Jennifer L. Washington, CP Paralegal	FOSTER MALISH BLAIR & COWAN, L.L ATTORNEYS AND COUNSELORS AT LAW A REGISTERED LIMITED LIABILITY PARTNERSHIP 1403 WEST SIXTH STREET AUSTIN, TEXAS 78703 (512) 476-8591 FAX: (512) 477-8657 www.fostermalish.com	WRITE	CONTRIL <sup>G</sup> SION	07 AUG 20 PM 2: 45	RECEIVED-FPSC
	August 17, 2007			07 /UG	Detre
Via UPS Next Day	Air			20	
Ms. Ann Cole Division of the Con Florida Public Serv 2540 Shumard Oak Tallahassee, Florida	Boulevard		10 U4		DISTRICTION DENTES

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

Dear Ms. Cole:

Regarding the above-referenced docket, please find the original and 21 copies each of dPi Teleconnect's rebuttal testimonies of Brian Bolinger and Steve Watson. Please file these testimonies and return a file-marked copy of each to this office; a self-addressed, stamped envelope is enclosed.

Thank you for your courtesy in this matter. If you should have any questions, please do not hesitate to call.

CMP COM CTR ECR: GCL OPC \_\_\_\_/jlw Enclosures RCA SCR \_\_\_\_\_ SGA \_\_\_\_\_ SEC \_\_\_\_\_ OTH \_\_\_\_\_

Very truly yours,

Jennifer L. Washington, CP

Paralegal

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Ms. Ann Cole Division of the Commission Clerk and Administrative Services August 17, 2007 Page 2

cc: Manuel A. Gurdian, Attorney AT&T Florida 150 South Monroe Street, Room 400 Tallahassee, Florida 32301

> J. Phillip Carver, Sr. Attorney AT&T Florida 675 West Peachtree Street, Suite 4300 Atlanta, Georgia 30375

Theresa Tan, Staff Counsel Division of Legal Services Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850 Via First-Class Mail and Via Electronic Mail: mg2708@att.com

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		PERODE THE PLODED & NUMBER GENERAL COMMUNICATION	
1	BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION		
2 3			
4	In R	e: ) DOCKET NO. 050863-TP	
5		)	
6	dPi Teleconnect, L.L.C. v.		
7	BellSouth Telecommunications, Inc.		
8			
9		REBUTTAL TESTIMONY OF dPi TELECONNECT'S BRIAN BOLINGER	
10	Q:	Overall, what is your response to Bellsouth's testimony?	
11	A:	Generally speaking, Bellsouth spends most of its breath addressing essentially	
12		irrelevant issues. Its direct testimony is focused on issues which represent less than 2% of	
13		the total dollars at issue - the Two Features for Free promotion and the Secondary Service	
14		Charge Waiver. The main issue in this complaint is the Line Connection Charge Waiver	
15		("LCCW") Promotion. It accounts for about 98% of the total credits and thus it will be the	

focus of my rebuttal testimony.

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## Q: Does focusing on the Line Connection Charge Waiver ("LCCW") Promotion simplify issues for the Commission?

A: Vastly. As noted above, the dispute over this promotion accounts for more than 98% of the dollars at issue between the parties. Frankly, the cost of litigation far surpasses the minuscule amount at issue for the other two promotions. Had this been known earlier, these claims likewise could have been dismissed earlier. From here out, dPi will concentrate only on the LCCW promotions.

## In the parallel proceeding in North Carolina, the vast majority of the time, dPi was denied credit under this promotion because Bellsouth refused to "count" as Touchstar features those features selected by dPi, such as the Touchstar blocks. It is likely that a similar

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excuse is being used here in Florida; however, I must amend my testimony to reflect the exact percentages in the future because this information was withheld from discovery produced on August 9, 2007, until a protective agreement was executed. This has been executed by dPi has not received the proprietary document.

Q: 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."

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10 A: Exactly. And there is no getting around the fact that dPi has in fact ordered Basic 11 Service with Touchstar features. If Bellsouth does not wish its promotion to apply to all 12 Touchstar features, it should do like SBC (prior to its merger with Bellsouth), and alter its 13 promotion so that the promotion specifically lists those features that Bellsouth requires to 14 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 Titpon 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. BellSouth allowed CLECs to claim this credit under dPi's interpretation originally. It was only after Bellsouth realized that by changing its interpretation of the promotion it could avoid extending the LCCW credit to many CLEC order without affecting its own customer

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base, because of differing natures of the Bellsouth's, as opposed to dPi's typical customer. In other words, BellSouth switched its business practices and stopped awarding LCCW to its end users with orders substantially the same as dPi's for the sole reason that more dPi users would be harmed than Bellsouth end users. This business decision of Bellsouth can *in no way* effect whether or not an order qualifies for the promotion.

The Commission should simply read the text of the LCCW promotion according to its plain meaning – as both Bellsouth and dPi did initially – and compel BellSouth to extend the LCCW promotion pricing to dPi or amend its promotion language to specify those features which will no longer qualify for the promotion.

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## Q: Does this conclude your testimony?

11 A: Yes – for now. But I reserve the right to supplement or amend it at hearing.

Respectfully Submitted,

## FOSTER MALISH BLAIR & COWAN, LLP

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