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Subject: Florida Docket No. 050863-TP
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B. Docket No. 050863-TP: dPi Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc.

C. BellSouth Telecommunications, Inc.
on behalf of J. Phillip Carver

D. 22 pages total (includes letter, pleading and certificate of service)

E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Post-Hearing Brief.

<<brief.pdf>>

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April 30, 2008

Ms. Ann Cole
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2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 050863-TP: dPi Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc.

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Post-Hearing Brief, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

J. Phillip Carver

cc: All parties of record
Gregory Follensbee
E. Earl Edenfield, Jr.
Lisa S. Foshee

CERTIFICATE OF SERVICE
DOCKET NO. 050863-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U. S. Mail this 30th day of April, 2008 to the following:

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(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: dPi Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc.	)	Docket No. 050863-TP
	)	Filed: April 30, 2008

AT&T FLORIDA'S POST-HEARING BRIEF

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STATEMENT OF THE CASE

This docket commenced on November 10, 2005 with a Complaint filed by dPi Teleconnect, L.L.C. ("dPi") against BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"). The case was held in abeyance from March 8, 2006 through January 4, 2007 (pursuant to Order No. PSC-06-0185-PCO-TP). Subsequently, the hearing on this matter was continued a number of times for a variety of reasons. For example, the hearing was continued on October 10, 2007 at the joint request of the Parties, in order to allow additional time for settlement negotiations (which ultimately were not successful).[1] The hearing was ultimately set by the Commission for April 3, 2008 (*Commission's Order Denying Additional Discovery and Fourth Order Modifying Procedure*, Order No. PSC-08-0122-PCO-TP, issued February 26, 2008). The hearing on the two identified issues did, in fact, take place on April 3, 2008. AT&T Florida presented the testimony of Pam Tipton. Testimony was also presented by dPi witnesses, Brian Bolinger and Steve Watson. The hearing produced a transcript of 343 pages and 32 exhibits.

STATEMENT OF BASIC POSITION

As to Issue 1, dPi claims that it is entitled to receive credits pursuant to AT&T Florida's Line Connection Charge Waiver ("LCCW") promotion. The Commission should reject dPi's claim because it is clear that dPi failed to qualify for this promotion. Specifically, the tariffed retail promotion requires that the customer purchase features to qualify. The undisputed facts show that dPi routinely added free blocks[2] to its end users' lines to keep them from utilizing

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[1] See, *Order Granting Emergency Joint Motion for Continuance and Second Order Modifying Procedure;* Order No. PSC-07-0814-PCO-TP.

[2] The proper name of the service in question, as set forth in the tariff, is "Denial of Per Activation." This free service is often informally referred to as a "call block" or "call restriction." Hereinafter, these terms are used interchangeably.

features. When dPi did so, it did not ask its customers' permission to add the blocks, nor did it tell the customer that the blocks had been added. dPi then submitted credit requests based on the claim that these free blocks satisfy the requirements of the promotion. However, dPi failed to qualify for the promotion because 1) the call blocks were free, therefore, there was no purchase; 2) the blocks that dPi placed on its customers' lines are not features.

Also, under the express terms of the Interconnection Agreement between the parties, the LCCW promotion is available to dPi end users who would qualify for the promotion if they were AT&T Florida retail customers. In other words, an end user must place an order that qualifies. Under the undisputed facts of the case, dPi's customers did not place orders for blocks or features. Instead, dPi added blocks to its end users' lines without their knowledge. For this additional reason, dPi does not qualify for the LCCW promotion.

As to Issue 2, the undisputed evidence is that dPi does not qualify for either of the two promotions at issue.

STATEMENT OF POSITIONS ON THE ISSUES

ISSUE 1(A): Is dPi entitled to credits for the AT&T Florida Line Connection Charge Waiver Promotion when dPi orders free blocks on resale lines?

**AT&T Florida's Position: 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.

ISSUE 1(B): If so, in what amount?

**AT&T Florida's Position: For the reasons set forth above, dPi is not entitled to any credit.

I. dPi FAILED TO QUALIFY FOR THE LCCW PROMOTION.

The fact that dPi is not entitled to credit under the LCCW promotion is clear. This conclusion requires only a review of the plain language of the tariffed retail promotion, the pertinent language of the Interconnection Agreement between the parties, and a handful of uncontested facts.

Specifically, under the heading "Charges Waived," the tariffed promotion sets forth the following requirements to obtain a waiver of the line connection charge:

> The line connection charge to reacquisition or winover residential customers who currently are not using BellSouth for local service and who purchase BellSouth Complete Choice service, BellSouth PreferredPack service, or basic services and **two (2)** features will be waived.

(AT&T Florida's General Subscriber Services Tariff ("GSST"), A2.10.2.A).

The parties agree that the above-quoted language relating to Complete Choice service and PreferredPack service does not apply in this case. Thus, if we delete the inapplicable language from the above-quoted tariff provision, the promotion states that the waiver of the line connection charge is available to a "residential customer who currently . . . [is] . . . not using BellSouth for local service and who purchase[s] basic service and two (2) features . . .." Clearly, the promotion requires a *purchase* of *features*. An order that does not include features does not qualify. Also, an order of features, blocks or any other service that is available free of charge does not qualify.

This retail promotion is made available to dPi, just as it is made available to every CLEC, through an Interconnection Agreement between the parties. The Attachment to this Agreement that sets forth the terms of resale contains a page entitled "Exclusions And Limitations on Services Available For Resale." This page contains the statement that, "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." (Exhibit 22, PAT 1). This straightforward language from the Interconnection Agreement means that, in order to qualify for a promotional waiver, there must be an actual order by the end user, just as there would be an order from a retail end user to whom AT&T Florida would give the promotion.

Finally, there are a handful of undisputed facts that clearly establish that the orders dPi submitted did not qualify for the LCCW promotion. dPi's witness, Brian Bolinger, admitted that "when a dPi end user orders basic local service, dPi automatically puts the BCR, BRD and HBG blocks on the end user's line."[3] (Tr. 89). However, dPi does not obtain its customers' permission to place blocks on the customers' lines (Tr. 89), nor does dPi tell the customer that the blocks have been added. (Tr. 90). Specifically, Mr. Bolinger admitted that, dPi does not tell the customer it is placing the blocks on the customers line at the time it does so (Tr. 90), and dPi does not subsequently send "correspondence to the customer to indicate that the blocks are on the customer's line" (Tr. 91). Mr. Bolinger likewise admitted that the bill dPi sends to the customer "doesn't indicate that the block is on the line." (Tr. 91). Moreover, Mr. Bolinger admitted that, given these facts, the dPi end user does not order the blocks that dPi places on the customer's line (Tr. 91-92). Further, dPi does not pay AT&T Florida anything for the blocks that it adds to customer's lines, nor does it charge its customers anything for these blocks. (Tr. 101). Nevertheless, dPi claims that these free blocks constitute purchased features, and that dPi, therefore, qualifies for the LCCW promotion.

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[3] BCR, BRD and HBG are ordering codes for the "Denial Per Activation" of, respectively, Call Return, Repeat Dialing and Call Tracing (Exhibit 26, PAT-5, page 12 of 15).

Based on above-described undisputed facts, as well as the clear language of the tariffed retail promotion and the Interconnection Agreement, it is clear that dPi failed to qualify for the LCCW promotion for three reasons. First, the specific language of the promotion requires a purchase. Since the "Denial of Per Activation" restriction (i.e., the call block) is offered free of charge, there is no purchase, and dPi does not qualify. Second, the promotion requires the purchase of features. Per use denials are not features. Instead, they are a means to prevent the activation of features on a per-use basis. Thus, dPi fails to qualify for the promotion for this second reason. Third, the above-quoted language of the Interconnection Agreement requires that the LCCW promotion be made available to qualified end users. This language necessarily requires an order by the end user. In this case, dPi's end users ordered nothing. Instead, as dPi admitted, it unilaterally placed blocks onto customers' lines without their knowledge or consent. Thus, dPi also failed to qualify for the promotion because the act of cramming services on to customers' lines (*albeit* free services) is irreconcilable with the express language of the Interconnection Agreement to which both parties voluntarily agreed.

Although there are three clear reasons that dPi failed to qualify for the promotion, each constitutes an independent, compelling reason that dPi's requests for credit were properly denied. In other words, while there is ample reason for the Commission to find in AT&T Florida's favor on all three of these points, the Commission need accept AT&T Florida's position on only one to sustain AT&T Florida's denial of dPi's credit requests. If the Commission finds that there was no purchase, that call blocks are not features or that dPi's customers did not place orders, then AT&T Florida must prevail.

Again, the reasons that dPi failed to meet the requirements of the LCCW promotion are clear and straightforward. Nevertheless, dPi expended a great deal of time and effort, both in its

pre-filed testimony and during the hearing, casting about for an argument to support its claim. Some of these efforts involved raising collateral matters that are wholly unrelated to the determinative issue of whether dPi qualified for the subject promotion.[4] dPi also attempted to avoid the inescapable conclusion that it failed to qualify for the promotion by testimony or cross examination that seemed principally designed to muddy the water. In the three sections that follow, AT&T Florida will discuss specifically these attempts, and will address in greater detail the evidence that supports AT&T Florida's positions.

A. dPi Failed To Qualify For The LCCW Promotion Because It Did Not Make A Purchase.

The clear language of the promotion requires a "purchase of basic local service and two (2) features." (emphasis added). The only logically supportable interpretation of this phrase is that to qualify, a customer/end user must purchase basic local service and must purchase two features. It is uncontroverted that AT&T Florida charged dPi nothing for the "Denial of Per Activation" that dPi added to its customers lines. The tariff specifically indicates that there is no charge for "Denial of Per Activation" (A.13.19.4.A(1)(c), (2)(a) and 3(c)) (Exhibit 26, PAT-5). Moreover, Ms. Tipton testified that, "dPi neither pays AT&T for call blocks, nor charges its end user customers for call blocks. Since neither dPi nor its end user customers pay for call blocking, it is not a 'purchased' feature." (Tr. 216). Finally, as noted above, Mr. Bolinger admitted on cross-examination that AT&T Florida does not charge dPi for call blocks, and that dPi does not charge its end user either. (Tr. 101). Obviously, since this call restriction is available at no charge, it cannot be purchased, and ordering it cannot satisfy the requirement of the promotion that the customer purchase features.

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[4] For example, much of the testimony of dPi's witness, Steve Watson, was devoted to his essentially irrelevant complaints about the *process* by which CLECs submit requests for promotional credit, not the specific

The only testimony to the contrary was the assertion of Mr. Bolinger during the hearing that basic local service and free blocks are purchased together so that the price charged for basic local service constitutes payment for the blocks as well. In this regard, Mr. Bolinger testified that the situation is analogous to buying a house, i.e., there is no separate charge for each door knob. (Tr. 97). Mr. Bolinger's analogy is inapposite, however, because a door knob is clearly part of the house. In contrast, basic local service and optional features are priced and offered separately in the tariff.[5] Thus, customers must order basic service and features *separately*.

Moreover, if Mr. Bolinger's interpretation of the tariff on this point were correct, then the language of the promotional tariff would have to be different. That is, the promotion would not require the purchase of "basic local service and two (2) features," it would simply require the purchase of basic local service. Again, under Mr. Bolinger's unlikely theory, whatever is paid for basic local service is somehow extended to cover any other services ordered as well (even free blocks). If this were the case, then the requirement to buy local service and two features would be nonsensical.

Finally, Mr. Bolinger's interpretation cannot be aligned with the cost structure of the promotion. Ms. Tipton stated during the hearing that the cost of this particular promotion is covered by the revenues derived from *purchased* features. In this regard, she testified as follows:

> . . . [U]nder Commission rules . . . [AT&T Florida] cannot offer our services below cost. [W]e have to be ready any time we offer a promotion to provide the evidence that this promotion is not being offered below cost. So there's always a cost analysis that's performed associated with every promotion. And our promotions are designed, this Line Connection Charge Waiver promotion at issue is designed with a clear contemplation that the features are, number one, purchased and that they have a charge associated with them.

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denials of dPi's requests. (Tr. 158-160).

[5] TouchStar features, as well as free call blocks, are listed in A.13.19.4.A. Basic local service is priced and offered in an entirely different part of the GSST, i.e. A3.4.2.B.

(Tr. 245).

Given the above, it is obvious that the LCCW promotion requires a purchase. It is uncontroverted that the call blocks at issue are offered free of charge. Therefore, there can be no purchase when one orders free call blocks. Accordingly, dPi cannot qualify for the LCCW promotion by ordering these free blocks.

B. dPi Failed To Qualify For the Promotion Because There Was No Order Of Features.

As Ms. Tipton testified, the promotional tariff lists specifically the features that qualify for the promotion. Each is designated within the tariff by a capital letter (Tr. 244). Thus, the tariff lists under the heading "Definitions of Feature Offerings," TouchStar features such as Call Return, Repeat Dialing, Call Selector, and Preferred Call Forwarding (G.S.S.T. § A13.19.2(A)(B)(C) and (D) (Exhibit 26, PAT-5). Under certain of the features, there are sub-parts that delineate particular options that a customer may select in regard to the feature. For example, as set forth in the tariff provision for Call Return, a customer may subscribe to Call Return at a monthly rate of $6.95 per month. (A13.19.4(A)(1)(a). A customer may also order Call Return on a "per activation" basis for $1.25 per use (A13.19.4(A)(1)(b). In order to do this, the customer would simply utilize Call Return even though he had not subscribed to this feature. As Ms. Tipton testified,

> If the customer chooses not to subscribe to the service, but periodically wants to activate their Call Return feature, all they have to do is dial *69 and a $1.25 will be charged to their telephone bill. The scenario of subscribing to a TouchStar® feature on a monthly or per activation basis is the same for Repeat Dialing and Call Tracing. Most telephone lines are equipped to allow the use of TouchStar® features without a customer actually having to subscribe on a monthly basis, which is why there is the per activation charge.
>
> (Tr. 214)

Finally, a customer may determine that he not only wishes not to subscribe to Call Return, but that he also wants to ensure that no one having access to the telephone engages Call Return on a per use basis. To accomplish this, the customer would select the "Denial of Per Activation." (A13.19.4(A)(1)(c). As Ms. Tipton explained,

> Alternatively, if a customer wants to ensure that these features are not able to be utilized on their telephone line and thus incur no additional charges, AT&T allows the customer to request a call block, free of charge, which prevents the activation of a feature. This blocking capability is described as "Denial of Per Activation" in Exhibit PAT-5. A customer must request the block be put in place.
>
> (Tr. 214).

The distinction in the tariff between a feature and the per activation denial of a feature is clear. The functional difference between a feature and a feature block is equally clear. Ms. Tipton testified that "a feature is an optional enhancement to the customer's basic service that the customer chooses to purchase at a set monthly rate. A Calling Block is a way to prevent a feature from being activated on a per call basis." (Tr. 213). This functional distinction is tracked by the separate line items in the tariff that allow a customer either to subscribe to Call Return (a feature), to utilize Call Return without a subscription, or to block the per use activation of Call Return.

The thrust of dPi's argument that blocks are features is that the general heading of this section refers to TouchStar features, therefore, everything included in this section must be a feature.[6] This argument, however, makes no sense in terms of the organization of the tariff. An apt analogy would be a situation in which a customer ordering an automobile checked off a list of desired features on a pre-printed form. Assume the form had under the heading "Air

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[6] See, for example, Mr. Bolinger's Direct Testimony on this point (Tr. 57).

Conditioning," three options: 1) standard air conditioning; 2) deluxe air conditioning, and 3) no air conditioning. Under dPi's logic, "no air conditioning" would be deemed a form of "air conditioning." A similar nonsensical result follows in our case from dPi's interpretation of the tariff. In other words, there is no question but that Call Return, for example, is a feature. A customer that chooses the denial per activation of call return at no charge ensures that this feature is not engaged. This customer has no more ordered a feature by virtue of his choice to block Call Return than the hypothetical customer choosing "no air conditioning" has chosen a form of air conditioning. The point of this illustration, of course, is that dPi's interpretation of the tariff leads to results that are simply absurd.

Moreover, as Ms. Tipton testified, there is a clear functional distinction between a feature and a block. A feature creates a functionality, while a "per use denial" prevents that functionality from being engaged on a per use basis. dPi presented nothing to address this clear functional distinction. Thus, the distinction between a feature and a block is clear both from a functional standpoint and from the organization of the tariff.

Finally, Ms. Tipton also testified to the fact that the entire idea of having a promotion to encourage the ordering of free call blocks would make no sense:

> The entire purpose of a sale's promotion is to provide customers with an incentive to purchase additional services at an additional price. The premise of offering promotions from any business's perspective is simple: encourage customers to purchase additional products or services that generate more revenue for the business and the business will give the customer a discount. In this case, AT&T waives the line connection charge.
>
> It makes no sense to encourage the ordering of call blocks because the blocks do not generate any additional revenue. Again, call blocks are simply a mechanism that AT&T provides to customers at no charge, and which the customer uses to ensure that users of his/her telephone line do not activate any feature on a per call basis that would incur additional charges on the bill.

(Tr. 214-15).

Given the organization of the tariff, the clear functional distinction between a feature and a block, and even the fundamental reasons for offering promotions to customers, it is clear that a block is not a feature within the meaning of the LCCW promotion. Thus, dPi's placement of blocks on its customers lines cannot qualify it to receive credits under the LCCW promotion.

C. dPi Failed To Qualify For The Promotion Because It Did Not Comply With The Terms of the Interconnection Agreement.

The promotional tariff at issue makes the LCCW promotion available to retail customers. Obviously, CLECs cannot order from a retail tariff so it is necessary for there to be a mechanism whereby promotions may be made available to CLECs, i.e., an Interconnection Agreement. In this instance, there is an Interconnection Agreement between the parties that has an entire attachment that is devoted to the topic of resale. Within this section is the sentence previously referred to, which states that "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." (Exhibit 22, PAT-1). The provision that the promotion "be made available only to end users" means that the order submitted by dPi must be the result of an actual customer order. In other words, whenever a retail customer orders a feature from AT&T Florida, there is an actual order generated by an actual customer. dPi does not contend that AT&T Florida places features, blocks or any other type of service on the lines of its customers without an actual order. Thus, the simple requirement of the Interconnection Agreement quoted above requires CLECs to do as AT&T Florida does with its retail customers, that is, have an actual order by a customer underlying each request for promotional credit.

This requirement makes perfect sense. It is inconceivable that AT&T Florida (or for that matter, any rational ILEC) would negotiate a resale agreement with a CLEC that would allow the CLEC to generate promotional discounts by placing services (even free services) on customer's lines that the customer did not order. Further, it is astounding that dPi contends in this proceeding that it should be allowed to obtain promotional discounts when even dPi admits that there are no customer orders underlying the credit requests.

It is noteworthy that dPi has offered no alternative interpretation of this phrase from the Interconnection Agreement. Instead, dPi has principally responded to the obvious meaning of this phrase by trying to avoid it altogether. dPi has done this principally by contending that this agreed upon provision in the Interconnection Agreement is somehow undercut by the legal requirement to make resale promotions available to CLECs. For example, Mr. Bolinger testified that AT&T Florida "is required by law to make available for resale any promotion that [it] makes available to its customers for an extended period of time." (Tr. 55). Likewise, dPi has cited in other jurisdictions (and presumably will do so in its Brief here as well), federal case law that stands for the general proposition that ILEC retail promotions must be made available to CLECs. However, dPi's argument ignores the fact that AT&T Florida *does* make the LCCW promotion available to dPi. As Ms. Tipton testified:

> AT&T makes its applicable retail promotions available to dPi in Florida by giving it a credit for the value of the promotion *as long as the dPi end user meets the same criteria that an AT&T customer must meet the qualify for the same promotion.*

(Tr. 192).

Thus, the issue is not whether AT&T Florida makes the LCCW promotion available to dPi (clearly it does). The question is whether dPi qualifies for the promotion that has been made available.

Apparently, dPi is relying upon the flawed premise that the legal requirement to make a promotion "available" means that it must be given to CLECs that do not comply with the promotional criteria or with the terms of the Interconnection Agreement between the parties. Moreover, dPi appears to assert that a contractual provision that requires merely that dPi have an actual customer place an actual order (just as AT&T Florida would have) somehow runs afoul of the legal requirement to make the promotion available. There is nothing, however, in the case law dPi has cited in other jurisdictions (and will likely cite here) that even vaguely supports this proposition. Moreover, dPi's argument seems especially strange, given the fact that dPi has acknowledged that it is governed by the terms of the Interconnection Agreement.[7] Moreover, dPi's witness, Mr. Bolinger, specifically admitted that this particular phrase is one of the contractual obligations that appear in the Interconnection Agreement, and that it applies to dPi.[8]

dPi also appeared to assert during the hearing the argument that this particular provision of the Interconnection Agreement conflicts with other provisions of the Interconnection Agreement. Most provisions of the Agreement dPi raised during the hearing, however, were very general provisions from the General Terms and Conditions that simply provided that federal law applies, or that make the general point that promotions must be made available for resale. (Tr. 289-294). Moreover, as Ms. Tipton testified, the other provisions of the Resale Attachment

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[7] In Response to AT&T Florida's Request for Admissions, dPi admitted that "dPi resells AT&T services pursuant to the Resale provisions of the Interconnection Agreement between the Parties." Exhibit 15, STIP-15, Item Nos. 1-20 of dPi Teleconnect's First Amended Responses to AT&T Florida's First Request for Admissions, Item No. 5.

[8] Exhibit 9, STIP-9, Deposition Transcript of Brian Bolinger taken on September 24, 2007, pp. 9-10.

are entirely consistent with the above-quoted provision that dPi must submit actual customer orders (Tr. 293).

Despite dPi's efforts to avoid the clear language of the Interconnection Agreement, which it negotiated and to which it admits it is bound, the fact remains that the provisions of the resale provisions of the Agreement require dPi to premise its credit requests upon actual customer orders. dPi is simply not allowed, under the Interconnection Agreement, to fabricate customer orders by placing services on customers' lines (even free services) that the customer does not order as a way to try to obtain credit under to the LCCW promotion.

II. AN AT&T RETAIL CUSTOMER WHO ORDERS BASIC LOCAL SERVICE AND CALL BLOCKS DOES NOT QUALIFY FOR THE LCCW PROMOTION.

As Ms. Tipton testified, an AT&T Florida retail customer who orders basic local service and call blocks, but no features, does not qualify for the LCCW promotion (Tr. 199). dPi claims to the contrary. In response to dPi's claim, AT&T Florida first notes that how AT&T Florida treats its retail customers is less important to resolving this case than the more direct question of whether dPi has met the controlling promotional criteria. The appropriate method to answer *this* question is simply to consider the requirements of the promotion and the uncontested facts regarding dPi's practices to see if dPi qualifies for the promotion. Clearly, dPi does not.

Moreover, how AT&T Florida deals with orders from its retail customers is not really pertinent because, for the reasons discussed above, dPi had no customer-generated orders. That is, since dPi's customers did not place orders for the call blocks dPi submitted, the language of the Interconnection Agreement dictates that the accounts dPi submitted can not qualify for

promotional credits. Thus, the question of what AT&T Florida does when one of its retail customer places a *legitimate* order is never really reached.[9]

Nevertheless, even if this issue were central to the case, there is ultimately nothing to support dPi's contention that AT&T Florida gave promotional waivers to its own customers who did not qualify for the LCCW promotion. dPi appears to base its challenge to Ms Tipton's testimony on this point entirely upon a response AT&T Florida provided in discovery. (Exhibit 13). However, it became clear during the cross examination of Ms. Tipton that these discovery documents provide nothing of probative value.

Specifically, dPi requested that AT&T produce account records to show whether retail customers who ordered basic local service and call blocks received a waiver of the line connection charge. The more reliable data produced in response to this request, the billing data for 2005-2007, shows that approximately 14% of the customers with this ordering profile received a waiver of the line connection charge. (Tr. 333) This data, however, contains absolutely no information as to *why* the waiver was given. As Ms. Tipton testified, line connection charges may be waived as a result of the LCCW promotion, but also as a result of split billing situations, bundled service offerings, reconnections after disconnections in error, and reconnections after disconnections due to natural disaster. (Tr. 302). Thus, this data provides no basis upon which one could draw a conclusion as to why these waivers were given. As Ms. Tipton testified, "it's actually impossible to tell from this data." (Tr. 331).

Moreover, Ms. Tipton also testified that she went beyond the information that dPi requested in discovery and looked at a representative sampling of the actual services orders. (Tr.

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[9] Of course, how AT&T deals with its own customers who place orders for blocks, without features, does provide evidence of how AT&T interprets the promotion on the retail side. Further, the North Carolina Commission did rely on Ms. Tipton's testimony on this point to find in AT&T's favor on an identical claim litigated there.

334). Although her review did not yield useful information as to every single service order, it did prompt two important conclusions. First, Ms. Tipton found that a significant number of the service orders specifically identified a reason that the line connection waiver was granted *other than the LCCW promotion.* (Tr. 335). Second, in her review, Ms. Tipton did not find a single service order that indicated that the line connection charge waiver was granted as a result of the LCCW promotion. (Tr. 336).

Thus, dPi's unsupported contention that AT&T Florida gave the promotional waiver to its own retail customers was undercut by evidence of three undisputed facts: 1) 86% of the time, the waiver was not given to retail customers that ordered basic local service and blocks; 2) as to the 14% of the time when waivers were given, there is no way to discern from the data in Exhibit 13 the reason; and 3) Ms. Tipton's examination of the source data for the account information, i.e., services orders, strongly suggests that the waivers at issue were given for reasons other than the LCCW promotion. Given these facts, dPi's contention that AT&T Florida provided waivers to its own customers who placed orders comparable to those submitted by dPi has no evidentiary support whatsoever and should be rejected.

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

**AT&T Florida's Position: 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 of the promotion.

ISSUE 2(B): If so, in what amount?

**AT&T Florida's Position: For the reasons set forth above, dPi is not entitled to any credit.

Issue 2 involves two additional promotions for which dPi submitted credit requests. The first of these is the Secondary Service Charge Waiver ("SSCW") promotion, which, as Ms. Tipton testified, applies "when changes are made to certain features or services on an *existing* AT&T end user account." (Tr. 197). Thus, "for a dPi customer to qualify for the SSCW promotion, the customer must already be a dPi end user and the service request must be adding or changing features/services on the account." (Tr. 197-98). As Ms. Tipton also testified, dPi failed to qualify for this promotion because dPi submitted credit requests for new customers to dPi that "were not part of their existing customer base" (Tr. 199). dPi offered no testimony or other evidence to support its claim that it is entitled to receive these promotional credits. Instead, Ms. Tipton's testimony on this point was uncontroverted.

Ms. Tipton's testimony is likewise uncontroverted as to the second promotion encompassed within this issue, the Two Features For Free ("TFFF") promotion. Ms. Tipton explained this promotion in her testimony as follows: "Under this promotion, AT&T reacquisition or win over customers who purchased basic local service plus two Custom Calling or TouchStar® features qualified for a credit for the features during the contiguous 12 month period immediately following the installation of a qualifying basic local service." (Tr. 198). As Ms. Tipton also explained, dPi failed to qualify for this promotion because dPi "improperly submitted requests for existing dPi customers." (Tr. 199). Also, some of dPi's requests for credit under this promotion were denied because they "extended beyond the 12-month

contiguous billing period for the promotion" (Tr. 200). dPi also submitted no testimony or evidence regarding this promotion.

Based on the foregoing, it is clear that AT&T Florida must prevail on Issue 2. Ms. Tipton presented testimony that dPi failed to qualify for both the SCCW and the TFFF promotions. dPi offered nothing to controvert Ms. Tipton's testimony, either in its pre-filed testimony or during the hearing. Accordingly, the Commission should rule in favor of AT&T Florida on Issue 2, find that dPi's credit requests were improper, and find that AT&T acted correctly in denying these requests.

CONCLUSION

For the reasons set forth above, the Commission should find that dPi is not entitled to promotional resale credits for the Line Connection Charge Waiver, Secondary Service Charge Waiver, and Two Features For Free promotions.

Respectfully submitted this 30th day of April, 2008.

AT&T FLORIDA

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