1 2		BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION	
2 3 4 5 6 7 8		DOCKET NO. 050863-TP    celeconnect, L.L.C. v.	
9 10 11	<u>F</u> ]	IRST AMENDED REBUTTAL TESTIMONY OF dPi TELECONNECT'S BRIAN BOLINGER	
12	Q:	Overall, what is your response to Bellsouth's testimony?	
13	A:	Generally speaking, Bellsouth spends most of its breath addressing essentially	
14		irrelevant issues. Its direct testimony is focused on issues which represent less than 2% of	
15		the total dollars at issue – the Two Features for Free promotion and the Secondary Service	
16		Charge Waiver. The main issue in this complaint is the Line Connection Charge Waiver	
17		("LCCW") Promotion. It accounts for about 98% of the total credits and thus it will be the	
18		focus of my rebuttal testimony. See dPi Exhibit FL- 4, a spreadsheet showing LCCW	
19		promotion credits applied for by dPi and denied by BellSouth.	
20 21 22	Q:	Does focusing on the Line Connection Charge Waiver ("LCCW") Promotion simplify issues for the Commission?	
23	A:	Vastly. As noted above, the dispute over this promotion accounts for more than 98%	
24		of the dollars at issue between the parties. Frankly, the cost of litigation far surpasses the	
25		minuscule amount at issue for the other two promotions. Had this been known earlier, these	
26		claims likewise could have been dismissed earlier. From here out, dPi will concentrate only	
27		on the LCCW promotions.	
28		In the parallel proceeding in North Carolina, the vast majority of the time, dPi was	
29		denied credit under this promotion because Bellsouth refused to "count" as Touchstar	

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features those features selected by dPi, such as the Touchstar blocks. That is the same being used here in Florida. Seventy five percent of all LCCW promotions (\$58,210 of \$78,947) were denied because AT&T claimed there were not enough features.

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A:

So in short, this case is reduced to whether dPi is entitled to promotional credits when it orders Basic Service plus Touchstar block features because it has "purchase[d] ... BellSouth Basic Service with at least one feature" and thus has "qualif[ied] for a waiver of the local service connection fee."

Exactly. And there is no getting around the fact that dPi has in fact ordered Basic Service with Touchstar features. If Bellsouth does not wish its promotion to apply to all Touchstar features, it should do like SBC (prior to its merger with Bellsouth), and alter its promotion so that the promotion specifically lists those features that Bellsouth requires to qualify for the promotion.

BellSouth does not address this issue in any detail in its testimony. It seems to hinge its position on the fact that the North Carolina Utilities Commission decided that dPi was not entitled to the LCCW credit because the North Carolina Utilities Commission found that BellSouth did not actually provide the credit to its end users with identical orders as dPi's customers. Transcr. Pam Tipton p.17 (July 23, 2007).

Of course, this completely ignores the fact that Bellsouth **did** originally interpret its promotion the as the plain language reads, and as dPi contends it should be interpreted. Lost Key worked with BellSouth in developing the automated system for processing these promotions. Small test batches of orders were sent to BellSouth for evaluation and approval before the larger batches were sent; and BellSouth approved those orders for LCCW credits with POTS plus blocking features. BellSouth allowed CLECs such as Budget Phone to

claim this credit under dPi's interpretation originally. It was only after Bellsouth realized 1 2 that by changing its interpretation of the promotion it could avoid extending the LCCW credit to many CLECs without affecting its own customer base, because of differing natures 3 of the customers bases of BellSouth and dPi. In other words, BellSouth switched its business 4 practices and stopped awarding LCCW promotions to its end users with orders substantially 5 the same as dPi's for the sole reason that more dPi users would be harmed than Bellsouth end 6 users. This business decision of Bellsouth can in no way affect whether or not an order 7 qualifies for the promotion. 8 The Commission should simply read the text of the LCCW promotion according to 9 its plain meaning – as both Bellsouth and dPi did initially – and compel BellSouth to extend 10 11 the LCCW promotion pricing to dPi. Going forward, Bellsouth should amend its promotion language to specify those features which will no longer qualify for the promotion if it does 12 not want CLECs such as dPi to qualify for the promotion with basic service plus two blocks. 13 Q: Does this conclude your testimony? 14 Yes – for now. But I reserve the right to supplement or amend it at hearing. 15 A: Respectfully Submitted, 16 17 FOSTER MALISH BLAIR & COWAN, LLP 18 19 20 21 Chris Malish 22 23

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