

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Delta Phones, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. TC-2004-0064
	)	
Southwestern Bell Telephone Company, L.P.,	)	
d/b/a Southwestern Bell Telephone Company,	)	
	)	
Respondent.	)	

**REPLY OF SOUTHWESTERN BELL TELEPHONE, L.P.  
TO COMPLAINANT’S SUGGESTIONS IN OPPOSITION  
TO SBC MISSOURI’S MOTION TO MODIFY  
ORDER REGARDING COMPLAINT**

COMES NOW Southwestern Bell Telephone, L.P. d/b/a SBC Missouri (“SBC Missouri”), and for its Reply to Complainant’s Suggestions in Opposition to SBC Missouri’s Motion to Modify Order Regarding Complaint (“Suggestions in Opposition”) states as follows:

1. Delta Phones, Inc. (“Delta Phones”) filed its Complaint against SBC Missouri on July 28, 2003. The Complaint alleged various billing errors by SBC Missouri. On August 19, 2003, the Missouri Public Service Commission (“Commission”) issued its Order Regarding Complaint in which it prohibited SBC Missouri from disconnecting service to Delta Phones until further order of the Commission. The Order Regarding Complaint also required both Delta Phones and SBC Missouri to file a statement of the disputed and undisputed amounts unpaid by Delta Phones. On August 26, 2003, SBC Missouri filed its Response and Motion to Modify Order Regarding Complaint (“Motion to Modify”). SBC Missouri sought a modification of the Order Regarding Complaint to (a) eliminate the prohibition against disconnection or (b) condition the order on Delta Phones’ compliance with the terms of the Interconnection Agreement, including payment of undisputed amounts and placement of any disputed amounts into an escrow arrangement.

2. In its Suggestions in Opposition, Delta Phones claims that the terms of the Interconnection Agreement are an insufficient basis for the Commission to modify its Order Regarding Complaint. Suggestion in Opposition, para. 1. Under the Telecommunications Act of 1996 (“the Act”), however, an Interconnection Agreement is the vehicle which Congress adopted to govern the rights and duties of incumbent local exchange companies (“ILECs”) like SBC Missouri and competitive local exchange companies (“CLECs”) like Delta Phones. 47 U.S.C. Section 252. Under the Act, this Commission has the authority to review and either approve or reject interconnection agreements submitted to it, including the SBC Missouri-Delta Phones Interconnection Agreement. 47 U.S.C. Section 252(e). That agreement was approved by the Commission on December 23, 2002. See: Case No. CK-2003-0281.

3. Under the Interconnection Agreement, SBC Missouri and Delta Phones have agreed how disputes related to billing issues are to be resolved and the Commission approved that Agreement. The Interconnection Agreement specifically requires Delta Phones to pay undisputed amounts billed to it and to make escrow arrangements for any amounts which it disputes. Interconnection Agreement, General Terms and Conditions, Sections 8.4 and 10.4. Delta Phones cites no statutory provision that would give the Commission the authority to override the requirements of a previously approved Interconnection Agreement. Even if the Commission had such authority, Delta Phones has provided no basis that would justify doing so here.

4. Delta Phones’ attempts to shield itself from the requirements of the Interconnection Agreement by invoking a “customer benefit” rationale. Suggestions in Opposition, para. 2. That provides no basis for Delta Phones’ failure to pay any amounts to SBC Missouri since March, 2003 while incurring additional charges in excess of \$1.1 million since that time. Motion to Modify, para. 3. There is no justification for refusal to pay any amounts due for more than five and one-half months while continuing to utilize SBC Missouri’s services. Id. Delta Phones is

collecting revenues from its customers, but is not paying its supplier anything. When called to task in other states and required to pay undisputed amounts and escrow disputed amounts, Delta Phones has simply opted to withdraw its complaints. Only in Missouri has the delaying tactic utilized by Delta Phones been effective -- Delta Phones continues to receive service, continues to collect revenues from its customers, and continues to pay SBC Missouri nothing for five and one-half months.

5. Delta Phones owes \$1,438,076.06 as of August 19, 2003, but has claimed only \$554,964.34 is in dispute, leaving an unpaid and undisputed balance of \$883,111.72. Id. at paras. 1-2. The terms of the Interconnection Agreement unequivocally require Delta Phones to pay the undisputed amounts and to make escrow arrangements for the disputed amounts. The Commission does not have the legal authority to override the terms of the Interconnection Agreement, nor should it do so even if it had that authority. Accordingly, the Commission should modify its Order Regarding Complaint to either (a) eliminate the prohibition on SBC Missouri's disconnection of service to Delta Phones or (b) condition that prohibition on Delta Phones' compliance with the terms of the Interconnection Agreement, including payment of undisputed amounts and the placement of disputed amounts into escrow.

6. The central issue in SBC Missouri's Motion to Modify the Order Regarding Complaint, the prohibition against termination of service without a corresponding obligation to comply with the requirements of the Interconnection Agreement, centers on Delta Phones' failure to pay undisputed amounts and to escrow disputed amounts. Delta Phones takes issue with the relevance of SBC Missouri's discussion of Delta Phones' failure to comply with orders in other states requiring escrow of disputed sums. The purpose of providing this information to the Commission is to demonstrate the need to require compliance with the interconnection agreement; Delta Phones seeks to delay disconnection and does not pay even when ordered to do so. In

Oklahoma and Kansas, Delta Phones admits it withdrew its complaints after being ordered to escrow the amount in dispute. Suggestions in Opposition, para. 6. Delta Phones claims that it withdrew its complaints because the costs of pursuing relief outweighed the benefits. *Id.* Apparently the claim was worth pursuing as long as it permitted Delta Phones to avoid payment; as soon as Delta Phones was ordered to escrow the disputed amounts the “costs” outweighed the “benefits” of the complaint.

In paragraph 16 of his affidavit, Mr. Mintz asserts that (a) Delta Phones is not under a current order in Arkansas to deposit funds into escrow and (b) Delta Phones is not out of compliance with any Arkansas order. That assertion is false on both counts. In Order No. 4 in the Arkansas Complaint proceeding, Delta Phones was ordered to pay undisputed amounts within 10 days and to escrow any disputed amounts within 30 days of August 12, 2003. Ark. P.S.C. Docket No. 03-100-C. The time to pay the undisputed amounts has passed without any payment from Delta Phones. The 30-day period to escrow on disputed amounts has not yet passed, but there is no question that Delta Phones is under a current order to escrow the funds. In addition, Order No. 3 in the Delta Phones Complaint proceeding in Arkansas required payment of \$200,000 in deposits over four installments. The first \$50,000 was paid but, contrary to Mr. Mintz’s affidavit, the second \$50,000 deposit which was due on August 29 has still not been paid.


7. On August 15, 2003, Staff filed its Report and Recommendation in which it recommended that Delta Phones be required to comply with the terms of the Interconnection Agreement and pay the undisputed charges while placing any disputed amounts into escrow. In its Supplement to Staff Report and Recommendation filed on September 5, 2003, Staff explained that Delta Phones had failed to comply with requests for information, necessitating formal data requests and a delay in Staff’s final report. Staff reiterated that Delta Phones should be required to comply with the provisions of the Interconnection Agreement requiring payment of undisputed

amounts and escrow arrangements for any disputed amounts. SBC Missouri concurs. There is no legal nor factual basis to require SBC Missouri to continue to provide service to Delta Phones without some assurance of payment if its claims are found to be unsubstantiated (as they largely were in Texas).

WHEREFORE, for all the foregoing reasons, SBC Missouri respectfully requests the Commission to grant its Motion to Modify the Order Regarding Complaint and to either (a) remove the restriction on terminating service to Delta Phones or (b) condition the order on Delta Phones' compliance with the terms of the Interconnection Agreement, including the provisions regarding payment of undisputed charges and escrow arrangements for disputed amounts.

Respectfully submitted,

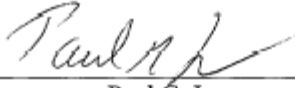
SOUTHWESTERN BELL TELEPHONE, L.P.  
D/B/A SBC MISSOURI

BY   
PAUL G. LANE #27011  
LEO J. BUB #34326  
ANTHONY K. CONROY #35199  
MIMI B. MACDONALD #37606

Attorneys for SBC Missouri  
One SBC Center, Room 3520  
St. Louis, Missouri 63101  
314-235-4300 (Telephone)/314-247-0014 (Facsimile)  
[paul.lane@sbccom.com](mailto:paul.lane@sbccom.com)

## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this document was served on all counsel of record by electronic mail on September 11, 2003.



Paul G. Lane

GENERAL COUNSEL  
ERIC ANDERSON  
MISSOURI PUBLIC SERVICE COMMISSION  
PO BOX 360  
JEFFERSON CITY, MO 65102

PUBLIC COUNSEL  
JOHN B. COFFMAN  
OFFICE OF THE PUBLIC COUNSEL  
PO BOX 7800  
JEFFERSON CITY, MO 65102

MARK W. COMLEY  
CATHLEEN A. MARTIN  
NEWMAN, COMLEY & RUTH P.C.  
POST OFFICE BOX 537  
JEFFERSON CITY, MISSOURI 65102-0537