line that dPi orders is a basic service line with the [blocks] known by their USOCs of HBG, BCR, and BRD".

Q. MR. O'ROARK TESTIFIES THAT ALL DPI HAD TO DO TO QUALIFY FOR THE LCCW CREDITS IT SEEKS IS "PURCHASE .... [AT&T SOUTH CAROLINA] BASIC SERVICE WITH AT LEAST ONE FEATURE" (REBUTTAL TESTIMONY AT PAGE 3). IS MR. O'ROARK'S REBUTTAL TESTIMONY CONSISTENT WITH THE EXHIBIT TO MR. O'ROARK'S DIRECT TESTIMONY THAT IS LABELED "DPI KY-2"?

A. No, it is not. Exhibit No. 2 to Mr. O'Roark's Direct Testimony that is labeled "dPi KY-2" shows that what is actually required is the purchase of basic service and two features, not the purchase of basic service "with" two free blocks (or one feature) as Mr. O'Roark erroneously suggests.

Specifically, this exhibit says the LCCW provides a service connection waiver "for new acquisition or reacquisition customers purchasing . . . BellSouth Basic Service and 2 features." *See* Exhibit dPi KY-2 at §1.1.1. It further states that the Line Connection Charge will be waived for "reacquisition or winover customers who purchase . . . Basic Service and two features and who are currently not using BellSouth for local service . . . ." *Id.*, §§1.1.2, 1.1.3.

1 Finally, Exhibit dPi KY-2 says the retail "customer must switch their local service
2 to BellSouth and purchase any one of the following: . . . BellSouth Basic Service
3 and two custom calling or touch star local feature(s)." *Id.*, §5.
4
5 Clearly, the LCCW promotion is not available unless features are purchased. As I
6 explained in my Direct Testimony, the blocks dPi relies upon are not features, and
7 they were not purchased (but instead, provided free of charge upon the request of
8 dPi).
9
10 Q. ON PAGE 9 OF HIS REBUTTAL TESTIMONY, MR. O'ROARK STATES
11 THAT "IF THE [BLOCKS] WERE ORIGINALLY INTENDED NOT TO
12 BE 'COUNTED' TOWARDS FULFILLING THE PROMOTION, [AT&T
13 KENTUCKY] COULD HAVE EASILY DRAFTED ITS PROMOTION
14 LANGUAGE TO SO SPECIFY". HOW DO YOU RESPOND?
15
16 A. The question is not whether AT&T could have said the same thing in a different
17 way – the question is whether a customer who does not pay for two features
18 qualifies for the LCCW promotion.
19
20 The language that was used makes it clear that such a customer does not. The
21 language says you have to purchase basic service and two features.
22

1 Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

2

3 A. Yes.

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STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for AT&T South Carolina ("AT&T") and that she has caused AT&T's Surrebuttal Testimony of P.L. (Scot) Ferguson in Docket No. 2005-358-C to be served upon the following on March 4, 2010.

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