

**Respondent.**

**AFFIDAVIT OF FALLEAN MINTZ**

Fallean Mintz, being of lawful age and first duly sworn on his oath, hereby deposes and states as follows:

1. My name is Falean Mintz. I am the CEO of M&T Capital Group, LLC, which is the investor group that owns the majority of stock in Delta Phones, Inc. My business address is 1245 East Diehl Road, Naperville, IL 60563. In that position, I am responsible for safeguarding the interests of the investors in Delta Phones, Inc. As such, I oversee all areas of operation that deal with Delta Phones, Inc.'s (DPI) interconnection with Southwestern Bell Telephone Company, L.P. (SBC). I have personal knowledge of the facts and circumstances regarding the billing dispute issues raised by DPI before this Commission. I also have personal knowledge of the operations and activities of DPI in other jurisdictions.

2. In his affidavit which was attached to SBC's recent motion to modify the Commission's Order Regarding Complaint, Mr. Jerry Gilmore of SBC asserted that DPI has engaged in a pattern of not paying its phone bills in all states across SBC territory. DPI engages in the prudent business practice of examining its bills for service and withholding payment on bills that cannot be verified. DPI repeatedly advised SBC that its billings were inaccurate and excessive. Eventually, Mr. Gilmore's supervisors assured Delta Phones that its disputes would be analyzed in detail, that the unreasonable requests that SBC had made for deposits and escrow would be withdrawn, and most importantly, that SBC would ramp Delta Phones up on the ordering platform for UNE-P.

3. In return for these assurances and in accord with the agreement between the parties, Delta Phones paid SBC over \$900,000, in lieu of escrow. As is detailed in DPI's complaint, SBC failed to fulfill its commitments under the agreement that the carriers had reached on March 18, 2003. SBC's inaccurate and excessive billings are continuing and DPI has not moved from its position that it will withhold payment until the billings are properly supported. SBC persists in refusing to show the support for its billings.

4. DPI's complaints about SBC's billings are nearly identical to those raised with respect to SBC billing systems across the company's 13 state operating territory. For example, the PSC in the state of Wisconsin has undertaken a root-cause analysis of SBC's wholesale billing systems. In addition, the United States Department of Justice has recently recommended rejection of the SBC requests for in-region long distance authority in Illinois, Indian, Michigan, Ohio and Wisconsin, based upon the failures in SBC's billing systems, which render them incapable of producing accurate, auditable bills. SBC has engaged in a system of inaccurate billing that deserves investigation. It is this pattern of inaccurate billing that is at the root of Delta Phones' complaint.

#### **SBC-Ameritech Merger Discount Issues:**

5. SBC established a complicated and unnecessary series of steps by which to qualify for the discounts related to its merger with Ameritech.. The process began with a CLEC locating a web page that contained documentation for the amendment of its interconnection agreements with SBC for the discounts. Despite the fact that carriers such as DPI communicated with a single account manager for all of the SBC states in which they operate, SBC required that DPI navigate through the amendment process numerous times. At every level of the process, DPI was expected to monitor SBC's fulfillment of its obligations, or it would not receive the discounts to which it was entitled. SBC made the process to qualify for the discount intentionally difficult.

6. DPI became aware of the potential to receive discounts from the merger in October of 1999, when the FCC entered its order approving the merger. The owners and managers of DPI immediately notified SBC that DPI wanted the discounts in all states in which DPI operated, **including Missouri**. Despite repeated requests from DPI for the merger discounts in all of its SBC states, SBC, amended agreements with DPI in some states but not in others.

7. For example, DPI's interconnection agreement with SBC in Arkansas was amended to include the merger discounts. To effect this amendment, DPI repeatedly demanded SBC to prepare and execute the amendment. Despite the existence of the merger discounts amendment, however, SBC has never been able to demonstrate to DPI that it applied the merger discounts to DPI's Arkansas accounts.

8. In Missouri, DPI received this Commission's approval of its resale interconnection agreement with SBC effective December 10, 1999. Again, DPI repeatedly demanded that SBC assist it in getting access to the maximum discounts available under the FCC's merger order for Missouri. DPI's demands were made throughout the negotiation of the companies' Missouri interconnection agreement. Despite these demands, and despite SBC's pledge to the FCC and state regulators that it would flow through merger related savings to customers such as DPI, SBC refused to amend the interconnection agreement. DPI deems the refusal unreasonable and contrary to good will, and in equity the discounts should be available to DPI and its customers.

### **Carrier Access Billing System Records Issues:**

9. I will also address SBC's loss of DPI's access usage records, which are commonly referred to as carrier access billing system, or "CABS" data. This issue was raised in the affidavit of SBC witness Jerry Gilmore. Convenient and meaningful access to CABS data is critical for a carrier the size of DPI.

10. DPI was previously certificated as a UNE-P carrier by this Commission. This Commission approved DPI's facilities based interconnection agreement with SBC on December 23, 2002. DPI submitted its initial UNE-P profile to SBC on January 8, 2003. Despite its best efforts to overcome the problem, DPI was impeded by SBC from providing services under its UNE-P agreement until approximately March 21, 2003. While the companies may disagree as to the time that it should have been able to order UNE-P in Missouri, the Texas PSC, for example, determined that SBC should have had DPI on the UNE-P ordering platform as of March 8, 2003. Even though the Texas Commission's determination on this issue is inaccurate, it does provide some guidance for this Commission. At the latest, DPI should have been up on the UNE-P platform in Missouri by March 8, 2003. As of that date, the Texas PSC found that DPI should have been able to order under UNE-P, and thus entitled to the CABS records that are necessary for a carrier such as DPI to bill customers for use of the access lines that it leases from SBC.

11. In addition to the ability to innovate in the provision of services, and the receipt of a more favorable wholesale discount, another primary motivation for DPI to pursue UNE-P certification is that it gives it the ability to collect revenues from all of the customers that use an individual access line. For example, in addition to the end-user residential customer that is normally associated with an access line, there are a number of other customers that use the facilities and help carriers such as DPI to recover the costs associated with providing service. Those customers could be internet service providers ("ISPs"), interexchange carriers ("IXCs"), or operator service providers ("OSPs"). All utilize the facilities that DPI leases from SBC. DPI bills these customers for their use, based upon the data provided to it by SBC.

12. SBC has made it impossible for DPI to bill access customers for a significant amount of owed revenue. In approximately June of 2003, SBC notified DPI that it had lost its CABS data for the period between March 18, 2003 to May 20, 2003, and that the data was unrecoverable. DPI responded promptly to this notice. The parties have exchanged extensive correspondence and have engaged in many telephone conferences about this issue. SBC has admitted that it lost DPI's CABS data. Despite its admission, SBC has taken no affirmative steps to recover the data or to remedy the situation in any way. It is conceivable that SBC billed DPI's customers itself for these revenues—effectively converting those revenues from DPI to SBC's use.

13. In his affidavit, Jerry Gilmore states that DPI did not raise this issue through the normal dispute resolution process. DPI placed this matter in the hands of its assigned



SBC account manager. This should have been sufficient. Given SBC's admission that it lost the records, the dispute resolution process is an unnecessary procedure at this point.

**Actions Taken by Delta Phones in Other Jurisdictions:**

14. There are a number of points that were raised in the affidavit of SBC witness Jerry Gilmore which need to be clarified in order for the Commission to understand the environment in which Delta Phones finds itself. These points relate to the entry of Commission orders in other jurisdictions, and some of the actions that Delta Phones has taken in other jurisdiction. These issues are raised in paragraphs 4-7 of the affidavit of Jerry Gilmore. All of the actions taken by Delta Phones relate to the pattern of inaccurate and excessive billing that SBC has exhibited in other jurisdictions.

15. In paragraphs 4 and 5 of his affidavit, Mr. Gilmore discusses orders that were entered by Commissions in Oklahoma and Kansas, respectively, and actions that Delta Phones took in those states with respect to its complaints. In Oklahoma and Kansas DPI made the decision to withdraw its complaints. It was the conclusion of DPI management that the benefits of continuing the complaints in those jurisdictions were outweighed by the increasing costs. In Oklahoma, SSBC filed a counterclaim, and DPI intends to actively defend it. DPI has been working over the past month to provide Commission staff with substantial information concerning DPI's disputes.

16. In paragraphs 6 and 7 of Mr. Gilmore's affidavit, he discusses the orders entered by the Commissions in Arkansas and Texas, respectively. DPI is not under a current order in Arkansas or Texas to deposit funds into escrow. DPI is not out of compliance with any Arkansas or Texas Commission order. DPI and SBC have both requested modification and clarification of an Arkansas Commission order which concerns the payment of undisputed amounts into escrow. The request for clarification and modification is due to disagreements as to the amounts that need to be paid and the timing of those payments. Additionally, DPI has paid SBC a \$50,000 installment payment related to a deposit that the order required, and has already made its second payment of \$50,000 to SBC per the terms of the order.

17. With respect to Texas, DPI requested and received a stay of the Commission's order until September 18, 2003, when the full Commission will discuss the terms of the order, and DPI's assertion that the administrative law judge has rendered concerns regarding the judges' complete and utter disregard for facts surrounding SBC's anti-competitive conduct with respect to Delta Phones and other carriers.

18. Regarding DPI's operations in Tennessee and Kentucky, DPI had a limited customer base in Tennessee. At the time it filed its complaint against Bell South in Tennessee, DPI had 40 customers. The continuing billing disputes with Bell South and the direct effect those disputes had on the operating revenues derived from Tennessee operations led to DPI's departure from that jurisdiction and the dismissal of its complaint.

With respect to Kentucky, DPI's complaint against Bell South was never brought to a formal hearing and DPI is considering refiling its complaint.

Signed: Fallean Mintz  
Fallean Mintz

STATE OF ILLINOIS     )  
                                  )  
COUNTY OF DUPAGE    )

Subscribed and sworn to before me, a Notary Public, at my office in the state and county above written, on this 5<sup>th</sup> day of September, 2003.

Julissa Cavazos  
Notary Public

My Commission expires:

10/26/2005

