BEFORE THE

TENNESSEE REGULATORY AUTHORITY

In Re:	)	
	)	
dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee	)	Docket No. 05-00310
	)	Docket No. 08-00063
dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee	)	

NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff dPi Teleconnect, LLC, ("dPi") respectfully submits as supplemental authority the attached brief filed by the Staff of the Louisiana Public Service Commission ("Staff") in proceedings virtually identical to those now before this Authority.[1]

As in the instant matter, the Louisiana Public Service Commission was tasked with resolving the general issue of how the promotional wholesale rate for telecommunications services should be calculated when a cash back promotion is offered for more than 90 days. In its brief filed on November 18, 2011, Staff "focus[es] on what it believes is the core problem with AT&T's methodology and why it should be rejected when the cash-back amount results in a 'negative price.'" *See* Exhibit A, *Staff's Brief on Remand*, Staff of Louisiana Public Service Commission, November 18, 2011, p. 2.

[1] *BellSouth Telecommunications, Inc. d/b/a/ AT&T Southeast d/b/a AT&T Louisiana v. Image Access, Inc. d/b/a New Phone; Budget Prepay, Inc. d/b/a Budget Phone d/b/a Budget Phone Inc.; BLC Management, LLC d/b/a Angles Communications Solutions d/b/a Mexicall Communications; dPi Teleconnect, LLC; and Tennessee Telephone Service, Inc. d/b/a Freedom Communications USA, LLC*; in Docket No. U-31364 before the Louisiana Public Service Commission.

Respectfully submitted,

Malish & Cowan, P.L.L.C.
1403 West Sixth Street
Austin, Texas 78703
(512) 476-8591
(512) 477-8657 – facsimile
cmalish@malishcowan.com

/s/ Chris Malish
Christopher Malish
Texas State Bar No. 00791164

Attorneys for dPi Teleconnect, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2011, a true and correct copy of the forgoing was served upon the parties of record via electronic mail and/or United States mail.

Joelle J. Phillips
333 Commerce Street, Room 2101
Nashville, Tennessee 37201
(615) 214-6311
joelle.phillips@att.com

Guy M. Hicks
333 Commerce Street, Room 2101
Nashville, Tennessee 37201
(615) 214-6301
guy.hicks@att.com

/s/ Chris Malish
Christopher Malish

EXHIBIT A

Louisiana Public Service Commission

POST OFFICE BOX 91154
BATON ROUGE, LOUISIANA 70821-9154

Telephone: 225-342-9888

July 12, 2011

Ms. Terri Lemoine
Louisiana Public Service Commission
Docketing Division
P. O. Box 91154
Baton Rouge, LA 70821

Docket No. U-31364- In re: Consolidated Proceeding to Address Certain Issues Common to Dockets U-31256, U-31257, U-31258, U-31259, and U-31260.

Dear Ms. Lemoine:

Please find attached hereto an original and two copies of Staff's Brief on Remand on behalf of the Louisiana Public Service Commission for the above referenced docket. Parties are being served via e-mail and U.S. mail. Should you have any questions regarding this filing, please contact me.

Please return me a date stamped copy.

Very truly yours,

Brandon M. Frey
LPSC Deputy General Counsel

BMF/khb

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

2011 NOV 18 PM 4: 13

LA PUBLIC SERVICE COMMISSION

DOCKET NO. U-31364

BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T SOUTHEAST D/B/A AT&T LOUISIANA VERSUS IMAGE ACCESS, INC. D/B/A NEW PHONE;

BUDGET PREPAY, INC. D/B/A BUDGET PHONE D/B/A BUDGET PHONE, INC.;

BLC MANAGEMENT, LLC D/B/A ANGLES COMMUNICATIONS SOLUTIONS D/B/A MEXICALL COMMUNICATIONS;

DPI TELECONNECT, LLC;
AND
TENNESSEE TELEPHONE SERVICE, INC. D/B/A FREEDOM COMMUNICATIONS USA, LLC

In re: Consolidated Proceeding to Address Certain Issues Common to Dockets U-31256, U-31257, U-31258, U-31259, and U-31260.

STAFF'S BRIEF ON REMAND

The Staff of the Louisiana Public Service Commission ("Staff") respectfully submits this Brief on Remand in accordance with the procedural schedule established by this Tribunal. For the reasons set forth herein, Staff re-urges its position advocated in Staff's Post-Hearing brief filed February 9, 2011 and in the exceptions to this Tribunal's recommendation filed by Staff on July 12, 2011. In the alternative, Staff urges this tribunal to adopt a compromise position, as addressed herein, that insures a reseller receives no less of a benefit than an AT&T retail customer.

I. The Scope of this Remand is Dictated by Order U-31364

As set forth in Order U-31364, adopted by the Commission, this matter "shall be remanded to the Administrative Hearings Division for further consideration of the calculation methodology to be applied to cash back promotions."[1] Thus the Commission, after reviewing the prior filings of the parties, this Tribunal's recommendation on all pending issues, and listening to oral argument, determined that the cash back promotion methodology necessitated further consideration.

While the Order does not specify what further consideration was anticipated, it is clear that, based on the information before it, the majority of the Commission was not comfortable in reaching a vote on the merits. A review of the prior filings, as well as the transcripts, leads Staff to conclude that this discomfort is a direct result of the issue before the Commission being muddled by the spurious arguments that have been made. Rather than rehash Staff's prior arguments, and those of AT&T and the resellers, Staff will attempt to focus on what it believes is the core problem with AT&T's methodology and why it should be rejected when the cash-back amount results in a "negative price".

A. ***What is at issue is the "negative effective price" that exists when the cash-back offering exceeds the price of the service. AT&T's "red herrings" should be ignored.***

While it should be clear that the focus of this issue is how to properly allocate a cash-back credit to a reseller when the amount of the credit exceeds the price of the service, Staff believes that issue has been confused by AT&T arguing that a) resellers aren't harmed because they fail to pass these credits on to their customers, b) resellers work with affiliates to churn customers to take advantage of the system c) Staff's position, if adopted, would "improperly pad the pockets of resellers without providing any benefit to Louisiana customers," and d) the effect of the cash-back credit must be considered in the aggregate over time.[2]

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[1] Order U-31364, Ordering paragraph 1.
[2] See AT&T's reply brief dated March 1, 2011.

What AT&T fails to mention from its statements is that a) there is absolutely no requirement that resellers pass on any credits to their customers, b) there is no evidence in this proceeding that the resellers in this proceeding are engaging in such activity, c) Staff's position would ensure resellers receive no less of a benefit than retail customers and d) the fallacy of considering the effect in the aggregate over time is the lack of a requirement to keep the service over time.

Staff also reminds this Tribunal that AT&T used Staff's failed attempt at humor in characterizing counsel's inability to perform mathematical equations as "dangerous", into an attempt to discredit Staff, using the phrase "dangerous legal mathematics" in a pejorative sense no less than four times in its reply brief. Finally, Staff would also remind this Tribunal that AT&T vehemently argued throughout its reply brief that Staff's methodology was "new" and "unprecedented", despite the fact that the same method was, as properly pointed out the resellers, discussed by Mr. Gillan, and thus not a novel approach.

But why is it important to address these prior arguments again? In simple terms, AT&T's methodology, when applied in a "negative effective price" scenario, produces results that are illogical, a conclusion that cannot be ignored. Any attempt to shift the focus from this illogical conclusion should be rejected.

B. ***Staff's proposed methodology, rejected by AT&T and this Tribunal, provides the same wholesale price when the credit does not exceed the retail price.***

Somewhat glossed over in this proceeding is that Staff's proposed methodology, (despite its warts discussed above), when applied to a scenario wherein the amount of the credit is less than the price of the service, **produces the exact same result as AT&T's methodology**. This occurs even though a different formula is applied. The following example illustrates the above conclusion:

STAFF Methodology:

If AT&T's retail service is $30 a month, and if it offers a cash back amount of $20 to sign up for that service, in the first month, the $20 cash back has the effect of changing the retail rate for that month to $10. Under Staff's proposal, the 20% avoided cost discount is applied to that $10, resulting in an avoided cost in month one of $2. **The wholesale customer thus gets the service for $8.**

AT&T Methodology:

AT&T argues that the 20% discount must be applied to both the $30 monthly fee ($30x20%) and the cash back offering ($20x20%). Under this scenario, the monthly fee for month one is $24, the credit is $16, **the result is the same $8 charge to the wholesale customer.**

C. ***AT&T's methodology, however, results in a greater benefit being provided to its retail customers than is provided to wholesaled customers when the effective price is negative.***

In no uncertain terms, AT&T's methodology for calculating the cash-back credit provided to a reseller when the amount of the cash-back exceeds the price of the service, results in the reseller receiving less of a benefit than the retail customer in the month that credit is applied. Such a result cannot be logical, particularly when its justification is that the "wholesale discount is applied" resulting in the 20% reduction in the discount. AT&T, through what it has called an appropriately applied avoided cost discount, has devised a method by which it ensures its reseller customers will receive a net benefit of 20% less than its retail customers.[3] Thus, as Staff has argued throughout this proceeding, while mathematically correct, the formula defies logic. One need not be an economist, mathematician, or even an attorney, to reach such a conclusion.

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[3] See Attachment G to AT&T's Reply Brief wherein the $8.00 credit is characterized as 20% different from net retail.

AT&T will no doubt respond, as it has throughout this proceeding, that it is improper to look at the credit on a one month basis. This argument fails, however, on the fundamental grounds that the cash-back promotion that is the subject of this proceeding requires the customer to remain with AT&T for **ONE** month only. Regardless of what the average length of time is the customer stays with the company, AT&T still places no obligation the customer remain for that time. As a result, it is only the month in which the credit is applied, that its impact should be addressed.[4]

What hasn't been briefed previously is the absurd consequences that could result from applying AT&T's methodology and formula. If, for example, AT&T decided to offer a $500 cash-back promotion, under the same terms as the current promotion, and the retail price was $30, the AT&T retail customer would get a credit of $470 the first month. Under the AT&T formula, the reseller customer's credit, "reduced" by the avoided cost discount, would result in credit of $376 dollars. The difference between the $470 credit and the $376 credit - 20%. Clearly this cannot be what was contemplated by the Telecommunications Act. While it is unlikely that AT&T would make such a promotional offering, looking at the absurd consequences of AT&T's methodology under such a scenario illustrates how it logically fails.

II. Staff's Logical, Mathematic-Free, Compromise Approach

As shown above, AT&T's methodology could result in a situation resellers are greatly harmed by its application. While Staff is aware that a solution to address such absurd consequences is being considered by the South Carolina Commission[5], and solution that may have some merit, Staff believes a more simple solution could apply, that would address the

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[4] Staff is aware that the North Carolina Commission has adopted AT&T's argument, and looked at the aggregate impact of the credit over time. Staff respectfully disagrees with this application.

[5] The South Carolina Commission order, as of the date of this filing, has not been issued to the best of Staff's knowledge. Staff only references this potential decision to the extent it is rendered prior to the briefing schedule in this matter being concluded.

concerns. In simple terms, AT&T should provide the same credit amount to a reseller than it provides to its retail customers, if the cash-back amount is greater than the price of the service.

Under this scenario, the reseller customer would receive precisely the same credit as the retail customer in month one. In simple terms, if the retail price is $30, and the cash-back amount is $40, both customers should receive a credit of $10 in the first month. In each subsequent month the customer maintains service, that month's service is reduced by the avoided cost, as would be the case absent the cash-back offering. Staff fully anticipates AT&T will argue this compromise position has not been argued before this Tribunal and thus should not be considered. However, failing to consider a position that, at the very least, ensures the reseller receives at least the same benefit retail customer, would continue to defy logic.

III. Conclusion

For the reasons stated herein, and in Staff's prior filings, Staff respectfully requests that this Tribunal adopt on remand the position advanced by Staff with respect to the correct treatment of "cash-back" promotions. In the alternative, Staff respectfully requests this tribunal consider Staff's alternative compromise that ensures resellers receive equal benefits as retail customers.

Respectfully Submitted:

Brandon Frey (Bar Roll No. 25054)
Deputy General Counsel
Louisiana Public Service Commission
P.O. Box 91154
Baton Rouge, Louisiana 70821-9154
Ph. (225) 342-9888 Fax (225) 342-5610

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via email to the service lists for docket U-31364 this 18th day of November 2011.

Brandon Frey

Service List for U-31364
as of 11/18/2011

Commissioner(s)

Lambert C. Boissiere, Commissioner
Eric Skrmetta, Commissioner
James "Jimmy" Field, Commissioner
Clyde C. Holloway, Commissioner
Foster L. Campbell, Commissioner

LPSC Staff Counsel

Brandon Frey, LPSC Staff Attorney

Petitioner: **AT&T Louisiana**

Michael D. Karno, Attorney
365 Canal Street
Suite 3060
New Orleans, LA 70130
Email: michael.karno@att.com; Telephone 1:(504)528-2003; Fax:(504)528-2948; Telephone 1:(504)528-2003;

Respondent: **BLC Management LLC of Tennessee D/B/A Angles Communication Solutions d/b/a Mexicall Communications and Tennessee Telephone Service, Inc. D/B/A Freedom Telecommunications USA, LLC**

Henry Walker,
1600 Division Street
Suite 700
Nashville, TN 37203
Fax:(615)252-6363; Telephone 1:(615)252-2363;

Respondent: **BLC Management, LLC**

11121 Highway 70
Suite 202
Arlington, TN 38002

Respondent: **Budget PrePay, Inc. D/B/A N/A**

Katherine W. King,
PO Box 3513
Baton Rouge, LA 70821
Email: Katherine.King@keanmiller.com; Fax:(225)388-9133; Telephone 1:(225)382-3436;

Lauren M. Walker,
P.O. BOX 3513
Baton Rouge, LA 70821
Email: Lauren.Walker@keanmiller.com; Fax:(225)388-9133; Telephone 1:(225)382-3436;

Respondent: **dPi Teleconnect, LLC D/B/A N/A**

Christopher Malish,
1403 West Sixth Street
Austin, TX 78703
Fax:(512)477-8657; Telephone 1:(512)476-8591;

Respondent: **Image Access, Inc.**

555 Hilton Avenue
Suite 606
Baton Rouge, LA 70808

Respondent: **Image Access, Inc. D/B/A NewPhone**

Paul F. Guarisco,
II City Plaza
400 CONVENTION STREET, SUITE 1100
Baton Rouge, LA 70821-4412
Email: paul.Guarisco@phelps.com; Fax:(225)381-9197; Telephone 1:(225)376-0241;