

**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.	)	

**SBC MISSOURI’S RESPONSE TO STAFF’S  
STATUS REPORT AND RENEWED MOTION TO  
MODIFY ORDER REGARDING COMPLAINT**

COMES NOW Southwestern Bell Telephone, L.P. d/b/a SBC Missouri (“SBC Missouri”), and for its Response to Staff’s Status Report (“Staff’s Report”) and SBC Missouri’s Renewed Motion to Modify Order Regarding Complaint states as follows:

1. This case was initiated on July 25, 2003 by a Complaint filed by Delta Phones, Inc. (“Delta Phones”) claiming that SBC Missouri had failed to comply with the Interconnection Agreement between the parties. Delta Phones subsequently filed a Motion for Issuance of an Amended Notice in which it requested the Commission to prohibit SBC Missouri from disconnecting service to Delta Phones while the Complaint is pending. On August 19, 2003, the Missouri Public Service Commission (“Commission”) issued its Order Regarding Complaint (“Order”) in which it directed SBC Missouri not to disconnect Delta Phones pending further order of the Commission. The Order Regarding Complaint also directed the parties to file statements setting forth the amount in dispute.

2. SBC Missouri filed its Response and Motion to Modify Order Regarding Complaint (“SBC Missouri Response”) on August 26, 2003. SBC Missouri attached an Affidavit from Gert Andersen demonstrating that Delta Phones owed, at that time, \$1,438,076.06. SBC Missouri Response, para. 1. SBC Missouri also demonstrated that, based on Delta Phones’ own Complaint, only \$554,964.34 was in dispute as of July 25, 2003. SBC Missouri Response, para. 2. SBC Missouri pointed out that Delta Phones’ last payment was made in March, 2003, and that, since that time, Delta Phones had incurred charges of hundreds of thousands of dollars without any payment whatsoever. SBC Missouri Response, para. 3.

3. With regard to its Motion to Modify the Order Regarding Complaint, SBC Missouri requested the Commission to either (a) eliminate the prohibition against termination of service or (b) condition the order prohibiting termination of service upon Delta Phones’ compliance with the terms of the Interconnection Agreement, including payment of undisputed charges and placement of any disputed charges into escrow. SBC Missouri Response, para. 4. SBC Missouri pointed out that the Order Regarding Complaint was contrary to the provisions of the Interconnection Agreement and that the Commission did not have authority to unilaterally change its terms. SBC Missouri Response, para. 4.

4. Based on the information provided in Staff’s Status Report, SBC Missouri respectfully requests the Commission to consider and grant the Motion to Modify the Order Regarding Complaint. As related in Staff’s Status Report, Staff has received little information in response to data requests first submitted to Delta Phones on August 15, 2003. Staff notes that due to the delay in Delta Phones providing information, Staff will not complete its investigation until late October at the earliest. Staff Status Report, para. 3. As Staff noted, this delay causes financial harm to SBC Missouri since Delta Phones continues to pay nothing for the services

provided to Delta Phones. Id. Accordingly, Staff has again asserted that the Commission should “order the parties to follow the terms of the interconnection agreement by requiring Delta to pay the undisputed amounts and to place the disputed amounts into escrow. Id.

5. During the pendency of this Complaint, SBC Missouri has continued to provide service to Delta Phones as ordered by the Commission. Delta Phones owes more than \$1.4 million as of August 25, 2003, but has paid absolutely nothing to SBC Missouri since March, 2003. It is both extraordinarily unfair and contrary to the unequivocal requirements of the Interconnection Agreement for Delta Phones to pay nothing for services rendered and to refuse to escrow any legitimately disputed amounts. While SBC Missouri has followed the requirements of the Order Regarding Complaint, the Commission has yet to explain its authority to override the explicit terms of the Interconnection Agreement, and SBC Missouri is aware of no such authority.

6. It is not unreasonable for SBC Missouri to ask that it be paid for the services it has rendered. Nor is it unreasonable for SBC Missouri to ask that any legitimately disputed amounts be placed into escrow, so that there is a fund available to ensure that SBC Missouri will be paid for its services if and when the Commission determines that the Complaint is without merit.

7. Based on Delta Phones’ actions in other states, SBC Missouri believes that Delta Phones has an intent to delay the proceeding as much as possible and will not pay SBC Missouri even if the Commission ultimately agrees that payment is required under the terms of the Interconnection Agreement. SBC Missouri previously explained that Delta Phones was ordered to comply with escrow arrangements in Arkansas, Kansas and Oklahoma, but has refused to do so. SBC Missouri Response, para. 6. SBC Missouri also pointed out the arbitrator assigned to

review the Complaint of Delta Phones in Texas found that the vast majority of the “dispute” lacked substantive merit. Id. Since that time, the Kansas Corporation Commission has ordered Delta Phones to cease operations in SBC Kansas exchanges and authorized SBC Kansas to disconnect Delta Phones UNE-P customers effective October 20, 2003. See Attachment A: Order 5: Ordering Delta To Cease Operations In SWBT Exchanges And Requiring A Press Release Before SWBT Disconnects Delta’s UNE-P Customers, Docket No. 04-SWBT-013-COM, October 3, 2003. In Texas, the PUC has issued its Order Approving Arbitration Award. See Attachment B: Order Approving Arbitration Award, PUC Docket No. 28041, September 29, 2003.

8. Delta Phones apparently has no intention of paying SBC Missouri for its services, even though Delta Phones continues to collect monies from its own customers during the pendency of the Order Regarding Complaint. Continued delay suits Delta Phones’ interests -- it continues to collect from its own customers while refusing to pay its primary supplier. But these actions are not consistent with the requirements of the Interconnection Agreement, which clearly impose on Delta Phones the obligation to pay all undisputed charges and to escrow any disputed charges. Apart from the unequivocal requirements of the Interconnection Agreement, which this Commission previously approved, fair and balanced regulatory policy requires that Delta Phones pay for services it has ordered and received and that it escrow any amounts legitimately disputed.

WHEREFORE, for all the foregoing reasons, SBC Missouri respectfully requests the Commission to grant Staff’s Motion to Compel and to grant SBC Missouri’s Motion to Modify Order Regarding Complaint by either (a) eliminating the prohibition on SBC Missouri’s disconnection of Delta Phones’ service or (b) conditioning the order prohibiting disconnection upon Delta Phones’ compliance with the terms of the Interconnection Agreement, including

payment of undisputed amounts and escrow arrangements for any disputed amounts. The Commission should order escrow arrangements for the disputed amounts, and payment of undisputed amounts, be made within three days of the Commission's Order in response to this motion to modify.

Respectfully submitted,

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

BY

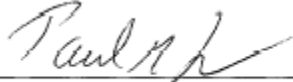


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## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this document was served on all counsel of record by electronic mail on October 10, 2003.



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