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February 5, 2010

The Honorable Charles Terreni
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 Mr. Terreni:

Enclosed for filing is AT&T South Carolina's Direct 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, with the exception of PLF-2, which is a CD containing the 2003 and 2007 interconnection agreements between the parties. That CD is being hand-delivered to the Commission today, and AT&T South Carolina will make copies of that CD available to the parties upon request.

Sincerely,

Patrick Turner

Patrick W. Turner

PWT/nml
Enclosure
cc: All Parties of Record
778494

AT&T SOUTH CAROLINA

DIRECT TESTIMONY OF P.L. (SCOT) FERGUSON

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2005-358-C

FEBRUARY 5, 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, Inc.'s Wholesale organization. As such, I am responsible for certain issues related to wholesale policy, primarily related to the general 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. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from the University of Georgia in 1973, with a Bachelor of Journalism degree. My career spans more than 35 years with Southern Bell, BellSouth Corporation, BellSouth Telecommunications, Inc., and AT&T. In addition to my current assignment, I have held positions in sales and marketing, customer system design, product management, training, public relations, wholesale customer and regulatory support, and wholesale contract negotiations.

1 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

2

3 A. The purpose of my testimony on behalf of BellSouth Telecommunications, Inc.
4 d/b/a AT&T South Carolina ("AT&T South Carolina") is to address the issues
5 raised in the Complaint filed by dPi Teleconnect, L.L.C. ("dPi") with the Public
6 Service Commission of South Carolina ("Commission") on November 9, 2005, to
7 address certain aspects of the pre-filed Direct Testimony of dPi's witness, Mr.
8 Tom O'Roark, and to explain why dPi is not entitled to the promotional credits
9 that it is seeking in this proceeding.

10

11 AT&T South Carolina's counsel will present legal arguments supporting the
12 policy positions set forth in my testimony in post-hearing briefs and, if necessary,
13 in oral argument.

14

15 Q. HOW IS YOUR TESTIMONY ORGANIZED?

16

17 A. I begin my testimony by providing a brief summary of the dispute in this
18 proceeding. I then provide information about the parties and about the
19 interconnection agreements that apply to this dispute. Next, I describe AT&T
20 South Carolina's retail promotions that are involved, and I explain AT&T South
21 Carolina's reasons for denying the promotion credits dPi seeks in this docket. I
22 then explain that two State commissions and two federal courts have ruled in
23 favor of AT&T and against dPi in similar proceedings in other states. Finally, I
24 address the discovery (that was produced in another state for a similar proceeding)
25 that dPi's witness relies upon in his testimony.

I. SUMMARY OF THE DISPUTE

Q. BRIEFLY SUMMARIZE WHAT IS AT ISSUE IN THIS PROCEEDING.

A. Some of the services dPi purchases from AT&T South Carolina for resale are subject to AT&T South Carolina's retail promotions. AT&T South Carolina makes its applicable retail promotions available to dPi for resale in South Carolina, as long as the dPi end user meets the same criteria that an AT&T South Carolina retail customer must meet to qualify for the same promotion.

In many instances, however, dPi sought promotional credits[1] from AT&T South Carolina when dPi's end users did not meet the eligibility criteria for the promotions. For example, one of AT&T South Carolina's retail promotions that I describe in detail below (the Line Connection Charge Waiver, or "LCCW") waives the line connection charge when an AT&T South Carolina customer purchases basic service and also purchases two features. dPi places certain blocks[2] on most, if not all, of its end users' lines. dPi's end users do not order these blocks, and dPi does not inform its end users that it places these blocks on these lines. dPi pays nothing to AT&T

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[1] As I explain below, when dPi resells telecommunications services that are the subject of a retail promotion to an end user that meets the qualifications of the promotion, dPi can request a bill credit from AT&T South Carolina that passes the benefit of the promotion, less the resale discount, along to dPi.

[2] These free blocks are referred to as "Denial of per use" in the South Carolina General Subscriber Services Tariff ("Tariff") and South Carolina General Exchange Price List ("Price List"). In my testimony, I refer to them as "blocks."

South Carolina for these blocks,[3] and dPi does not charge its end users for the blocks.

dPi contends that these free blocks constitute "purchased features" and has sought LCCW promotional credits from AT&T South Carolina. AT&T South Carolina disagrees and has denied these credit requests, just as it would deny the LCCW promotion to an AT&T South Carolina retail customer who only purchased a line and asked that two free blocks be placed on that line.

dPi, therefore, is asking this Commission to order AT&T South Carolina to issue dPi promotional credits for its end users that do not meet the qualifications for the promotions in question.

Q. AT PAGE 6 OF HIS DIRECT TESTIMONY, MR. O'ROARK CLAIMS THAT AT&T REFUSES TO ISSUE DPI PROMOTIONAL DISCOUNT CREDITS. PLEASE COMMENT ON THIS STATEMENT.

A. Mr. O'Roark is wrong to suggest that AT&T South Carolina has not paid any credits to dPi. Very simply, AT&T South Carolina grants credit requests to which dPi is entitled, and it denies credit requests to which dPi is not entitled. As of December 2009, for example, AT&T South Carolina has issued approximately $895,000 in promotional credits to dPi when its end users satisfied the requirements of the LCCW promotion, and approximately

[3] Similarly, when an AT&T South Carolina customer requests these blocks, he or she pays AT&T South Carolina nothing for these blocks.

$21,000 in promotional credits to dPi when its end users satisfied the requirements of other promotions at issue in this docket.

As explained below, however, in many instances, dPi requested promotional credits when its end users did not satisfy the requirements of the promotion. In those instances, AT&T South Carolina properly denied those requests.

Q. IN ITS COMPLAINT, DPI ALLEGES THAT AT&T SOUTH CAROLINA ADMITTED ITS OBLIGATION TO ISSUE ADDITIONAL CREDITS TO DPI. IS THAT AN ACCURATE STATEMENT?

A. No, and I do not know what dPi is referring to with this statement in the complaint. As I mentioned above, AT&T South Carolina grants credit requests to which dPi (or any other Competitive Local Exchange Carrier ("CLEC")) is entitled, and it denies credit requests to which dPi (or any other CLEC) is not entitled.

Q. DO YOU HAVE ANY OTHER OBSERVATIONS WITH RESPECT TO YOUR GENERAL SUMMARY OF THIS PROCEEDING?

A. Yes. Mr. O'Roark discusses the process by which dPi requests promotional credits, but that testimony has nothing to do with the issues in this proceeding. The manner in which the companies exchange information and process credits has no bearing on whether dPi qualifies for the credits it seeks.

Moreover, the process Mr. O'Roark discusses has been in place for years in the former BellSouth region, and it has not been the subject of any Commission complaint filed by dPi or any other CLEC. Finally, as this Commission knows, the Change Management Process (CMP)[4] has been and remains available to CLECs that want to raise issues regarding AT&T's wholesale systems and processes. That collaborative process is in place to ensure that no individual CLEC has the opportunity to put its preferences ahead of the needs of the CLEC community as a whole.

II. THE PARTIES TO THIS DISPUTE

Q. WHAT TYPE OF CARRIER IS AT&T SOUTH CAROLINA?

A. AT&T South Carolina is an incumbent local exchange carrier ("ILEC").

Q. WHAT TYPE OF CARRIER IS DPI?

A. dPi is a CLEC that purchases telecommunications services from AT&T South Carolina and resells those services to its end users in South Carolina. To my knowledge, dPi does not own any telecommunications facilities in South Carolina.

[4] Prior to the AT&T/BellSouth merger, this process was known as the BellSouth Change Control Process (CCP) in the Southeast.

Q. WHAT TYPES OF SERVICES DOES DPI PURCHASE FROM AT&T SOUTH CAROLINA FOR RESALE?

A. dPi purchases basic residential service from AT&T South Carolina at the discounted rate of between $11.33 and $13.75. It then resells that same service to its end users for $39.99, which is a markup of between 191% to 253%. *See* Exhibit PLF-1.

Q. WHAT TYPE OF CUSTOMER DOES DPI TARGET IN SOUTH CAROLINA?

A. dPi provides pre-paid telecommunications services primarily to cash-constrained and credit-constrained residential customers in South Carolina.

III. THE APPLICABLE INTERCONNECTION AGREEMENTS

Q. COULD YOU BRIEFLY EXPLAIN THE SOURCE OF AT&T SOUTH CAROLINA'S RESALE OBLIGATIONS?

A. Yes. I am not a lawyer, and our attorneys can address the specific details of AT&T South Carolina's resale obligations in post-hearing briefs and, if necessary, during oral argument. In order to put the remainder of my testimony in perspective, however, I will provide a high-level overview of AT&T South Carolina's resale obligations, subject to further explanation by our attorneys.

In general, the Telecommunications Act of 1996 ("Act") requires AT&T South Carolina, subject to certain conditions and limitations, to offer for resale at wholesale rates any telecommunications service it provides at retail to subscribers who are not telecommunications carriers. *See generally*, 47 U.S.C. §§251(b)(1); 251(c)(4).

The FCC issued an order and adopted rules implementing these provisions,[5] and in an early arbitration proceeding, this Commission issued an order establishing the resale discount rate in South Carolina as 14.8% for both residential and business services.[6]

Q. HAVE DPI AND AT&T SOUTH CAROLINA EXECUTED INTERCONNECTION AGREEMENTS THAT ADDRESS THESE RESALE OBLIGATIONS?

A. Yes. Exhibit PLF-2 to my testimony is a CD containing a copy of the interconnection agreements ("Agreements") between dPi and AT&T South Carolina that were in effect during the time periods relevant to this docket.

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[5] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499, ¶¶ 863-984 (*"Local Competition Order"*). *See also*, 47 C.F.R. §§ 51.601-51-617.

AT&T South Carolina and dPi negotiated these Agreements, each of which was subsequently approved by the Commission. *See* Exhibit PLF-3.

Q. DO THOSE AGREEMENTS ADDRESS PROMOTIONAL OFFERINGS?

A. Yes. Section 4.2 of the Resale Attachment to these Agreements provides that "resold services can only be used in the same manner as specified in [AT&T South Carolina's] Tariffs" and that resold services are "subject to the same terms and conditions as are specified for such services when furnished to an individual customer of [AT&T South Carolina] in the appropriate section of [AT&T South Carolina's] Tariffs." *See* Exhibit PLF-4.

Additionally, Exhibit A to the Resale Attachment to these Agreements provides that "[w]here available for resale, promotions will be made available only to End Users who would have qualified for the promotion had it been provided by [AT&T South Carolina] directly."[7] *See* Exhibit PLF-5.

Per the clear language in these Agreements, dPi is only entitled to promotional credits for dPi end users that meet the same criteria that AT&T South Carolina retail customers must meet in order to receive the benefits of a promotion. And despite dPi's assertions to the contrary, AT&T South

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[6] *See* Order on Arbitration, *In Re: Petition of AT&T Communications of the Southern States, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc.*, Order No. 97-189 in Docket 96-358-C at 14 (March 10, 1997).

[7] In the 2007 Agreement between the Parties, the language is identical except "Customers" is used instead of "End Users".

Carolina has paid promotional credits to dPi when its end users met such criteria.

IV. THE PROMOTIONS AT ISSUE

Q. WHAT PROMOTIONS ARE AT ISSUE IN THIS DOCKET?

A. As I understand it, three specific promotions[8] that AT&T South Carolina uses to attract and/or retain retail customers in the highly competitive post-1996 Act marketplace are at issue in this docket: 1) the LCCW promotion; 2) Secondary Service Charge Waiver ("SSCW") promotion; and 3) the Two Features for Free ("TFFF") promotion. Exhibit PLF-6 to my testimony is comprised of examples of AT&T's filings with this Commission that describe these promotions.

Q. DOES MR. O'ROARK'S TESTIMONY SUPPORT DPI'S CLAIMS FOR CREDITS FOR ANY PROMOTIONS OTHER THAN THE LCCW?

A. No. To the contrary, Mr. O'Roark states at page 9 of his Direct Testimony that "this case will focus on the dispute about dPi's eligibility for a single

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[8] dPi also identified "the CREX Non-Recurring promotion" in the Complaint it filed with the Commission, but dPi has not pursued "the CREX Non-Recurring promotion" claim in the companion proceedings before the North Carolina, Florida and Georgia commissions. AT&T South Carolina assumes that dPi will not be pursuing that claim in this docket either as Mr. O'Roark did not address it in his Direct Testimony. Should dPi do so at a later date, however, AT&T South Carolina reserves its right to address the issue in its surrebuttal testimony.

1 particular promotion – the LCCW promotion – as this argument encompassed
2 the lion's share of the total dollars in dispute in South Carolina apart from the
3 cash back promotions."
4
5 Mr. O'Roark goes on to mention the SSCW and TFFF in passing, but he does
6 nothing to suggest that dPi is entitled to any credits whatsoever for these two
7 promotions.
8
9 Q. PLEASE DESCRIBE THE LCCW PROMOTION.
10
11 A. The LCCW promotion waives the applicable nonrecurring line connection charge
12 (installation charge) associated with the installation of a basic local residential
13 line when an AT&T South Carolina customer orders specific services as outlined
14 in the promotion. To qualify for the LCCW promotion, an AT&T South Carolina
15 customer must be a customer whose service is currently with a carrier other than
16 AT&T South Carolina and who is now ordering service as an AT&T South
17 Carolina "win-over" or reacquired customer. In addition, the AT&T South
18 Carolina customer must have purchased a minimum of basic local service and a
19 designated number of Custom Calling or TouchStar® features. AT&T South
20 Carolina does not waive and would not waive the line connection charge under
21 this promotion for an AT&T South Carolina customer that only purchased basic
22 local service and asked that two free blocks be placed on his or her line.
23

Q. PLEASE DESCRIBE THE SSCW PROMOTION.

A. The SSCW promotion waives the Secondary Service Charge when changes are made to certain features or services on an existing AT&T South Carolina customer account. Thus, for an AT&T South Carolina customer to qualify for the SSCW promotion, he or she must already be an AT&T South Carolina customer, and the service request must be adding or changing features/services on the account that specifically qualifies for the promotion. For example, an existing AT&T South Carolina customer wishing to simply add or change custom calling features would normally incur a Secondary Service Charge, but under the SSCW promotion, the Secondary Service Charge would be waived because the customer is and remains an AT&T South Carolina customer and is simply purchasing specific items identified in the Tariff/Price List.

Q. PLEASE DESCRIBE THE TFFF PROMOTION.

A. Under the TFFF promotion, AT&T South Carolina customers who are considered reacquisition or win-over customers and who purchased basic local service plus two Custom Calling or TouchStar® features qualify to receive a credit for the two Custom Calling or TouchStar® features for a 12-month period immediately following the installation of the qualifying services. Again, the AT&T South Carolina customer must be a re-acquired or a competitive win-over and have

1 purchased the requisite number of qualifying features, in addition to the basic
2 local service, in order to qualify for this promotion.
3

4 Q. DID AT&T SOUTH CAROLINA MAKE THESE THREE PROMOTIONS
5 AVAILABLE TO DPI FOR RESALE?
6

7 A. Yes. In accordance with the parties' Agreement, however, dPi's end users
8 had to meet the same qualifications as AT&T South Carolina's customers in
9 order for dPi to qualify for a promotional credit.
10

11 Q. GENERALLY, HOW DOES DPI OBTAIN THE BENEFIT OF
12 PROMOTIONS FOR WHICH IT QUALIFIES?
13

14 A. dPi submits a request for a bill credit that passes the benefit of the promotion, less
15 the resale discount, along to dPi. I will use the LCCW promotion to explain how
16 this works.
17

18 The LCCW promotion waives the line connection charge for qualifying AT&T
19 South Carolina customers. To simplify the math, assume that the line connection
20 charge is $20 and that the resale discount is 20%. If dPi purchased a basic line
21 and purchased two features for resale to a dPi end user that otherwise qualified for
22 the promotion, AT&T South Carolina would bill dPi the retail price less the resale
23 discount for the line and features, and it also would bill dPi $16 ($20 less the 20%
24 resale discount) for the line connection charge. In order to receive the benefit of

the LCCW promotion that an AT&T South Carolina customer would receive, dPi submits a request for a $16 bill credit, which has the effect of waiving the line connection charge for dPi.

V. AT&T SOUTH CAROLINA'S DENIAL OF DPI'S PROMOTIONAL CREDIT REQUESTS

Q. WHY DID AT&T SOUTH CAROLINA DENY DPI'S PROMOTIONAL CREDIT REQUESTS THAT ARE AT ISSUE IN THIS DOCKET?

A. Because dPi's end users did not meet the qualifications of the promotion for which dPi requested a credit. Depending on the promotional credit for which dPi applied, dPi's non-qualifying requests throughout the Southeast region generally fell into one or more of five categories:

- Less than the required number of features were purchased;
- The promotion only applies to *new* customers and the credit request was submitted for an existing dPi end user;
- The promotion only applies to *existing* customers and the credit was submitted for a new end user;
- The request for credit extended beyond the term of the promotional offer; and
- The request was a duplicate request where dPi requested credits for the same earning telephone number in the same month under both the

LCCW and the SSCW promotions, which, as I address further below, are mutually exclusive promotions.

Q. WHAT IS THE MOST COMMON REASON DPI'S REQUESTS FOR LCCW PROMOTIONAL CREDITS WERE DENIED?

A. AT&T South Carolina denied most of these requests because dPi's end user did not purchase the required number of features. Indeed, many of these dPi end users did not purchase *any* features. Other requests for credit under the LCCW promotion were denied because the request was a duplicate request.

Q. WHAT IS THE MOST COMMON REASON DPI'S REQUESTS FOR SSCW CREDITS WERE DENIED?

A. Most requests for SSCW credits were denied because dPi's end user was not part of dPi's existing customer base but, instead, was a new customer to dPi. As explained above, the SSCW promotion is available only to existing customers.

Q. WHAT IS THE MOST COMMON REASON DPI'S REQUESTS FOR TFFF CREDITS WERE DENIED?

A. Most requests for TFFF credits were denied because dPi's end user was an existing dPi end user and not a reacquired or win-over customer. As explained above, the TFFF promotion is available only to reacquired or win-

over customers. In addition, some of dPi's requests for credit under this promotion extended beyond the 12-month contiguous billing period from the date of installation for the promotion and, thus, were denied.

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

A. dPi's claims include requests for credit in the same month for the same end user telephone number for both the LCCW promotion and the SSCW promotion. As I discuss above, the LCCW promotion applies only to *new* reacquired or win-over customers, and the SSCW promotion applies only to *existing* customers. A review by AT&T South Carolina of the credit submissions for a random month, May 2005, reveals that dPi submitted requests for credit and attempted to "double-dip" by applying for both promotions such that all of the accounts submitted for credit under the SSCW promotion were also submitted for credit under the LCCW promotion credit request.

Q. CAN YOU PROVIDE ANY ADDITIONAL INFORMATION AS TO WHY DPI'S CREDIT REQUESTS AT ISSUE IN THIS DOCKET WERE DENIED?

A. Yes. Attached as Exhibit PLF-7 are examples of accounts for which dPi submitted promotional credit requests that AT&T South Carolina denied because the dPi end user did not meet the eligibility criteria for the specified

promotion. AT&T South Carolina's process for granting and denying credits is a regional process; therefore, the examples are from the Southeast region. For each of the examples, AT&T South Carolina notes which promotional credit dPi requested and the specific reason for denial.

Q. WHICH OF THE THREE PROMOTIONS YOU DESCRIBED EARLIER IS INVOLVED IN MOST OF DPI'S DENIED CREDIT REQUESTS?

A. By far, most of the denied credit requests at issue in this docket involve the LCCW promotion.

Q. COULD YOU PROVIDE ADDITIONAL INFORMATION SUPPORTING AT&T SOUTH CAROLINA'S DENIAL OF THESE LCCW CREDIT REQUESTS?

A. Yes. In almost all of the disputed instances, dPi submitted credit requests when its end users only purchased basic local service and dPi placed free blocks on the end users' lines without the end users' knowledge. AT&T South Carolina's denial of these credit requests is appropriate for at least three reasons:

1. Calling blocks are not features, and therefore, the orders do not qualify for the promotions;

2. Even if calling blocks were features (and they are not), neither dPi nor its end users purchased these blocks; and

3. dPi's end users did not order the call blocks that dPi placed on their phone lines nor did dPi's end users know that the call blocks existed.

Q. REGARDING THE FIRST REASON THAT DPI'S LCCW CREDIT REQUESTS WERE DENIED (BECAUSE BLOCKS ARE NOT FEATURES), DO AT&T SOUTH CAROLINA'S TARIFF AND PRICE LIST ADDRESS FEATURES?

A. Yes. Exhibit PLF-8 is a copy of a portion of Section A13.19 of AT&T South Carolina's Tariff[9] and Price list[10], which is entitled "TouchStar® Service." The first sentence of this section in the Tariff states: "TouchStar® service is a group of central office call management features offered in addition to basic telephone service. TouchStar® service consists of the following features: . . . ."[11] Tariff § A13.19.1.

Q. DOES "BASIC TELEPHONE SERVICE" INCLUDE CALL RETURN AND REPEAT DIALING?

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[9] The last version of the relevant sections of Tariff Section A13.19 is attached. The language I refer to in my testimony is substantively the same in this version of the Tariff as it was in prior versions of the Tariff that were in effect during the time period relevant to this proceeding.

[10] The latest version of the relevant sections of Price List Section A13.19 is attached. The language I refer to in my testimony is substantively the same in this version of the Price List as it was in prior versions of the Price List that were in effect during the time period relevant to this proceeding.

[11] The Price List provides similarly as follows: "TouchStar® service consists of the following central office call management features offered in addition to basic telephone service." Price List § A13.19.1.

A. No. Call Return and Repeat Dialing – like all TouchStar® features – are features that are offered in addition to basic telephone service, and customers who use these features must pay a price above and beyond the price they pay for basic telephone service.

Q. DOES AT&T SOUTH CAROLINA'S TARIFF/PRICE LIST DEFINE TOUCHSTAR® FEATURE OFFERINGS?

A. Yes. Section A13.19.2, entitled "Definitions of Feature Offerings," lists the TouchStar® features one-by-one, and the blocks at issue in this case are not identified as features. Section A13.19.2 lists the following features:

A. Call Return

B. Repeat Dialing

C. Personalized Ring 6 (a.k.a. Call Selector)

D. Selective Call Forwarding (a.k.a. Preferred Call Forwarding)

E. Call Block[12]

F. Call Tracing

G. Caller ID – Basic (Number Delivery)

H. Caller ID – Deluxe (Name and Number Delivery)

I. Calling Number Delivery Blocking – Permanent

[12] This feature provides the end user the ability to prevent incoming calls from up to six different numbers. This is not one of the blocks that are at issue in this proceeding.

J. Calling Number Delivery Blocking – Per Call

K. Call Tracking – Bulk Calling Line Identification (BCLID)

L. Obsoleted

M. Anonymous Call Blocking (a.k.a. Anonymous Call Rejection)

N. Enhanced Caller ID (Busy Line/Idle Line Name and Number Delivery)

O. Enhance Caller ID (With Call Management)

P. BusyConnect

Q. DOES THIS LIST OF "FEATURES" INCLUDE ANY OF THE BLOCKS DPI RELIES UPON IN THIS PROCEEDING?

A. No.

Q. DO AT&T SOUTH CAROLINA'S TARIFF AND PRICE LIST FURTHER ADDRESS CALL RETURN AND REPEAT DIALING?

A. Yes. They explain that Call Return allows an end user to "place a call to the telephone number associated with the most recent call received, whether or not the call was answered or the number is known," §A13.19.2.A, and that Repeat Dialing, "automatically redials the last number the customer attempted to call." §A13.19.2.B.

They also provide that a customer can pay a monthly price for unlimited use of either of these features, *see* §§A13.19.2A, .B; A13.19.4.A(1), (2), or a customer who does not pay the monthly price can use either of these features "on a non-subscription basis with a per occasion charge for each use." *Id.*

They further provide that for either of these features, "[a]ccess to the usage option can be restricted at the customer's request at no charge." *Id.* In other words, the customer can avoid paying per use charges for these features by placing a free block on the line that prevents the use of these features.

Q. ARE THERE OTHER REASONS THAT BLOCKS ARE NOT FEATURES?

A. Yes. As explained above, features are "offered in addition to basic telephone service," and the customer pays a price over and above what he pays for basic service to use features. A block, on the other hand, prevents the customer from using a feature "in addition to basic telephone service," and it helps prevent the customer from paying anything above what he pays for basic service. In light of these obvious differences, dPi's claim that a block is the same thing as a feature simply defies logic. Additionally, blocks that restrict the use of a feature, like those relied upon by dPi, are not considered features as that term is used in the telecommunications business.

1 Q. AT PAGE 14 OF HIS DIRECT TESTIMONY, MR. O'ROARK CLAIMS THAT
2 AT&T SOUTH CAROLINA SOMEHOW "WITHDREW" ITS POSITION
3 THAT BLOCKS ARE NOT FEATURES AS A REASON FOR DENYING
4 DPI'S LCCW PROMOTIONAL CREDIT REQUESTS.DO YOU AGREE WITH
5 THIS CLAIM?
6
7 A. No, I am not aware of AT&T South Carolina having "withdrawn" this valid
8 reason for denying the LCCW promotional credits dPi is seeking. For all the
9 reasons I have discussed, the blocks dPi relies on are not features, and, therefore,
10 dPi's promotional credit requests that contained only those blocks do not qualify
11 for the credits dPi seeks in this proceeding.
12
13 Q. HOW DO YOU RESPOND TO MR. O'ROARK'S TESTIMONY ON PAGE 15
14 THAT "BELLSOUTH CHARACTERISTICALLY REFERRED TO AND
15 CHARGED FOR THESE THINGS AS FEATURES UNDER THE UNE
16 REGIME?"
17
18 A. This proceeding is about resale, not UNEs, and how blocks may or may not be
19 treated in a UNE environment has nothing to do with how they are treated in a
20 resale environment. Unlike UNEs, which involve piece-parts of AT&T South
21 Carolina's network that are priced at cost-based rates, resale involves entire
22 services that are priced at a discount off the retail rates for the same services.
23 Regardless of what the parties' Agreement may or may not say about UNEs, it

clearly provides that "[w]here available for resale, promotions will be made available only to End Users who would have qualified for the promotion had it been provided by [AT&T South Carolina] directly." Exhibit PLF-5.

Q. REGARDING THE SECOND REASON THAT DPI'S LCCW CREDIT REQUESTS WERE DENIED (BECAUSE NEITHER DPI NOR ITS END USERS PURCHASED BLOCKS), DOES AT&T SOUTH CAROLINA CHARGE DPI FOR THE BLOCKS DPI PLACES ON ITS END USERS' LINES?

A. No.

Q. DOES DPI CHARGE ITS END USERS FOR THE BLOCKS DPI PLACES ON THEIR LINES?

A. To the best of my knowledge, it does not. In fact, in a companion proceeding before the North Carolina Commission, dPi acknowledged that it does not charge its end users for these blocks that it places on their lines. *See* Exhibit PLF-9.

Q. DOES AT&T SOUTH CAROLINA CHARGE ITS CUSTOMERS FOR THESE BLOCKS?

A. No. As I note above, the AT&T South Carolina's Tariff and Price List provide that "Access to the usage option can be restricted at the customer's request at no

charge."

Q. REGARDING THE THIRD REASON THAT DPI'S LCCW CREDIT REQUESTS WERE DENIED (BECAUSE DPI'S END USERS NEITHER ORDERED NOR WERE INFORMED OF THE BLOCKS), WHY DO YOU SAY DPI'S END USERS DID NOT ORDER AND WERE NOT INFORMED OF THE BLOCKS?

A. dPi's website does not list these blocks, it does not provide a price for these blocks, and it does not indicate that these blocks are placed on its end users' lines.[13] *See* Exhibit PLF-10. Additionally, Mr. O'Roark admits at page 26 of his Direct Testimony that dPi's "basic offering always includes the Touchstar blocks." In addition, dPi admitted to both the North Carolina and Florida Commissions that dPi routinely places these blocks on its end users' accounts without its end users' knowledge and without its end users' approval to place the blocks. *See* Exhibit PLF-11. dPi has also admitted that its end users never actually order the blocks. *See* Exhibit PLF-12.

Moreover, in North Carolina, dPi admitted that for <u>every</u> end user to whom dPi resells AT&T's basic telephone service, dPi requests (when it places the order) that AT&T place blocks on the telephone line so that dPi's end users cannot use certain TouchStar® features such as Call Return and Repeat Dialing on a per-use

[13] dPi's website refers to a dPi feature entitled "Call Block," which provides the customer the ability to prevent incoming calls from up to six different telephone numbers. This "Call Block" clearly is different from the blocks that are at issue here.

basis. *See* Exhibit PLF-13.

Q. WOULD AN AT&T SOUTH CAROLINA CUSTOMER WHO ONLY PURCHASED BASIC LOCAL SERVICE AND ASKED THAT TWO FREE BLOCKS BE PLACED ON THAT LINE RECEIVE A WAIVER OF THE LINE CONNECTION CHARGE UNDER THE LCCW PROMOTION?

A. No.

Q. WOULD IT MAKE BUSINESS SENSE FOR AT&T SOUTH CAROLINA TO WAIVE THE LINE CONNECTION CHARGE FOR SUCH A CUSTOMER?

A. No. The purpose of LCCW promotion (and the other promotions at issue in this docket) is to provide customers with an incentive to purchase additional services at an additional price, thereby generating additional revenue. Waiving the line connection charge for a customer that requested blocks that AT&T South Carolina provides free of charge simply does not further that business purpose. Beyond that, the blocks at issue not only do not generate additional revenue in their own right, but they also prevent AT&T South Carolina from receiving potential revenue from per-use charges for the features that are blocked.

Q. IS DPI ENTITLED TO THE LCCW CREDITS IT SEEKS IN THIS DOCKET?

A. No. Neither dPi nor its end users requested any features or purchased anything other than basic local service. Additionally, dPi's end users did not even order the blocks dPi placed on their lines.

The parties' Agreement provides that "[w]here available for resale, promotions will be made available *only to End Users who would qualify for the promotion had it been provided by [AT&T South Carolina] directly*." (Emphasis added.) *See* Exhibit PLF-5. It is clear from the above testimony that dPi's end users would not have qualified for the promotion had they been AT&T South Carolina customers and, therefore, in accordance with the Agreement, dPi is not justified in requesting promotional credits in these instances.

Q. HOW DOES AT&T SOUTH CAROLINA VERIFY THAT A CLEC'S END USER MEETS THE CRITERIA FOR A GIVEN PROMOTION?

A. Originally, it did not. When AT&T South Carolina began processing requests for promotional credits, AT&T South Carolina operated under an "honor system" by which it assumed in good faith that when a CLEC submitted a promotional credit request, that CLEC screened its end users and only submitted credit requests for end users that qualified for the promotion.

Q. DID THAT CHANGE AT SOME POINT?

1 A. Yes. In the fall of 2004, AT&T South Carolina discovered that its assumption
2 was ill-founded and that a number of CLECs' credit requests were not valid.
3 After working through a number of issues regarding the specific qualifiers for
4 promotions and ensuring that parity requirements were met, AT&T South
5 Carolina implemented a sampling process in early 2005 to validate CLEC
6 requests for promotional credits.
7
8 For each monthly credit request submission, AT&T South Carolina pulled a
9 sample from the submission and performed an audit. Based on the percentage of
10 valid qualifying requests from the audit sample, AT&T South Carolina applied
11 the resulting "percentage qualified" to the total credit amount requested to
12 determine the credit actually given to the CLEC for that particular credit request
13 submission. As an example, if a resale CLEC requested $1,000 in promotion
14 credits and AT&T South Carolina's sampled review revealed that only 60% of the
15 end user accounts for which that CLEC requested a credit actually qualified for
16 the promotion, AT&T South Carolina applied the qualifying percentage of 60%
17 (in this example) to the original amount of that CLEC's requested promotional
18 credits. This resulted in a credit of $600 to the requesting CLEC rather than the
19 $1,000 originally requested.
20
21 Due the extent to which CLECs submitted invalid credit request and the
22 corresponding manual effort required to validate CLEC requests, AT&T South
23 Carolina began developing an automated verification process mid-year 2005, and

that process was implemented in April 2006. Today, the automated process evaluates 100% of the accounts submitted on each request for resale billing credits related to promotions.

Q. BASED ON THE SAMPLING PROCESS WHAT PRECENTAGE OF DPI'S LCCW CREDIT REQUESTS WERE DENIED?

A. AT&T South Carolina denied 92% of dPi's requests for LCCW credits between February 2004 and December 2005.

Q. AT PAGE 11 OF HIS DIRECT TESTIMONY, MR. O'ROARK CLAIMS THAT AT&T SOUTH CAROLINA PAID SIMILAR CREDITS TO OTHER CLECS WITH ESSENTIALLY IDENTICAL CLAIMS, BUT REFUSES TO ISSUE THE CREDITS TO DPI. HOW DO YOU RESPOND?

A. As I discussed above, AT&T South Carolina previously trusted that, when a CLEC requested a promotional credit, the CLEC had already screened its end users to determine eligibility for the promotion for which it was asking a credit. Prior to using the verification process mentioned above, some CLECs did receive credits to which they were not entitled.

This fact – that some CLECs were improperly claiming promotional credits and receiving them when AT&T South Carolina processed the requests under the "honor system" – does not demonstrate that AT&T South Carolina agreed

with dPi's erroneous interpretation of the promotion or that AT&T South Carolina treated dPi differently from other CLECs. Indeed, dPi's own witness conceded at the hearing before the North Carolina Commission that dPi had requested promotional credits to which it was not entitled. *See* Exhibit PLF-14.

VI. OTHER PROCEEDINGS

Q. HAS ANY OTHER STATE COMMISSION RULED ON THE ISSUES THAT ARE BEFORE THIS COMMISSION IN THIS PROCEEDING?

A. Yes, both the North Carolina Commission and the Florida Commission have issued decisions in favor of AT&T in companion dockets. Exhibit PLF-15 and Exhibit PLF-16, respectively, are copies of the Orders issued by these Commissions. Both Commissions found that dPi was not entitled to the LCCW credits it sought in those states.

Q. DID DPI APPEAL THE NORTH CAROLINA COMMISSION'S DECISION?

A. Yes.

Q. WHAT WAS THE RESULT OF THAT APPEAL?

A. The federal District Court in North Carolina affirmed the North Carolina Commission's ruling. Exhibit PLF-17 is a copy of the Court's ruling.

1

2

3 Q. DID DPI APPEAL THE NORTH CAROLINA DISTRICT COURT'S

4 RULING?

5

6 A. Yes. That appeal is pending at the Fourth Circuit Court of Appeals.

7

8 Q. DID DPI APPEAL THE FLORIDA COMMISSION'S DECISION?

9

10 A. Yes.

11

12 Q. WHAT WAS THE RESULT OF THAT APPEAL?

13

14 A. The federal District Court affirmed the Florida Commission's ruling. Exhibit

15 PLF-18 is a copy of the Court's ruling.

16

17 Q. DID DPI APPEAL THAT COURT RULING?

18

19 A. No.

20

21 **VII. THE FLORIDA DISCOVERY**

22

23 Q. WHAT IS YOUR UNDERSTANDING OF MR. O'ROARK'S TESTIMONY

24 THAT BEGINS ON PAGE 11 OF HIS DIRECT TESTIMONY AND

25 CONTINUES TO PAGE 13?

1

2 A. It appears that Mr. O'Roark is claiming that information AT&T provided to dPi in

3 discovery in Florida ("the Florida discovery") somehow shows that AT&T South

4 Carolina extended the LCCW promotion to its own customers "taking just Basic

5 Service plus the TouchStar Blocking Features."[14]

6

7 Q. DID AT&T SOUTH CAROLINA CUSTOMERS WHO ONLY PURCHASED

8 BASIC LOCAL EXCHANGE SERVICE AND ASKED THAT TWO FREE

9 BLOCKS BE PLACED ON THAT LINE QUALIFY FOR A WAIVER OF THE

10 LINE CONNECTION CHARGE UNDER THE LCCW PROMOTION?

11

12 A. No.

13

14 Q DOES THE FLORIDA DISCOVERY MR. O'ROARK DISCUSSES SHOW

15 OTHERWISE?

16

17 A. No. As I explain below (and as the North Carolina Commission, the Florida

18 Commission, the North Carolina federal court, and the Florida federal court have

19 found), the Florida discovery does not show otherwise.

20

21 Q. HOW DID THIS FLORIDA DISCOVERY COME ABOUT?

---

[14] I am addressing Mr. O'Roark's testimony on the Florida discovery without waiving any of AT&T South Carolina's rights to challenge the admissibility of this testimony or of any of dPi's exhibits that address the Florida discovery.

1

2 A. In a parallel docket before the Florida Commission, dPi sought certain
3 information from AT&T Florida during discovery, and AT&T Florida provided
4 the information dPi requested. The information dPi requested, however, does not
5 (and is not intended to) provide a record as to why certain waivers were given.
6

7 Q. PLEASE EXPLAIN WHY THE FLORIDA DISCOVERY DOES NOT
8 SUPPORT DPI'S CLAIM THAT AT&T GAVE THE LCCW PROMOTION TO
9 ITS CUSTOMERS WHO ONLY PURCHASED A BASIC LINE AND THEN
10 ASKED FOR TWO FREE CALL BLOCKS.
11

12 A. There are several reasons. First, the Florida discovery itself does not identify
13 when the LCCW promotion was given to an AT&T customer – in other words,
14 while the Florida discovery shows that a line connection charge was waived on a
15 particular account, it does not show why it was waived. Second, AT&T issued a
16 waiver of line connection charges to customers for appropriate reasons other than
17 the LCCW promotion at issue in this Docket. Finally, it was not AT&T's practice
18 to grant the LCCW promotion to its customers who did not meet the eligibility
19 requirements. Therefore, contrary to Mr. O'Roark's speculation, the Florida
20 discovery simply does not show that AT&T granted the LCCW promotion to its
21 customers who did not meet the eligibility criteria.
22

1 Q. WHAT ARE SOME REASONS OTHER THAN THE LCCW PROMOTION
2 THAT AT&T FLORIDA (AND LIKEWISE, AT&T SOUTH CAROLINA)
3 WOULD WAIVE A LINE CONNECTION CHARGE FOR ITS OWN
4 CUSTOMERS?
5
6 A. During 2004 and 2005 (a time period essential to dPi's argument), Florida (the
7 state the data was pulled from) was severely impacted by hurricanes and many
8 customers' service was temporarily disconnected. AT&T Florida's tariff provides
9 for a waiver of the line connection charge when a customer whose home is
10 destroyed establishes service (i) at their temporary location and (ii) then again
11 when they return to their permanent location and reestablish service. *See* Exhibit
12 PLF-19. This is similar to AT&T South Carolina's activation of a similar plan
13 that waived the installation charge under certain circumstances in the aftermath of
14 Hurricane Katrina. *See* Exhibit PLF-20.
15
16 Another example of a waiver of the line connection charge that is unrelated to the
17 LCCW promotion is a split-bill situation, in which roommates are dividing one
18 billing account with two existing lines into two separate billing accounts. In that
19 case, the service representative initiates an "N" (or new) order, makes the notation
20 of the billing change, and places a waiver code to waive any non-recurring
21 charges that might typically apply to a new order.
22

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. In fact, AT&T's use of these waiver codes pre-dates the implementation of the LCCW promotion.

Q. IN LIGHT OF THAT EXPLANATION, WHAT DOES THE FLORIDA DISCOVERY SHOW ABOUT WHETHER AT&T SOUTH CAROLINA PROVIDED THE LCCW PROMOTION TO RETAIL CUSTOMERS WHO ONLY PURCHASED A BASIC LINE AND REQUESTED TWO FREE CALL BLOCKS ON THAT LINE?

A. Nothing. The Florida discovery simply does not indicate for which of several potential and valid reasons a particular customer received a waiver of certain non-recurring charges.

dPi, therefore, engages in sheer speculation when it claims that the waivers reflected in the Florida discovery were a result of the LCCW promotion. 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.

See Exhibit PLF-21.

Q. HAS AT&T FURTHER REVIEWED THE FLORIDA DISCOVERY IN LIGHT OF DPI'S SPECULATION AS TO WHAT THE DATA SHOWS?

A. Yes. In response to dPi's claims, AT&T performed an analysis of a sample of the underlying service orders that were the source for the data provided to dPi. In doing so, AT&T used appropriate assumptions and took into consideration the data limitations noted above. Specifically, AT&T reviewed a random sample of 136 service orders associated with accounts in the Florida discovery for which a line connection charge was waived.

The review revealed that many of the service orders did not provide much new information. However, in the review, AT&T was able to ascertain that a significant number of service orders listed reasons for the waiver, and these reasons were not the LCCW promotion. 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 <u>all</u> of the service orders that received a waiver received such waiver as a result of the LCCW promotion was proven to be inaccurate.

1 Q WHAT DID THIS FURTHER REVIEW INDICATE ABOUT THE LCCW
2 PROMOTION?
3
4 A. Nothing. There are no specific indicators on the service orders that any of the
5 waivers were given as a direct result of the LCCW promotion, and it was not
6 AT&T's practice to provide the LCCW promotion to customers who did not meet
7 the eligibility requirements.
8
9 Q. HAS AT&T PREVIOUSLY MADE DPI AWARE THAT ITS RELIANCE ON
10 THE FLORIDA DISCOVERY IS MISPLACED?
11
12 A. Yes. AT&T explained the Florida discovery to dPi in the October 29, 2007 letter
13 that is included in Exhibit 8 to Mr. O'Roark's testimony (the affidavit of Steven
14 Tepera and its attachments), and it specifically rebutted dPi's speculation
15 regarding the Florida discovery in the companion proceedings before the Florida
16 and North Carolina Commissions. *See, e.g.* Exhibit PLF-22.
17
18 Q. DID THE FLORIDA COMMISSION ADDRESS THE FLORIDA
19 DISCOVERY?
20
21 A. Yes. On page 8 of its decision, the Florida Commission agreed with AT&T that
22 "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." Exhibit PLF-16.

Q. DID THE FLORIDA FEDERAL COURT ADDRESS THE FLORIDA DISCOVERY WHEN IT REVIEWED THE FLORIDA COMMISSION'S DECISION IN FAVOR OF AT&T?

A. Not directly, but dPi made arguments regarding this discovery in its pleadings before the federal court in Florida, and the court apparently did not find them compelling as it upheld the Florida Commission's decision.

Q. DID THE NORTH CAROLINA COMMISSION ADDRESS THE FLORIDA DISCOVERY?

A. Yes. In November 2007, dPi filed a Motion for Reconsideration in a North Carolina proceeding relating to the same issues in this proceeding. In addressing dPi's Motion and reviewing, among other things, Exhibits 4 and 8 to Mr. O'Roark's testimony in this proceeding, the North Carolina Commission, on page 8 of its Order, held that:

> [b]ased upon this record and the testimony here presented, nothing more than mere conjecture supports dPi's contention that the high number of waivers granted during the period in question provides a "strong inference" that [AT&T] granted a "significant percentage" of the line connection charge waivers

> to customers who only ordered basic service and two blocks. Certainly, the evidence in this record is insufficient to prove by the greater weight of the evidence that [AT&T] granted <u>any</u>, let alone a significant amount of, LCCW promotional waivers to the customers in question… (emphasis in original)

See Exhibit PLF-23. Moreover, as noted above, dPi's witness admitted at the hearing that one could not discern the specific reason that an individual AT&T customer was granted the line connection waiver from the data. *See* Exhibit PLF-21.

Q. DID THE NORTH CAROLINA FEDERAL COURT ADDRESS THE FLORIDA DISCOVERY WHEN IT REVIEWED THE NORTH CAROLINA COMMISSION'S DECISION IN FAVOR OF AT&T?

A. Yes. In the North Carolina district court case, dPi filed a motion to set aside the court's September 25, 2007 decision which affirmed the North Carolina Commission's Order dismissing dPi's Complaint. In addressing dPi's motion, the district court noted, at page 7 of its Order, footnote 2, that the evidence dPi submitted failed "to demonstrate a meritorious claim, particularly in light of the NCUC's assessment of the entire record." *See* Exhibit PLF-24. The district court, therefore, held that dPi "failed to meet the threshold requirement of asserting a meritorious claim" and denied dPi's requested relief. *See Id.* at page 7.

1 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

2

3 A. Yes.

4

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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 Direct Testimony of P.L. (Scot) Ferguson in Docket No. 2005-358-C to be served upon the following on February 5, 2010.

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