

**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.)	

**MOTION TO DISMISS, ANSWER AND
AFFIRMATIVE DEFENSES OF SBC MISSOURI**

COMES NOW Southwestern Bell Telephone, L.P., d/b/a SBC Missouri (SBC Missouri), and for its Motion to Dismiss, Answer and Affirmative Defenses regarding Delta Phones, Inc.'s (Delta's) Complaint, states to the Missouri Public Service Commission (Commission) as follows:

BACKGROUND

Delta's Complaint is outrageous. As of August 19, 2003, Delta owes SBC Missouri \$1,438,076.06. Of that amount, \$1,320,744.95 is past due. In a nutshell, Delta's Complaint is the latest attempt by Delta to ignore the interconnection agreement between SBC Missouri and Delta approved by the Commission on December 23, 2002,¹ and avoid its obligation to pay SBC Missouri for services provided by SBC Missouri to Delta under the rates, terms and conditions contained in that agreement.

The Commission-approved interconnection agreement between SBC Missouri and Delta requires Delta to pay SBC Missouri for all charges it does not dispute for services provided by SBC Missouri. Delta has not done so. The Commission-approved interconnection agreement

¹ The Commission issued its Order approving the SBC Missouri/Delta interconnection agreement in Case No. CK-2003-0281 on December 23, 2002. The effective date of the Commission's Order was January 2, 2003.

also requires Delta to pay all charges it disputes into an appropriate escrow account that complies with the detailed requirements contained in Section 8.4 of the General Terms and Conditions of the SBC Missouri/Delta interconnection agreement. Again, Delta has failed to do so. In fact, although SBC Missouri has continued to provide services to Delta under the terms of the interconnection agreement approved by the Commission on December 23, 2002, Delta has made only one payment to SBC Missouri since the Commission approved the SBC Missouri/Delta interconnection agreement on December 23, 2002, and has not established an appropriate escrow account relating to any charges it now seeks to dispute in its Complaint. Delta's Complaint has no merit, and fails to state any claim upon which the Commission can grant Delta relief. In short, the Commission should dismiss Delta's Complaint.

Delta's refusal to pay for services provided by SBC is not limited to Missouri. Delta has engaged in a pattern of refusing to pay for the services provided to it by SBC in several states since M&T Capital acquired an interest in Delta and assumed certain management functions in December, 2002. This pattern has culminated in recent weeks with Delta filing nearly identical complaints against SBC Arkansas, SBC Oklahoma, SBC Kansas, and SBC Texas. Delta has filed these complaints in the face of the suspension of ordering capabilities and disconnection of services provided by SBC as a result of Delta's failure to pay for services provided by SBC. In response to these complaints, in Arkansas, Delta has now been ordered by the Arkansas PSC to pay all undisputed charges and to place all disputed charges into an appropriate escrow account, but has failed to do so. In Kansas, Delta has been ordered by the Kansas Corporation Commission to pay \$352,000 into escrow, but instead of complying with the Kansas Commission's Order, Delta has now sought to dismiss its complaint. In Oklahoma, Delta has been ordered by the Oklahoma Corporation Commission to pay \$400,000 into escrow, but Delta

has dismissed its complaint rather than comply with the Oklahoma Commission's order. Finally, in Texas, Delta's Complaint has been almost entirely rejected on the merits by a Texas PUC arbitration panel, who found the vast majority of Delta's claim lacked any substantive merit.

Delta has not been current in its required payments to SBC Missouri since November, 2002. Since that time, Delta has incurred the following charges in Missouri: November, 2002 - \$81,937.65; December, 2002 - \$75,594.84; January, 2003 - \$70,884.14; February, 2003 - \$90,648.35; March, 2003 - \$172,111.29; April, 2003 - \$284,847.06; May, 2003 - \$303,401.00; June, 2003 - \$232,268.59; July, 2003 - \$170,157.58; and August, 2003 - \$153,063.37. During this time period, Delta has made just one payment relating to services provided by SBC Missouri, on March 25, 2003, in the amount of \$154,517.20. As this woeful payment history illustrates, Delta has incurred hundreds of thousands of dollars in charges since March, 2003, without making any payment to SBC Missouri whatsoever.

As described below, Delta's Complaint should be dismissed by the Commission for failure to state a claim. If, however, the Commission does not dismiss Delta's Complaint, the Commission must enforce the detailed provisions contained in the interconnection agreement approved by the Commission on December 23, 2002, and require Delta to immediately pay all undisputed charges to SBC Missouri, and to pay any disputed charges into an appropriate escrow account as required by the terms of the Commission-approved interconnection agreement. Delta has continued to receive service without making any payments since March, 2003, and without providing any assurance of payment through escrow arrangements as required by the interconnection agreement. SBC Missouri is entitled to payment for services to Delta that are undisputed, and to adequate assurance of payment for those items allegedly in dispute.

MOTION TO DISMISS

In support of its Motion to Dismiss, SBC Missouri states to the Commission as follows:

1. Delta has specifically failed to comply with Section 8 (BILLING AND PAYMENT OF CHARGES) and Section 10 (DISPUTE RESOLUTION) of the interconnection agreement between Delta and SBC Missouri approved by the Commission in Case No. CK-2003-0182 on December 23, 2002. Because Delta has not paid the charges for the services provided by SBC Missouri pursuant to Section 8 of the General Terms and Conditions of the parties' interconnection agreement, and because Delta has failed to comply with the mandatory provisions of Section 10 of the General Terms and Conditions of the parties' interconnection agreement regarding Dispute Resolution, Delta's actions constitute Delta's "irrevocable and full waiver of its right to dispute the subject charges."² As a result, Delta's Complaint must be dismissed.

2. As described above, the relevant provisions of the SBC Missouri/Delta interconnection agreement approved by the Commission are clear, and compel dismissal of Delta's Complaint. Under Section 8.1.1 of the interconnection agreement, Delta is required to pay all bills rendered by SBC Missouri within 30 calendar days of the bill date. Delta has not complied with this provision since November, 2002.

3. Section 8.4 of the General Terms and Conditions of the interconnection agreement contains very specific requirements relating to disputes regarding billed amounts.

Section 8.4 provides as follows:

8.4 If any portion of an amount due to a Party (the "**Billing Party**") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "**Non-Paying Party**") must, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("**Disputed Amounts**") and include in such written notice the specific details and reasons for disputing each item listed

² SBC Missouri/Delta interconnection agreement, General Terms and Conditions, Section 10.4.1.

in Section 10.4.1 On or before the Bill Due Date, the Non-Paying Party must pay (i) all undisputed amounts to the Billing Party, and (ii) all Disputed Amounts into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties. To be acceptable, the Third Party escrow agent must meet all of the following criteria:

8.4.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;

8.4.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and

8.4.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH (credit transactions) (electronic funds) transfers.

8.4.4 In addition to the foregoing requirements for the Third Party escrow agent, the disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:

8.4.4.1 The escrow account must be an interest bearing account;

8.4.4.2 all charges associated with opening and maintaining the escrow account will be borne by the disputing Party;

8.4.4.3 that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;

8.4.4.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and

8.4.4.5 disbursements from the escrow account will be limited to those:

8.4.4.5.1 authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement); or

8.4.4.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 10.7; or

8.4.4.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 10.7.

8.5 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 8.1.5.

8.6 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 10.

4. Pursuant to Section 8.4 of the General Terms and Conditions of the SBC

Missouri/Delta interconnection agreement, if Delta wished to dispute any amounts billed by SBC Missouri, it was required to give timely written notice to SBC Missouri of the amounts it disputed (which are referred to as “Disputed Amounts” in the interconnection agreement), and include in such written notice the specific details (as described in Section 10.4.1 of the General Terms and Conditions of the interconnection agreement) and its reasons for disputing each item. Section 8.4 of the General Terms and Conditions of the interconnection agreement also requires Delta, on or before each Bill Due Date, to pay all undisputed amounts to SBC Missouri, and to pay all disputed amounts into an interest bearing escrow account with a third party escrow agent that meets the criteria contained in Section 8.4.

5. Delta has not complied with the requirement of providing written notice of the specific details and reasons for disputing each item it now claims to dispute on or before each of the Bill Due Dates. Moreover, Delta has not paid all undisputed amounts to SBC Missouri, and has not paid any disputed amounts into an appropriate escrow account as defined in Section 8.4 of the parties’ interconnection agreement, despite the clear and unequivocal requirement to do so as specified in the interconnection agreement. Section 8.6 of the Commission-approved interconnection agreement makes clear the consequences of Delta’s failure to comply with Section 8.4 regarding disputed amounts, and provides that “issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 10.”

6. Section 10 of the General Terms and Conditions of the parties' interconnection agreement is entitled "DISPUTE RESOLUTION." Pursuant to Section 10.2, SBC Missouri and Delta agreed "to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach." Pursuant to Section 10.3, Dispute Resolution "shall commence upon one Parties' receipt of written notice of a controversy or claim or arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written notice has first been given to the other Party." Under Section 10.4 of the General Terms and Conditions of the parties' Commission-approved interconnection agreement, a mandatory dispute resolution procedure applies "with respect to any billing dispute arising out of or relating to the Agreement." Section 10.4.1 of the Agreement requires that the dispute first be referred to SBC's Local Service Center. This section also requires Delta to furnish written notice of: (i) the date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item in question, (v) amount billed and (vi) amount in question and (vii) the reason the CLEC disputes the billed amount." In addition, Section 10.4.1 specifically provides that in order to be deemed a "dispute" under this mandatory Section 10.4, Delta:

"must provide evidence that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in Section 8.4 of this Agreement and deposited all Unpaid Charges relating to Resale Services and Network Elements into that escrow account. Failure to provide the information and evidence required by this Section 10.4.1 not later than twenty-nine (29) calendar days following the Billed Due Date shall constitute [Delta's] irrevocable and full waiver of its right to dispute the subject charges."

7. There can be no question that Delta has not complied with the mandatory payment provisions contained in the Commission-approved interconnection agreement between

SBC Missouri and Delta. Likewise, there is no question that Delta has failed to comply with the mandatory dispute resolution provisions, including specifically the escrow requirements contained in Section 10 of the General Terms and Conditions of the Commission-approved interconnection agreement between SBC Missouri and Delta. Delta is clearly required to comply with these provisions and has not done so. Pursuant to Section 10.4.1 of the interconnection agreement, Delta's failure to comply with the mandatory provisions of Section 10 constitutes Delta's "irrevocable and full waiver of its right to dispute the subject charges." Since Delta has irrevocably and fully waived its right under the interconnection agreement to dispute the subject charges, its Complaint, which relates solely to services provided by SBC Missouri under the terms of the Commission-approved interconnection agreement, must be dismissed by the Commission.

8. It should come as no surprise to the Commission that Delta flaunts the mandatory payment, escrow and dispute resolution provisions of its Commission-approved interconnection agreement with SBC Missouri. In its Complaint, Delta does not even address Section 8 of the General Terms and Conditions of the interconnection agreement, which requires it to pay for the services provided by SBC Missouri, or otherwise properly dispute SBC Missouri's bills. Delta ignores Section 8 because it has clearly not complied with its mandatory requirements. Likewise, Delta does not address Section 10.4 of the Commission-approved interconnection agreement between SBC Missouri and Delta, and again, the reason is obvious. Section 10.4 of the General Terms and Conditions of the Commission-approved interconnection agreement, and specifically Delta's failure to comply with it, is fatal to Delta's Complaint, and requires that Delta's Complaint be dismissed.

9. The Commission does not have jurisdiction to alter the terms of a negotiated interconnection agreement pursuant to Section 251 of the Federal Telecommunications Act of 1996 (Act). The Commission appropriately approved the SBC Missouri/Delta Phones interconnection agreement pursuant to Section 252(e) of the Act in December, 2002. The Commission must enforce the mandatory provisions described above that are contained in the SBC Missouri/Delta Phone's Commission-approved interconnection agreement and dismiss Delta's Complaint in this case.

SBC MISSOURI'S ANSWER

SBC Missouri provides the following Answer to each of the allegations contained in the numbered paragraphs of Delta's Complaint. To the extent that SBC Missouri does not specifically admit any allegation contained in Delta's Complaint, SBC Missouri denies any such allegation.

1. SBC Missouri admits that Delta is a competitive local exchange carrier (CLEC) doing business in the State of Missouri. SBC Missouri does not have sufficient information to either admit or deny remaining allegations contained in this numbered paragraph of Delta's Complaint, and therefore denies same.

2. Southwestern Bell Telephone, L.P., admits that it is doing business as SBC Missouri in Missouri, and that it is a Texas Limited Liability Partnership, with its principal place of business in Texas. SBC Missouri admits that it is properly authorized to provide local exchange telecommunications services in Missouri and is an incumbent local exchange carrier. SBC Missouri admits that its principal place of business in Missouri is located at One SBC Center, St. Louis, MO 63101. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta's Complaint.

3. SBC Missouri admits the allegations contained in this numbered paragraph of Delta's Complaint.

4. SBC Missouri admits that the interconnection agreement approved by the Commission on December 23, 2002, in Case No. CK-2003-0182, controls this dispute. As described above, the unequivocal and mandatory provisions contained in this Commission-approved interconnection agreement require that Delta's Complaint be dismissed. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta's Complaint.

5. SBC Missouri denies the allegations contained in this numbered paragraph of Delta's Complaint.

6. SBC Missouri admits that Delta is presently denied access to certain Operational Support Systems (OSS), due to Delta's failure to comply with the requirements contained in the Commission-approved interconnection agreement with SBC Missouri. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta's Complaint.

7. SBC Missouri denies the allegations contained in this numbered paragraph of Delta's Complaint.

8. SBC Missouri denies the allegations contained in this numbered paragraph of Delta's Complaint.

9. SBC Missouri denies the allegations contained in this numbered paragraph of Delta's Complaint. As described above, Delta has specifically failed to comply with the Dispute Resolution procedures, which are mandatory, contained in the Commission-approved SBC Missouri/Delta interconnection agreement.

10. SBC Missouri admits that the Commission has general jurisdiction over both Delta and SBC Missouri. SBC Missouri denies that the Commission has jurisdiction to alter,

modify or otherwise waive provisions contained in the interconnection agreement between SBC Missouri and Delta, which was negotiated pursuant to the provisions of the Act and which was approved by the Commission under Section 252(e)(1) of the Act. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta's Complaint.

11. SBC Missouri admits that the provisions contained in the parties' Commission-approved interconnection agreement apply, including the provisions contained in Section 10.4 described above. The correct case number of the case in which the Commission approved the SBC Missouri/Delta Phones interconnection agreement on December 23, 2002, is Case No. CK-2003-0182. SBC Missouri denies that Delta is entitled to any relief under Section 10.6 of the parties' Commission-approved interconnection agreement. Section 10.6, entitled Formal Dispute Resolution, is only applicable under Section 10.6.1 if the parties "are unable to resolve the dispute through the informal procedure described in Section 10.5" of the interconnection agreement. Section 10.5 of the interconnection agreement, entitled "Informal Resolution of Disputes," is only applicable when one party submits a "notice of dispute" pursuant to Section 10.4.5, which may only be submitted if a party is not satisfied by the resolution of the billing dispute under Section 10.4. However, these provisions do not negate, or otherwise replace, the provisions of Sections 8 and 10.4 described above, which specifically require that Delta must either pay any disputed amount or establish an appropriate escrow account. Delta's failure to do so constitutes its "irrevocable and full waiver of its right to dispute the subject charges." SBC Missouri denies the remaining allegations of this numbered paragraph of Delta's Complaint.

12. SBC Missouri admits that it executed an interconnection agreement pursuant to the Federal Telecommunications of 1996, together with various attachments thereto, but this Agreement was not executed on December 23, 2002, as alleged in this numbered paragraph of

Delta's Complaint. The interconnection agreement between SBC Missouri and Delta was executed on or about October 8, 2002.³ SBC Missouri admits that this interconnection agreement was filed with the Commission, and was approved by the Commission, but not on December 20, 2002, as alleged in this numbered paragraph of Delta's Complaint. The Commission issued its Order approving the interconnection agreement on December 23, 2002. SBC Missouri agrees that the Commission make take notice of the interconnection agreement approved on December 23, 2002, in Case No. CK-2003-0182. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta's Complaint.

13. SBC Missouri admits that the interconnection agreement approved by the Commission on December 23, 2002, contains the applicable rates, terms and conditions under which SBC Missouri provides services to Delta in Missouri. SBC Missouri also admits that this interconnection agreement contains specific provisions regarding payment and dispute resolution obligations that Delta has failed to satisfy. SBC Missouri admits that the interconnection agreement approved by the Commission on December 23, 2002, contains an Appendix Merger Conditions, but denies that this appendix requires SBC Missouri to apply any merger condition resale discounts to Delta's accounts. The timeframe for the merger discounts to apply had expired before the effective date (January 2, 2003) of the Commission's Order approving the interconnection agreement between SBC Missouri and Delta. SBC Missouri also states that its prior Resale Agreement with Delta, which was approved by the Commission on November 30, 1999, in Case No. TO-2000-273, did not contain any provisions entitling Delta to any merger-related discounts. SBC Missouri denies any remaining allegations contained in this numbered paragraph of Delta's Complaint.

³ See Interconnection Agreement, General Terms and Conditions, Page 0000005.

14. SBC Missouri does not have sufficient information to either admit or deny the allegations contained in this numbered paragraph of Delta's Complaint, and therefore denies same.

15. SBC Missouri admits that Delta submitted some billing issues to SBC, but denies that Delta has complied with the dispute resolution provisions contained in the parties' Commission-approved interconnection agreement regarding each of the claims Delta raises in its Complaint. SBC Missouri admits that it sustained the charges and denied these claims. SBC Missouri denies the remaining allegations of this numbered paragraph of Delta's Complaint.

16. SBC Missouri admits that on or about January 14, 2003, it received a letter from Delta dated January 8, 2003, regarding various billing issues identified by Delta. SBC Missouri admits that in this letter, Delta stated that the letter should be regarded as "formal notice of dispute and claim." SBC Missouri denies the remaining allegations of this numbered paragraph of Delta's Complaint.

17. SBC Missouri admits that between February and June of 2003, it attempted to resolve Delta's inquiries regarding various billing issues "through email communications, letters and conference calls." SBC Missouri does not have sufficient information to either admit or deny the remaining allegations of this numbered paragraph of Delta's Complaint, and therefore denies same.

18. SBC Missouri admits that it advised Delta in a letter dated March 18, 2003, that SBC considered its obligations under the informal dispute process to be fulfilled with respect to certain issues raised by Delta. SBC Missouri admits that on March 19, 2003, representatives of SBC and Delta reached an agreement regarding provisioning new requests for products and services under the parties' interconnection agreement, which agreement was memorialized in a

letter dated March 21, 2003. SBC Missouri also admits that as a result of the March 19, 2003, meeting, Delta paid \$154,517.20 of the outstanding balance owed to SBC relating to services provided by SBC Missouri to Delta in Missouri. SBC Missouri denies that the agreement reached during the March 19, 2003, meeting, and memorialized in the March 21, 2003 letter, was an “extra-interconnection agreement,” a new interconnection agreement, or an amendment to the already existing Commission-approved interconnection agreement. SBC Missouri denies the remaining allegations of this numbered paragraph of Delta’s Complaint.

19. SBC Missouri admits that following Delta’s payment in March, 2003, it worked with Delta to convert Delta’s resale customers to UNE-P service. SBC Missouri admits Delta’s allegation that it later attempted to process UNE-P orders. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta’s Complaint.

20. SBC Missouri admits that representatives of SBC met with representatives of Delta on April 14, 2003 to discuss some of Delta’s billing issues. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta’s Complaint.

21. SBC Missouri denies the allegations contained in this numbered paragraph of Delta’s Complaint.

22. SBC Missouri admits that Delta is presently denied access to certain OSS of SBC Missouri, as provided in the parties’ interconnection agreement. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta’s Complaint.

23. SBC Missouri denies the allegations contained in this numbered paragraph of Delta’s Complaint. SBC’s actions and performance are consistent with the requirements contained in the Commission-approved interconnection agreement between Delta and SBC Missouri.

24. SBC Missouri admits that it sent a letter dated May 12, 2003, to Delta requesting payment of the outstanding past due balances. SBC Missouri does not have sufficient information to either admit or deny the remaining allegations contained in this numbered paragraph of Delta's Complaint, and therefore denies same.

25. SBC Missouri admits that it notified Delta of the consequences, as provided under the parties' Commission-approved interconnection agreement, of Delta's continued failure to pay for the services provided to Delta by SBC Missouri under the terms of that interconnection agreement. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta's Complaint.

26. SBC Missouri denies the allegations contained in this numbered paragraph of Delta's Complaint. Delta complains that it has not been treated like a "customer," but in all customer-supplier relations that SBC Missouri is aware of, customers are required to actually pay the amount they agreed to pay for services provided by the supplier. In this case, Delta is not paying for any of the services it is continuing to receive from SBC Missouri, nor has it provided any adequate assurance of payment, as required by the Commission-approved interconnection agreement.

27. SBC Missouri incorporates by reference its Answer to numbered paragraphs 1-26 of Delta's Complaint as its Answer to this numbered paragraph of Delta's Complaint.

28. SBC Missouri admits that Delta raised some claims regarding billing for customers after disconnection was ordered by Delta. SBC Missouri further admits that it denied those claims that were raised by Delta. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta's Complaint.

29. SBC Missouri incorporates by reference its Answer to paragraphs 1-28 of Delta's Complaint as its Answer to this numbered paragraph of Delta's Complaint.

30. SBC Missouri admits that Delta raised some issues regarding billing Delta for customers that were not Delta's customers. SBC further admits that it denied those claims that were raised by Delta. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta's Complaint.

31. SBC Missouri incorporates by reference its Answer to paragraphs 1-30 of Delta's Complaint as its Answer to this numbered paragraph of Delta's Complaint.

32. SBC Missouri denies that the claims set forth in this numbered paragraph of Delta's Complaint have ever been properly submitted by Delta to dispute resolution as required by the parties' interconnection agreement. SBC Missouri denies the allegations contained in this numbered paragraph of Delta's Complaint.

33. SBC Missouri incorporates by reference its Answer to paragraphs 1-32 of Delta's Complaint as its Answer to this numbered paragraph of Delta's Complaint.

34. SBC Missouri admits that the FCC approved a merger between SBC and Ameritech. SBC Missouri admits that the FCC imposed certain conditions upon the approval of this merger. SBC Missouri denies the remaining allegations of this numbered paragraph of Delta's Complaint.

35. SBC Missouri incorporates by reference its Answer to paragraphs 1-34 of Delta's Complaint as its Answer to this numbered paragraph of Delta's Complaint.

36. SBC Missouri admits that prior to March 21, 2003, it had requested a security deposit from Delta in accordance with the terms of its Commission-approved interconnection agreement with Delta. SBC Missouri further admits that it has requested Delta establish an

appropriate escrow arrangement, including payment in accordance with the mandatory requirements contained in this Commission-approved interconnection agreement. SBC Missouri admits that Delta has failed to make the required escrow arrangements or payments as required under the Commission-approved interconnection agreement. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta's Complaint.

37. SBC Missouri incorporates by reference its Answer to paragraphs 1-36 of Delta's Complaint as its Answer to this numbered paragraph of Delta's Complaint.

38. SBC Missouri admits that Delta has requested certain UNE-P electronic billing records. SBC Missouri denies that the claims set forth in this numbered paragraph of Delta's Complaint have been properly submitted by Delta to the dispute resolution process required under the Commission-approved interconnection agreement. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta's Complaint.

39. SBC Missouri does not have sufficient information to either admit or deny the allegations contained in this numbered paragraph of Delta's Complaint, and therefore denies same.

40. SBC Missouri incorporates by reference its Answer to paragraphs 1-39 of Delta's Complaint as its Answer to this numbered paragraph of Delta's Complaint.

41. SBC Missouri does not have sufficient information to either admit or deny the first two sentences contained in this numbered paragraph of Delta's Complaint, and therefore denies same. SBC Missouri denies that the claims set forth in this numbered paragraph of Delta's Complaint have ever been properly submitted by Delta to dispute resolution as required by the parties' interconnection agreement. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta's Complaint.

42. SBC Missouri does not have sufficient information to either admit or deny the allegations contained in this numbered paragraph of Delta's Complaint, and therefore denies same. Furthermore, SBC Missouri denies that the claims contained in this numbered paragraph of Delta's Complaint have ever been properly submitted by Delta to the dispute resolution process required by the parties' interconnection agreement.

43. SBC Missouri incorporates by reference its Answer to paragraphs 1-42 of Delta's Complaint as its Answer to this numbered paragraph of Delta's Complaint.

44. SBC Missouri denies the allegations contained in this numbered paragraph of Delta's Complaint. Moreover, SBC Missouri denies that the claims set forth in this numbered paragraph of Delta's Complaint have ever been properly submitted to the dispute resolution process required by the parties' interconnection agreement.

45. SBC Missouri incorporates by reference its Answer to paragraphs 1-44 of Delta's Complaint as its Answer to this numbered paragraph of Delta's Complaint.

46. SBC Missouri admits that it has assessed late charges in accordance with the requirements of the parties' Commission-approved interconnection agreement. SBC Missouri denies the remaining allegations contained in this numbered paragraph of Delta's Complaint.

AFFIRMATIVE DEFENSES

SBC Missouri asserts the following affirmative defenses to the allegations contained in Delta's Complaint:

1. SBC Missouri states that Delta's claims, as described above, have not been properly submitted to the dispute resolution process as established and required by the parties in their Commission-approved interconnection agreement. As a result, these claims are neither properly before the Commission nor ripe for resolution in this proceeding.

2. SBC Missouri states that Delta seeks refunds for alleged overpayments made by Delta that are beyond the contractual limitation for disputing amounts billed under the parties' interconnection agreement.

3. SBC Missouri states that Delta has waived any right to bring this Complaint as a result of its failure to comply with Sections 8, 9 and 10 of the Commission-approved interconnection agreement between SBC Missouri and Delta.

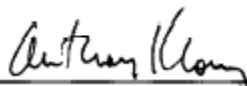
4. SBC Missouri states that Delta has failed to state a claim upon which relief may be granted.

5. SBC Missouri states that as of August 19, 2003, Delta owes SBC Missouri \$1,438,076.06.

WHEREFORE, SBC Missouri respectfully requests that the Commission issue an Order dismissing Delta's Complaint.

Respectfully submitted,

Southwestern Bell Telephone, L.P.,
d/b/a SBC Missouri

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this document was served on all counsel of record by electronic mail on August 27, 2003.



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