

1 experience that SBC (before its merger with BellSouth) did so: SBC's systems allowed one
2 to apply for a promotional credit as part of the provisioning order, and rejected the order if
3 it does not qualify for the promotion. The credit was applied to the price immediately and
4 the discount reflected on the same bill; the CLEC paid no more than what it actually owed
5 for the service from the get-go.

6 But in contrast (as I noted earlier), the practical effect of Bellsouth's refusal to bill
7 these charges correctly on the front end means that Bellsouth automatically overcharges
8 every reseller for every service the reseller orders that is subject to a promotional discount.
9 Then Bellsouth shifts the burden on to the reseller to figure out how much Bellsouth has
10 overcharged the reseller, and dispute Bellsouth's bills accordingly. Some CLECs I have
11 worked with aren't even aware that this is how the "system" is supposed to work and don't
12 know to apply for these promotions; in such cases, Bellsouth obviously just keeps their
13 money.

14 Again, for those CLECs who generally understand that they must apply for these
15 credits, Bellsouth's system makes it as difficult as possible for the reseller dispute the bills
16 to Bellsouth's satisfaction. First, the credit request must be meticulously documented, listing
17 details of every order for which credit is requested. But getting the data to populate these
18 forms is a Herculean task in itself: it must come from Bellsouth's billing and ordering data,
19 which Bellsouth has traditionally provided to resellers only on either a paper bill, or
20 electronically in a "DAB" file, which has data locks built into it, making downloading of the
21 raw data exceptionally difficult. To make matters worse, next to no one at Bellsouth can
22 explain how to get the data out of the "DAB" files, because Bellsouth does not maintain its

1 own data in such files, and its employees simply are not equipped with the knowledge to
2 answer questions about how to unlock its secrets. Figuring out how, as a practical matter,
3 to apply for these credits takes a large amount of resources in time and money. As you can
4 imagine, this has resulted in a great many CLECs simply throwing their hands in the air and
5 giving up. Bellsouth keeps their money too. I know of several CLEC that have gone out of
6 business who never realized before they went under that Bellsouth actually owed them
7 hundreds of thousands of dollars in promotional credits.

8 Next, if a CLEC spends the time and resources to figure out a way to get at their data,
9 and create systems for electronically scouring it to identify those orders that ought to qualify
10 for promotional credits, and write and re-write programs that will populate Bellsouth's forms
11 (which it changes from time to time as it sees fit), Bellsouth will examine the requests for
12 credit to see if it will honor them. There is no deadline for Bellsouth to act on these credit
13 requests. When it finally approves or denies credits – which can take months – it makes no
14 explanation for what credits it accepts, and what credits it rejects, and why. If the credit is
15 rejected, the CLEC has no way of auditing the rejection to see if it is merited or not. If the
16 credit is accepted, Bellsouth has kept the CLEC's money for months without interest before
17 returning it.

18 BellSouth's system is backwards, failure prone, and grossly inefficient. And at every
19 step of the way, whether consciously designed to that end or not, the system works to the
20 profit and unjust enrichment of Bellsouth at the CLEC's expense.

21 **Q: In what manner did dPi decide to apply for credits?**

22 **A:** Basically by doing what Bellsouth has asked us to do. When I first got involved in

1 trying to claim credits on behalf of CLECs, back in 2003, Bellsouth's "promotional credit
2 processing department" appeared to consist of one person: Stanley Messinger; he was later
3 replaced by Kristy Seagle, who was in turn superseded by Keith Deason in the second half
4 of 2005. These were the people tasked with helping CLECs navigate the promotional credit
5 filing process – that is, verifying what promotions CLECs were in fact eligible for, and how
6 to apply and secure those credits. I don't know how this "department" fit into Bellsouth's
7 organizational structure, but they were not part of Bellsouth's billing and collections
8 department, nor were they part of Bellsouth's wholesale operations. It was obvious when I
9 first started calling that they simply didn't get many promotional credit requests, nor any
10 questions about how to qualify and apply for such credits. Frequently they did not know the
11 answers to questions on these subjects, and sometimes a decision by one person would be
12 reversed by his or her successor. Oftentimes, it seems that policies were made on the spot,
13 on an *ad hoc* basis. In essence, we were feeling our way through "the system" together, and
14 I relied on what they told me about what was creditable and how to apply for those credits.
15 As CLECs began to figure out that they were entitled to promotion discounts, and how to
16 apply for them, the credit requests grew, to the point that in later 2004, Bellsouth began to
17 spend more resources on managing the influx of requests – redoing forms and processes and
18 so on.

19 **Q: What merit is there in Bellsouth's hints that dPi has cheated the system?**

20 A: None. Bellsouth's suggestion that dPi somehow cheated the system is simply
21 incredible to me. First, we worked with Bellsouth's staff in order to try to apply for these
22 credits as directed by Bellsouth. dPi simply cannot be blamed for following Bellsouth's

1 directions. Second, Bellsouth conveniently fails to mention those situations – for example,
2 with the CREX one time nonrecurring charge – that when the parties revisited whether it was
3 appropriate for dPi to have those charges credited, and concluded that it was not, these claims
4 were immediately dropped. dPi acted in good faith and stopped pursuing those credits that
5 it was not entitled to. It is only asking BellSouth to credit amounts to which dPi is entitled.
6 To have that somehow twisted to make dPi look like the bad actor is skewing the facts in the
7 worst possible way.

8 Finally, Bellsouth fails to acknowledge that those instances of “double-dipping” the
9 Secondary Service Charge Waiver are statistically inconsequential. Transcr. Pam Tipton p.
10 15 (July 23, 2007). The overwhelming amount of credit applied for and denied were for the
11 Line Connection Charge Waiver (“LCCW”) Promotion, which accounts for more than 98%
12 (\$78,947.73 of the \$80,428.17) of the dollars at issue between the parties. In the parallel
13 proceeding in North Carolina, the vast majority of the time, dPi was denied credit under this
14 promotion because Bellsouth refused to “count” as Touchstar features those features selected
15 by dPi, such as the Touchstar blocks. It is likely that this is the same excuse Bellsouth is
16 using here in Florida. However, we cannot be sure at this time because Bellsouth withheld
17 its reasons for denial in its discovery responses submitted August 9, 2007, until a proprietary
18 agreement was executed. It has since been executed but dPi has not received the proprietary
19 documents. My testimony will be amended once dPi receives these documents.

20 **Q: How did dPi qualify for LCCW promotions it applied for?**

21 **A:** All – *ALL* – dPi has to do to qualify for the line connection charge waiver is

1 purchase Basic Service with one or more Touchstar features.¹ In every situation in which dPi
2 applied for the promotional credit, it ordered at least Basic Service plus two or more
3 Touchstar features, including Touchstar blocks.² In short, using the words from Bellsouth's
4 own promotion, dPi is entitled to the promotion because it has "purchase[d] ... Bellsouth
5 Basic Service with at least one feature" and thus has "qualif[ied] for a waiver of the local
6 service connection fee."

7 Bellsouth evidently initially agreed with this interpretation because for a while it was
8 crediting other CLECs with promotional rates for orders identical to dPi's. At some point
9 Bellsouth determined that if they interpreted the promotion the way they profess to do so
10 now, they could avoid paying these credits to CLECs without unduly affecting their own
11 client base, since so few of BellSouth's customer base would take basic service with just the
12 blocks. This is because the typical order of a customer with poor credit – the profile of
13 virtually all of dPi's customers – would qualify under the two blocks. The typical order of
14 a customer with good credit – who tended to be Bellsouth's customers – would not have
15 these blocks.

16 Once Bellsouth realized this, it switched its interpretation of the promotion. No

1

See dPi Exhibit 1, a screenshot taken from Bellsouth's website during the summer of 2005. In relevant part, the promotion provides:

Connection Fee Waived

Customers who switch their local service to Bellsouth from another provider and purchase Bellsouth® Complete Choice®, Bellsouth® Preferred Pack, or Bellsouth Basic Service with at least one feature can qualify for a waiver of the local service connection fee. Customers must not have had local service with Bellsouth 10 days prior to new service connection date. Offer ends December 26, 2005.

2

dPi's basic offering always includes the Touchstar blocks. There is no dispute that dPi has ordered Touchstar blocks – the dispute is solely whether the Touchstar block features that dPi orders "qualify" as Touchstar features under the promotion because they bear no additional charge.

1 longer would the LCCW be credited if the order met the plain language of the qualifying
2 criteria but only if it met the tortured reading of the promotion that favored Bellsouth.
3 Bellsouth displays its tortured reading most clearly in Pam Tipton's sly change of language
4 in her testimony that the customers did not qualify because "many of these dPi end users did
5 not **purchase any features.**" Transcr. Pam Tipton p 10 (July 23, 2007) (bold added). Of
6 course, nothing in the promotion required dPi's customers to **purchase features**, but rather
7 to **purchase service** with Touchstar features. In reading the promotion qualification,
8 Bellsouth must completely ignore its ten-word listing of different qualifying services to reach
9 the result it wants.³

10 This is the heart of the dispute. Bellsouth hopes dPi (and the Commission) merely
11 glosses over the promotion without attempting a precise reading of the promotional language.
12 If one is precise and accurate, it is plain and obvious that dPi should be credits for the
13 LCCW.

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

18
19 A: Essentially. And as Brian Bolinger said, there is no getting around the fact that dPi
20 has in fact ordered Basic Service with Touchstar features. If Bellsouth does not wish its
21 promotion to apply to all Touchstar features, it should do like SBC did, and alter its
22 promotion so that the promotion specifically lists those features that Bellsouth requires to

3

In relevant portion, "Customers who switch their local service to Bellsouth from another provider and **purchase Bellsouth® Complete Choice®, Bellsouth® Preferred Pack, or Bellsouth Basic Service** with at least one feature can qualify." Bellsouth has to skip over everything bolded to reach its desired result. See footnote one for the complete text of the promotion.

1 qualify for the promotion.

2 The Commission should hold Bellsouth to the plain language of the qualifying
3 criteria that Bellsouth *itself* created and force Bellsouth to interpret it in the manner Bellsouth
4 *itself* originally interpreted it. It is only now, after it has become clear that more dPi
5 customers qualify for the promotion than Bellsouth customers, that Bellsouth changed its
6 interpretation.

7 dPi's orders meet the qualifying criteria exactly, and should be credited.

8 **Q: What about Bellsouth's claim that dPi wrongly submitted claims for transfer orders?**

9 A: We have reviewed Bellsouth's position on this, and compared it to the language of
10 the promotion. We agree upon further consideration that the promotions should not apply
11 to transfers.

12 **Q: Does this conclude your testimony?**

13 A: For now. But I reserve the right to supplement or amend it at hearing.

14 Respectfully Submitted,

15
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dPi EXHIBIT 1

SCREEN-SHOT OF BELLSOUTH'S WEBSITE SHOWING
PROMOTION QUALIFICATION TERMS

Important Information On Offers

All BellSouth Offers:

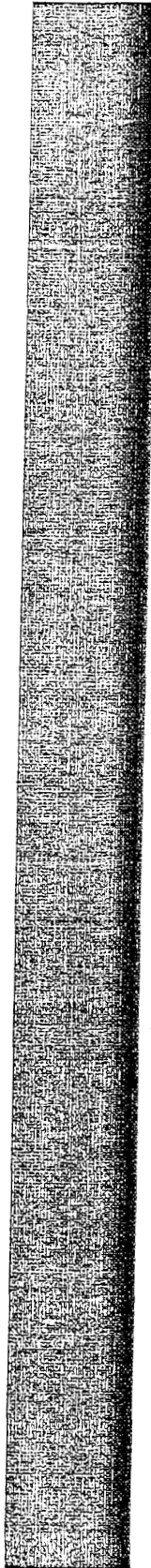
Quoted rates exclude taxes, fees & other charges and will vary depending on state and geographic location. Rates are subject to change. Promotions are valid for one service line at the intended local service address. Customers must not have had local service with BellSouth 10 days prior to new service connection date. One (re)acquisition reward per customer per 12 month period. Applicable taxes and fees will be based on the full monthly price of products and services and will not be credited with any reward or bill credit. Advertised services & features may not be available in all areas. All offers may be modified or discontinued at any time without notice. DIRECTV® and the Cyclone design logo, TOTAL CHOICE® and DIRECTV PARA TODOS® are registered trademarks of DIRECTV, Inc. Long Distance provided by BellSouth Long Distance, Inc. All other trademarks and service marks contained herein are the property of their respective owners. ©2005 BellSouth Corporation.

\$100 TARGET® GIFTCARD:

The \$100 Target® GiftCard is available to customers who switch local telephone service to BellSouth and purchase the BellSouth® Complete Choice® Plan or the BellSouth® PreferredPack® Plan by December 31, 2005. Customers must not have had local service with BellSouth 10 days prior to new service connection date. Coupon redemption required. See coupon for redemption details. Card will be sent within 4-6 weeks after receipt of coupon to customers who retain qualifying service. Other conditions apply. One (re)acquisition reward per customer per 12-month period. The Bullseye Design and Target are registered trademarks of Target Brands, Inc. Target is not a participating partner in or sponsor of this offer.

DIRECTV – NFL Sunday Ticket:

Offer available starting 8/1/05. Purchase of 2005 NFL SUNDAY TICKET (\$279.96/retail offer price) and the TOTAL CHOICE PREMIER package required. 2005 NFL SUNDAY TICKET billed in four monthly installments of \$69.99 each. In fifth month, customer's TOTAL CHOICE PREMIER package will continue at the regular payable charge (\$93.99/month). In certain markets, programming and pricing may vary. NFL SUNDAY TICKET automatically continues each year at a special renewal rate, provided DIRECTV carries this



service, unless customer calls to cancel prior to the start of the season. Programming consists of all regular-season Sunday games broadcast on FOX and CBS at 1pm and 4pm ET. However, games broadcast by your local FOX or CBS affiliate will not be available in NFL SUNDAY TICKET. Commercial locations require an appropriate license agreement. Signal theft is subject to civil and criminal penalties. The DIRECTV System has a feature which allows restricted access to or blocking of entire channels. Offer void in HI and where restricted.

Two Free Calling Features

Customers who switch their local service to BellSouth from another provider and purchase local service can choose 2 qualifying calling features without charge for 12 billing invoices. At the end of 12 billing invoices, customer will be billed at regular rates for calling features. Calling features must be compatible and are subject to availability. Some features require additional equipment. Long distance or expanded local calling rates may apply for Call Return, Call Forwarding and Three-Way Calling. Offer ends **December 31, 2005**.

Free Voice Mail

Customers who switch their local service to BellSouth from another provider and purchase local service can qualify for BellSouth[®] Voice Mail Service at no charge for 12 billing invoices. The BellSouth[®] Voice Mail Service will be at no charge for 12 months when the Companion Services Package is purchased. \$2 cost shown online is associated with the Companion Services Package. At the end of 12 billing invoices, customer will be billed at regular rates for BellSouth[®] Voice Mail Service. Offer ends **December 31, 2005**.

Nickel Savings Value Plan Promotion

To be eligible for this promotion, a customer must become a new customer to both BellSouth local service and BellSouth Long Distance, and subscribe to the BellSouth[®] Nickel Savings Value plan between January 1, 2005 and **December 31, 2005**. Eligible customers will receive a full waiver of the monthly recurring charge for up to 12 bill periods. Customers must not have subscribed to any BellSouth Long Distance service within five (5) days prior to their enrollment in this promotion. A \$3.95 monthly recurring charge applies after 12 billing invoices. International calls extra. A Carrier Cost Recovery Fee of \$0.99 will be charged monthly. This fee is not a tax or charge imposed or required by any government. Taxes, fees and other charges, including Universal Service Fund apply.

Connection Fee Waived

Customers who switch their local service to BellSouth from another

provider and purchase BellSouth Complete Choice, BellSouth Preferred Pack, or BellSouth Basic Service with at least one feature can qualify for a waiver of the local service connection fee. Customers must not have had local service with BellSouth 10 days prior to new service connection date. Offer ends **December 26, 2005**.

\$100 Cash Back or \$100 Visa® Gift Card Reward

Customers returning to BellSouth and purchasing a BellSouth® Complete Choice family plan or BellSouth® Preferred Pack® plan will be eligible to receive either a \$100 check or a \$100 VISA® Gift Card. Coupon redemption required. See coupon for redemption details. Check or gift card will be sent 4-6 weeks after receipt of coupon to customers who retain qualifying service. \$100 VISA® Reward Card is valid for one year from date of issue. Additional Usage Terms and Conditions for the card will be supplied with the Reward Card. Cards issued by Bank One, N.A. pursuant to a license from Visa U.S.A. managed by Ecount, a member service provider of Bank One. Offer ends **December 31, 2005**. May not be combined with the reacquisition \$100 cash back offer.

\$50 Cash Back

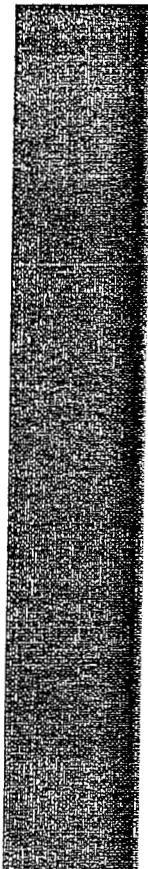
\$50 Cash Back coupon to customers who switch local telephone service to BellSouth and subscribe to local service, 2 calling features and a domestic BellSouth Long Distance plan. See coupon for redemption details. Check will be sent 4-6 weeks after receipt of coupon to customers who retain qualifying services. Offer ends **December 31, 2005**.

\$25 Cash Back with BellSouth Basic Unlimited

\$25 cash back coupon to residential customers with new purchase of a domestic BellSouth Unlimited Long Distance Plan by **December 31, 2005**. See coupon for redemption details. Check to be sent 4 to 6 weeks after receipt of coupon to customers who retain qualifying service. Offer excludes customers moving existing qualifying services to a new service address and customers moving from one BellSouth Unlimited Long Distance Plan to another such plan. Other conditions apply. Offer may not be combined with other promotional offers on the same services. Offer may be modified or withdrawn at any time without notice. Long distance services provided by BellSouth Long Distance, Inc.

\$5 Off BellSouth® Complete Choice® plan or BellSouth® PreferredPack® plan

Customers who switch their local service to BellSouth and purchase either the BellSouth® Complete Choice® plan or the BellSouth®



PreferredPack plan and a domestic BellSouth Long Distance plan receive \$5.00 off the Complete Choice or PreferredPack plan for a period of 12 months. At the end of 12 billing invoices, customer will be billed at regular rates for the BellSouth[®] Complete Choice[®] plan. Excludes BellSouth Unlimited Long Distance plans. Offer ends **January 8, 2006.**

\$5 Off BellSouth[®] Unlimited Savings Value Plan

To be eligible for this promotion, a customer must become a new customer to both BellSouth local service and BellSouth Long Distance, and subscribe to the BellSouth[®] Unlimited Savings Value plan between January 1, 2005 and **December 31, 2005.** Eligible customers will receive up to a \$5.00 discount off of the monthly recurring charge of \$19.99 for 12 bill periods. BellSouth[®] Unlimited Savings Value Plan is for domestic residential voice usage only. Callers under this plan must dial 1 + area code + domestic number. International calls extra. Usage in excess of typical residential usage, which is presumed to be 5000 minutes per month, will be subject to an additional fee of \$50. Other terms, conditions & restrictions apply. Taxes, fees & other charges, including Universal Service Fund, apply.

close window