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November 20, 2009

Ms. Ann Cole, Commission Clerk  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 090258-TP: Complaint of dPi Teleconnect, L.L.C. against  
BellSouth Telecommunications, Inc. d/b/a AT&T Florida for dispute  
arising under interconnection agreement**

Dear Ms. Cole:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Rebuttal Testimony of P.L. (Scot) Ferguson, 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,

Manuel A. Gurdian

cc: All parties of record  
Jerry Hendrix  
Gregory R. Follensbee  
E. Earl Edenfield, Jr.

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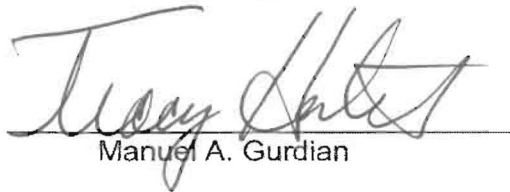
**CERTIFICATE OF SERVICE**  
**Docket No. 090258-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U.S. Mail this 20th day of November, 2009 to the following:

Theresa Tan  
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Manuel A. Gurdian

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AT&T FLORIDA  
REBUTTAL TESTIMONY OF P.L. (SCOT) FERGUSON  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 090258-TP  
NOVEMBER 20, 2009

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH AT&T OPERATIONS, INC. ("AT&T"), AND YOUR BUSINESS ADDRESS.

A. My name is Scot Ferguson. I am an Associate Director in AT&T Operations' Wholesale organization, and my business address is 675 W. Peachtree St., Atlanta, Georgia 30375.

Q. ARE YOU THE SAME P.L. (SCOT) FERGUSON WHO PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?

A. Yes. On September 15, 2009, I filed 33 pages of Direct Testimony and five (5) exhibits.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I have reviewed the Direct Testimony filed in this docket on September 15, 2009 by dPi Teleconnect's ("dPi's") witness, Mr. Tom O'Roark. My Rebuttal

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1           Testimony addresses a number of erroneous assertions made by Mr. O’Roark in  
2           his testimony, specifically with respect to policy positions at issue in this  
3           proceeding

4  
5           As I stated in my Direct Testimony, AT&T Florida’s counsel will present legal  
6           arguments supporting these positions in post-hearing briefs and, if necessary, in  
7           oral argument.

8  
9    Q.    MR. O’ROARK DEVOTES MUCH OF HIS DIRECT TESTIMONY TO  
10       PRESENTING HIS VIEWS OF THE PROCESS BY WHICH DPI REQUESTS  
11       PROMOTIONAL CREDITS. DOES THAT TESTIMONY HAVE ANYTHING  
12       TO DO WITH WHETHER DPI IS ENTITLED TO THE PROMOTIONAL  
13       CREDITS IT SEEKS IN THIS DOCKET?

14  
15   A.    No. In this docket, dPi is seeking a determination that it is owed a specific  
16       amount of credit. The manner in which the companies exchange information and  
17       process credits has no bearing on whether dPi qualifies for the credits it seeks  
18       (and it does not). Mr. O’Roark’s testimony on this process is not relevant to either  
19       of the issues identified by this Commission in Attachment A to Order No. PSC-  
20       09-0499-PCO-TP as the relevant issues in this proceeding.

21

1           Moreover, the process Mr. O'Roark discusses has been in place for years in the  
2           former BellSouth region, and it has not been the subject of any Commission  
3           complaint filed by dPi or any other CLEC.

4  
5           Finally, as the Commission is aware, the Change Management Process, or CMP,<sup>1</sup>  
6           has been and remains available to CLECs who want to raise issues regarding  
7           AT&T's wholesale systems and processes. That collaborative process is in place  
8           to ensure that no individual CLEC has the opportunity to put its preferences ahead  
9           of the needs of the CLEC community as a whole.

10

11    Q.    MR. O'ROARK TESTIFIES ON PAGES 7-8 OF HIS DIRECT TESTIMONY  
12           ABOUT THE PROCESS BY WHICH AT&T BILLED ITS RESELLERS, AND  
13           HE CONTRASTS THAT PROCESS WITH THE MANNER IN WHICH HE  
14           CONTENDS THAT AT&T'S RETAIL END USERS WERE BILLED. DID  
15           AT&T PROVIDE ITS RETAIL END USERS THE BENEFIT OF CASHBACK  
16           "FOR THE SERVICES THEY ORDERED WHEN THE ORDER WAS  
17           SUBMITTED" AS MR. O'ROARK SUGGESTS?

18

19    A.    No. As I described on pages 9-11 of my Direct Testimony, AT&T Florida sent a  
20           coupon to its retail end users whose service orders qualified for any of the  
21           cashback promotions at issue in this proceeding. The end user did not receive a

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<sup>1</sup>           Formerly the BellSouth Change Control Process, or CCP.

1           “cashback” check unless he or she returned the completed coupon to AT&T  
2           within the requisite time.

3

4    Q.    WHAT WAS THE REQUISITE TIME FOR AN AT&T FLORIDA END USER  
5           TO RETURN THE COMPLETED COUPON TO AT&T?

6

7    A.    To receive a “cashback” check, an AT&T Florida end user had to return the  
8           completed coupon within 90 days from receipt of the coupon from AT&T  
9           Florida.<sup>2</sup>

10

11   Q.    DO YOU AGREE WITH MR. O’ROARK’S CHARACTERIZATION (ON  
12           PAGES 2 THROUGH 5 OF HIS DIRECT TESTIMONY) OF FEDERAL  
13           RESALE REQUIREMENTS?

14

15   A.    No. As neither of us is an attorney, however, I will not attempt to address his  
16           contentions about federal resale law. Instead, I will defer to AT&T Florida's  
17           attorneys to address the relevant law in briefs and arguments.

18

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<sup>2</sup> I referenced this process in my description of the three (3) promotions at issue in this proceeding beginning on page 8 of my Direct Testimony. In the letters sent by AT&T Florida to the Commission announcing these promotions and in the tariff pages under Section A2.10 – Special Promotions, the timeframe for return of the coupon was described as “90 days ... from receipt of the cashback coupon”.

1 Q. ON PAGE 10 OF HIS DIRECT TESTIMONY, MR. O'ROARK CLAIMS THAT  
2 AT&T "ISSUES OR DENIES CREDITS AS IT SEES FIT." IS THAT AN  
3 ACCURATE STATEMENT?  
4

5 A. No. AT&T Florida grants credit requests to which dPi is entitled, and it denies  
6 credit requests to which dPi is not entitled. AT&T Florida denied the cashback  
7 promotional credit requests at issue in this docket because, as I explain in my  
8 Direct Testimony, dPi was not entitled to those credits.  
9

10 Q. AT PAGES 11 THROUGH 12 OF HIS DIRECT TESTIMONY, MR. O'ROARK  
11 TESTIFIES THAT THE RELEVANT TIME LIMIT FOR THE CLAIMS AT  
12 ISSUE IN THE CASE IS THE SIX-YEAR STATUTE OF LIMITATIONS, AND  
13 THAT THESE CLAIMS ARE GOVERNED BY THE PARTIES' PRIOR  
14 AGREEMENT INSTEAD OF THE CURRENT AGREEMENT (WHICH  
15 CONTAINS A REQUIREMENT THAT CLAIMS BE BROUGHT WITHIN 12  
16 MONTHS). DOES THE CURRENT INTERCONNECTION AGREEMENT  
17 BETWEEN AT&T FLORIDA AND DPI SAY ANYTHING ABOUT THIS?  
18

19 A. Yes. The relevant portions of Section 30.1 of the General Terms and Conditions  
20 portion of that Agreement state:

21 This Agreement sets forth the entire understanding and supersedes prior  
22 agreements between the Parties relating to the subject matter in this  
23 Agreement and merges all prior discussions between them. Any orders  
24 placed under prior agreements between the Parties shall be governed by  
25 the terms of this Agreement and DPI acknowledges and agrees that any  
26 and all amounts and obligations owed for services provisioned or orders

1 placed under prior agreements between the Parties, related to the subject  
2 matter hereof, shall, as of the Effective Date, be due and owing under this  
3 Agreement and be governed by the terms and conditions of this  
4 Agreement as if such services or orders were provisioned or placed under  
5 this Agreement.  
6

7 This language appears in Exhibit PLF-3 to my Direct Testimony.  
8

9 Q. WHAT TIME LIMITATION DOES THE CURRENT AGREEMENT IMPOSE  
10 ON THE PARTIES REGARDING BILLING DISPUTES?  
11

12 A. As explained in my Direct Testimony at pages 32-33, the parties' current  
13 Agreement requires dPi to submit a billing dispute within 12 months of an actual  
14 amount billed that is subject to dispute.<sup>3</sup> The language from Sections 30.1 (see  
15 previous answer) and that footnoted below support AT&T Florida's answer to the  
16 question posed by this Commission in Issue No. 1 in Attachment A to its Order  
17 No. PSC-09-0499-PCO-TP that dPi is time-barred from any rights to promotional  
18 credits at issue in this proceeding.  
19

20 Q. MR. O'ROARK CONCLUDES HIS TESTIMONY WITH THE ASSERTION  
21 THAT AT&T FLORIDA "ADMITTED DPI IS ENTITLED TO THESE KINDS  
22 OF PROMOTIONAL CREDITS ...BY PAYING THESE CREDITS FROM  
23 JULY 2007 FORWARD." IS HE CORRECT?  
24

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<sup>3</sup> Attachment 7, Section 2.2. See Exhibit PLF-3.



1 A. No. As I explained in my Direct Testimony beginning on page 13, AT&T  
2 Florida's decision to pay cashback credits beginning in July 2007 was the result of  
3 a decision by the recently-merged AT&T to standardize its resale position across  
4 the 22 states in which it operates as an incumbent local exchange carrier  
5 (“ILEC”). That decision was not a suggestion that the pre-merger BellSouth  
6 position was not legally permissible, and, despite Mr. O’Roark’s assertion, the  
7 voluntary change in policy is not an admission that dPi was entitled to these  
8 promotional credits prior to July 2007

9

10 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

11

12 A. Yes.