

**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.)	

**RESPONSE OF SBC MISSOURI TO
DELTA PHONES, INC.'S REPLY TO SBC MISSOURI'S
RESPONSE IN OPPOSITION TO MOTION FOR ISSUANCE
OF AMENDED NOTICE OF COMPLAINT**

COMES NOW Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri"), and for its Response to Delta Phones, Inc.'s ("Delta Phones") Reply to SBC Missouri's Response in Opposition to Motion for Issuance of Amended Notice of Complaint, states as follows:

1. Delta Phones filed its Complaint on July 25, 2003. On July 31, 2003, Delta Phones filed a Motion for Issuance of Amended Notice ("Motion") in which it sought to have the Missouri Public Service Commission ("Commission") issue an "amended" Notice of Complaint which would contain the following language:

[p]ursuant to 4 CSR 240-33.110, pending the resolution of this complaint, Respondent shall not discontinue service to Complainant on the basis of the issues that are the subject matter of this complaint.¹

2. SBC Missouri filed its Response in Opposition to Motion for Issuance of Amended Notice of Complaint ("Response") on August 6, 2003. In its Response, SBC Missouri explained that the rule cited by Delta Phones was not applicable and provided no basis for the relief sought by Delta Phones. SBC Missouri pointed out that 4 CSR

¹ Delta Phones Motion, para. 2.

240-33.110 applies only when a customer aggrieved by a violation any of the rules of Chapter 33 filed a formal or informal complaint under 4 CSR 240-2.070. But Delta Phones is neither a “customer” as defined by 4 CSR 240-33.020(8) (which limits the definition to an “individual”), nor has Delta Phones claimed that SBC Missouri violated any rule in Chapter 33 (nor could Delta Phones make such an allegation since the provisions of Chapter 33 apply only to residential customers).²

3. In its Reply, Delta Phones makes no substantive response to SBC Missouri’s discussion of the provisions of 4 CSR 240-33.110. Delta Phones does not rebut SBC Missouri’s assertion that Delta Phones is not a “customer” as defined in Section 33.020(8), nor does it rebut SBC Missouri’s assertion that the substantive provisions of Chapter 33 apply only to residential customers. Instead, Delta Phones notes that the Commission previously issued Notices of Complaints which referenced 4 CSR 240-33.110.³ Delta Phones asserts that SBC Missouri did not object to these prior Notices in other cases and has “waived” its arguments here.

4. Delta Phones’ position is without merit. 4 CSR 240-33.110 does not apply, and SBC Missouri’s decision not to point this out to the Commission in a prior case does not change the substance of the rule. It still does not apply by its terms. SBC Missouri chose not to explain the Commission’s error in the prior cases because it was engaged in mediation with a substantial prospect of resolving the issue. In this case, however, there is no prospect of resolution of any issues between the parties as Delta Phones has simply stopped paying entirely for all services rendered by SBC Missouri since March 21, 2003. Moreover, even if the failure to point out the Commission’s error

² See, 4 CSR 33.040 - 33.090.

³ The Commission did issue a Notice of Complaint containing references to 4 CSR 240-33.110 in Case No. XC-2003-0421 and Case No. LC-2003-0570.

in the prior cases constitutes a “waiver” in those cases, which it most assuredly does not, SBC Missouri has clearly not waived any rights with regard to Delta Phones.

5. Delta Phones’ failure to raise a substantive response to SBC Missouri’s position is telling. If Delta Phones had a legitimate argument that it was a “customer” as defined in Section 33.020(8), it would have presented it. Similarly, if Delta Phones had a legitimate claim that SBC Missouri had violated some substantive provision in Chapter 33, it would have so alleged. It did not because the substantive provisions of provisions of Chapter 33 apply only to residential customers, not to a competitive local exchange company (“CLEC”) wholesale operating under an interconnection agreement approved by the Commission.

6. Moreover, even if 4 CSR 240-33.110 applied, it would not bar SBC Missouri from discontinuing service to Delta Phones in this case. Section 33.110 provides that “the subject matter of such complaint shall not constitute a basis for discontinuance.” In Delta Phones’ Complaint, it alleges that SBC Missouri has overcharged it in the amount of \$554,964.34.⁴ As of July 30, 2003, Delta Phones owes SBC Missouri \$1,323,806. (Attachment A, Affidavit of Gert Andersen, para. 2). Delta Phones has not paid undisputed charges in excess of \$768,000. The failure to pay these undisputed charges is a more than sufficient basis to terminate service even if Delta Phones’ Complaint was otherwise valid. Delta Phones has paid nothing for services provided in Missouri since March 21, 2003, while continuing to incur hundreds of thousands of dollars of undisputed charges. (Attachment A, Affidavit of Gert Andersen, para. 2). Delta Phones’ refusal to pay undisputed charges and to escrow disputed charges is also directly contrary to a March 21, 2003 agreement with SBC Missouri. (Attachment

⁴ Complaint, para. 7.

B). Section 33.110 does not excuse the payment of undisputed charges, nor does it preclude disconnection of service for unpaid and undisputed charges.

7. The Commission scheduled a prehearing conference in this case on August 12, 2003. At the prehearing conference, Delta Phones made assertions that it could not identify its customers because it had no access to SBC Missouri's operational support systems ("OSS"). Such claims are absurd. Delta Phones obtains customers by direct contact through its sales personnel, and takes its orders for service directly from its own end-user customers. It then prepares bills to its customers and collects directly from those customers. The lack of access to SBC Missouri's OSS does not impact Delta Phones' ability to identify its customers, provide existing services to its existing customer base or to bill its customers for services rendered.

8. Under the terms of the Interconnection Agreement, upon Delta Phones' failure to pay undisputed charges and escrow disputed charges, SBC Missouri may "suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement." General Terms and Conditions, Section 9.5.1.1. As explained in the attached affidavit of Lance McNiel, SBC Missouri discontinued Delta Phones' access to OSS pursuant to the terms of its interconnection agreement when Delta Phones' failed to pay undisputed charges and to escrow disputed charges. (Attachment C, McNiel Affidavit, para. 3). The lack of electronic access to OSS precludes Delta Phones from adding new customers or changing service to existing customers. (*Id.* at para. 5). But, Delta Phones is not precluded from terminating service to its existing customer base, as it is permitted to submit manual orders to disconnect. (*Id.*). Moreover, Delta Phones continues to have the ability to

utilize other aspects of SBC Missouri's OSS that do not involve ordering service. Delta Phones has access to pre-ordering, maintenance and billing OSS and may use those systems to check the status of orders, to arrange for maintenance of existing customers' service and to check billing information. (Id. at para. 6). In fact, Delta Phones is continuing to access these OSS on an electronic basis. (Id.)

9. The Commission's Order Setting Prehearing Conference indicates a concern for the customers of Delta Phones upon discontinuance of service. As explained at the prehearing conference, when service to Delta Phones is discontinued SBC Missouri will have the duty under the Commission's Snap-Back Rule (4 CSR 240-32.120) to notify Delta Phones' resale customers and provide service for a 30-day period in order to permit the customer to choose another carrier. At the prehearing conference, Delta Phones expressed the view that SBC Missouri was attempting to disconnect its service in order to take over Delta Phones' customer base. To the contrary, SBC Missouri is attempting to reduce its financial exposure from Delta Phones' failure to pay charges for services rendered. If the Commission wishes to waive the requirement of the Snap-Back Rule that SBC Missouri provide service to Delta Phones' customers for a 30-day period after Delta Phones' service is disconnected, SBC Missouri has no objection. SBC Missouri notes that similar provisions requiring it to comply with the Snap-Back Rule are also contained in Section 9.7 of the Interconnection Agreement.


10. Under the interconnection agreement between SBC Missouri and Delta Phones, there are established procedures for resolving disputes between the contracting parties. With regard to billing disputes raised by Delta Phones, the contract clearly requires Delta Phones to (a) pay all undisputed charges and (b) pay disputed charges into an escrow arrangement. (Attachment D, Sections 9.3 and 10.4.1). These contractual

provisions permit Delta Phones to raise disputes but also provide SBC Missouri with assurance of payment if its position is ultimately upheld. These provisions, which have already been approved by the Commission in the interconnection agreement, properly allocate the risk of non-payment. These provisions have been ignored by Delta Phones in the end run it is attempting here; Delta Phones seeks Commission approval of its refusal to pay undisputed charges and its refusal to pay disputed charges into escrow. This direct violation of the specific provisions of the interconnection agreement by Delta Phones should not be countenanced. SBC Missouri is entitled to payment for the services it has rendered, and to assurances of payment for matters that are subject to dispute. There is no justification for Delta Phones' refusal to pay undisputed charges in excess of \$768,000 or to pay into escrow the \$554,964.34 it disputes. There is no justification for failure to make any payment since March 21, 2003.

WHEREFORE, for all the foregoing reasons, SBC Missouri respectfully requests the Commission to deny Delta Phones' Motion for Issuance of Amended Notice.

Respectfully submitted,

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

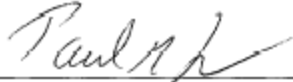
BY 

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@sbc.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this document was served on all counsel of record by electronic mail on August 6, 2003.



Paul G. Lane

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

MICHAEL F. DANDINO
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