

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3
4
5 PREHEARING CONFERENCE

6
7 August 12, 2003
8 Jefferson City, Missouri
9 Volume 1

10 Delta Phones, Inc.,)
11)
12 Complainant,)
13 vs.) Case No.: TC-2004-0064
14 Southwestern Bell Telephone)
15 Company, L.P., d/b/a)
16 Southwestern Bell Telephone)
17 Company,)
18 Respondent.)

19 KENNARD L. JONES, Presiding,
20 REGULATORY LAW JUDGE.

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1 P R O C E E D I N G S

2 (Written Entries of Appearance filed.)

3 JUDGE JONES: This prehearing -- prehearing
4 conference is being held on August 12th, 2003. It is
5 now several minutes after two o'clock.

6 I am Kennard Jones, the Administrative Law
7 Judge presiding over this matter, which is Case
8 No. TC-2004-0064.

9 This is a complaint case filed with the
10 Commission by Delta Phones, Incorporated against
11 Southwestern Bell Telephone Company.

12 Will the attorneys present please introduce
13 yourselves stating your name and the party you're
14 representing, starting with Public Service Commission
15 Staff.

16 MR. ANDERSON: Good morning, Your Honor. My
17 name is Eric Anderson. I represent the Staff of the
18 Missouri Public Service Commission. My address is
19 200 Madison Street, Jefferson City, Missouri 65102.

20 MR. LANE: Your Honor, my name is Paul Lane.
21 I represent Southwestern Bell Telephone, L.P. doing
22 business as SBC Center. My address is One SBC Center,
23 Room 3520, St. Louis, Missouri 63101.

24 MR. COMLEY: Good afternoon, Judge Jones. My
25 name is Mark W. Comley. I'm with Newman, Comley and

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1 Ruth. Our address is 601 Monroe Street, Jefferson
2 City, Missouri. We have a P. O. -- a Post Office
3 Box 537. Our zip code is 65102-0537. And I'm
4 appearing on behalf of the Complainant, Delta Phones,
5 Inc.

6 MR. DANDINO: Good afternoon, Your Honor. My
7 name is Michael Dandino, Office of the Public Counsel,
8 Post Office Box 7800, Jefferson City, Missouri 65102,
9 representing the Office of Public Counsel and the
10 Public.

11 JUDGE JONES: Thank you all.

12 Delta filed this Complaint on July 25, 2003.
13 The Commission issued its standard notice of complaint
14 on July 28th. And thereafter, Delta moved the
15 Commission to amend its notice to include the language
16 that will prohibit Southwestern Bell from discontinuing
17 service on the basis of issues that are the subject of
18 this Complaint. Southwestern Bell has opposed that
19 motion.

20 In its Complaint Delta makes various
21 references to customers being migrated, discontinued
22 service to it from Southwestern Bell and other actions
23 by Southwestern Bell that affect Delta's ability to
24 serve its customers.

25 In order to consider these issues more

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1 carefully, the Commission will require more information
2 from the parties concerning the state of Delta's
3 customers and Delta's ability to conduct business.

4 First I'd like to refer to Delta's Complaint
5 at paragraph 7. In that paragraph Delta states, at the
6 present time Southwestern Bell disconnected Delta from
7 the electronic operating support systems required to
8 manage and control customer accounts.

9 Delta would probably be best to address this.
10 What exactly is that?

11 MR. COMLEY: Well, my understanding, Judge
12 Jones, is that although the customers are still
13 connected to dial tone services, Delta Phones does not
14 have access to elec-- electronic recordkeeping systems
15 to let them know exactly how many customers are
16 connected under the Delta Phones name and exactly what
17 their service history is.

18 MR. LANE: Your Honor, are you looking for
19 all --

20 JUDGE JONES: Yes.

21 MR. LANE: -- parties to respond to that?

22 JUDGE JONES: You may respond also.

23 MR. LANE: Your Honor, under the
24 interconnection agreement between Delta Phones and
25 SBC Missouri, which this Commission approved -- I think

1 the approval date of the current agreement was
2 January 2nd of this year -- when a company fails to pay
3 the amounts when due, Southwestern Bell can issue a
4 notice to it that it is essentially keeping it from
5 accessing the operational support systems that would
6 allow it to change its service for its customers or to
7 add new customers so that the liability is essentially
8 cut off.

9 Delta Phones is still permitted to submit
10 manual orders to disconnect its customers if it has
11 some that aren't paying and the like, but they're not
12 permitted to continue to add new customers while we're
13 in the process of terminating their service if they
14 fail to pay the amounts that -- that we've billed them.

15 JUDGE JONES: Are they able to through
16 Southwestern Bell serve their present customers?

17 MR. LANE: Yes, Your Honor. It doesn't affect
18 their ability to serve their current customer base at
19 all.

20 JUDGE JONES: Is that true, Mr. Comley?

21 MR. COMLEY: My understanding is that
22 Southwestern Bell is not taking any action to
23 disconnect the customers from their dial tone service.
24 That's my understanding.

25 JUDGE JONES: How -- how is Delta able to

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1 serve its customers now?

2 MR. COMLEY: Only through the interconnection
3 agreement it has with Southwestern Bell Telephone.
4 Dial tone is offered by Southwestern Bell Telephone.
5 And I think that's only through the resale arrangements
6 of their interconnection agreement. They have not been
7 converted to the UNE-P platform that they have
8 requested.

9 And again, I --

10 MR. LANE: Your Honor, I may be able --

11 MR. COMLEY: -- I may be going too far into
12 the facts on this. But, again, the contention is that
13 Southwestern Bell is improperly withholding those OSS
14 services from Delta Phones.

15 Whether or not that issue is gonna be taken up
16 today, I don't know. I'm hoping we can probably
17 dispense of those kinds of arguments right now.

18 But my understanding is that service is being
19 supplied through the interconnection agreement. The
20 services expected from the interconnection agreement
21 are not full. Again, the OSS services are being
22 withheld, and we contend improperly so.

23 JUDGE JONES: How is that affecting Delta's
24 ability to serve, though, without having that
25 electronic --

1 MR. COMLEY: It's unable to provide the
2 Commission a precise account of its own customers.
3 That's -- that's one thing.

4 We don't believe that they've been
5 disconnected, but we don't know exactly how much money
6 is due the Company because of lack of access of the
7 OSS.

8 Customers apparently are making payments, but
9 they're doing it without the ability of the Company to
10 enforce those payments. The accounting information is
11 through the OSS service, and that's not being made
12 available.

13 JUDGE JONES: Is Delta receiving payments at
14 all from customers?

15 MR. COMLEY: Yes, payments are coming in from
16 customers on what appears to be a voluntary pa-- basis.
17 We don't know exactly what's due.

18 JUDGE JONES: Okay. Does Southwestern Bell --

19 MR. LANE: Your -- Your Honor, I -- I have to
20 correct. And in fairness to Mr. Comley, he probably
21 doesn't understand the workings of the system. But
22 what he's described to you is not an accurate
23 reflection of how the interconnection agreement works.

24 The OSS system is the electronic ability to
25 submit orders to Southwestern Bell to either add

1 customers or change customers or change something about
2 their service.

3 We do not do the billing for Delta Phones.
4 Delta Phones own systems are what they use to know how
5 many customers they have. It's not from our OSS
6 system. It's from their own records to know how many
7 customers they have.

8 They do their own billing out of their own
9 system. We don't do the billing for them. Access to
10 the OSS system has nothing to do with their billing
11 their own customers.

12 It only has to deal with their ability to
13 submit orders to us to add new customers or to
14 disconnect customers or to change service of their
15 customers.

16 And as I said before, they're still permitted
17 to submit manual orders -- not the electronic orders,
18 but manual orders to disconnect customers. So if
19 they're not getting paid by one of their customers,
20 they can submit a manual order to us telling us to
21 disconnect their customer on such and such a date, and
22 we will do so.

23 I also have to explain maybe a little bit
24 about how we provide service under the interconnection
25 agreement. I think there's -- in general, there's

1 three ways that a company can provide service in
2 Missouri -- a company like Delta Phones.

3 They can do so through the resale of
4 Southwestern Bell services. They can do so by
5 acquiring what are called unbundled network elements or
6 UNEs from Southwestern Bell, which they can combine
7 with their own facilities, or they can use entirely
8 unbundled network elements to provide the service. Or,
9 three, they could use their own service completely.

10 Now, in Delta Phones' case they're using the
11 first two. They're doing resale of Southwestern Bell
12 services and they're doing -- they're providing service
13 to customers using unbundled network elements from
14 Southwestern Bell. Both of those are available to them
15 under the interconnection agreement.

16 JUDGE JONES: I want to look also at
17 paragraph 18. It says, in March of this year
18 representatives from SWBT and Delta negotiated an
19 agreement outside of the terms of the interconnection
20 agreement, which would allow Delta to maintain its
21 disputes going forward and incremented Southwestern
22 Bell to assist with Delta in the migration of its
23 customers from resale to UN-- to unbundled network
24 elements.

25 Does that mean now that Delta does not do any

1 re-selling and only does unbundled network elements?

2 MR. COMLEY: Judge, my understanding is that
3 none of the customers are served by unbundled network
4 elements. That's my understanding.

5 MR. LANE: That's incorrect, Your Honor.

6 MR. COMLEY: And, Judge, I -- I really was
7 hoping that we could have had an opportunity for
8 representatives of the Company to appear --

9 JUDGE JONES: I understand.

10 MR. COMLEY: -- and do that. And this is the
11 information I have. And it's obvious that there's a
12 conflict in the information.

13 MR. LANE: Your Honor, they're providing
14 service both using resale of our service and through
15 the use of unbundled network elements from Southwestern
16 Bell.

17 I have a copy, if Your Honor pleases, of the
18 agreement that's referenced in there.

19 Is that the March 21st agreement that you
20 referred to, Your Honor?

21 JUDGE JONES: Yeah -- well, it's referred to
22 in the --

23 MR. LANE: In their complaint?

24 JUDGE JONES: The Complaint is March 19th
25 of --

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1 MR. LANE: It's actually March 21st, Your
2 Honor.

3 JUDGE JONES: Okay.

4 MR. LANE: And the agreement -- I guess it
5 depends on how one chooses to characterize it. It's
6 outside the interconnection agreement only to the
7 extent that it's not included as a part of it, but it
8 refers to and -- and comes from the interconnection
9 agreement.

10 And it was the agreement of Delta Phones where
11 they would agree to pay what they owed at that point,
12 that wasn't disputed. And that they would agree to pay
13 on a going-forward basis that which was not disputed,
14 and to put into escrow that which was disputed.

15 That agreement they have not carried through
16 on. They haven't paid SBC Missouri one penny since
17 March 20th of 2003 -- almost five months ago, and
18 they've racked up hundreds of thousands of dollars in
19 charges since that time.

20 Not all of which is disputed, none of which
21 has been paid and none of which has gone into the
22 escrow agreement, even though they agreed to it in this
23 March 21st agreement and it's a requirement of their
24 interconnection agreement.

25 MR. COMLEY: Judge, I'm not in any position at

1 this point to discuss the nature of that agreement.
2 And I'm -- I'm -- I'm hoping that the Judge understands
3 that I'm thinking that the statements by Mr. Lane are
4 somewhat outside the scope of the purposes for the
5 prehearing conference.

6 JUDGE JONES: Okay. The Commission's concern
7 is primarily whether Delta customers still have service
8 like they did before. If so, who's providing those
9 services? And how Delta's business is affected? Have
10 they lost customers? Has Delta lost customers as a
11 result of this? Is Delta continuing to lose customers,
12 actually?

13 MR. COMLEY: My understanding, Judge, is that
14 Southwestern Bell has not disconnected any of the su--
15 the customers that Delta Phones has as subscribers.
16 That's our understanding.

17 There is no -- my understanding from the
18 statements in the -- in the information I received from
19 this morning from Mr. Lock was that they can verify the
20 number of customers they have, because they don't have
21 access to the operational support fee -- the outside
22 support system, OSS.

23 And they need to have that in order to do --
24 to -- to make that verification.

25 JUDGE JONES: What would they be verifying

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1 if -- oh, how many customers they have?

2 MR. COMLEY: How many customers. And again,
3 my understanding is that without that OSS in place,
4 they cannot determine the exact amount of money that's
5 owed by those customers or the nature of the service
6 that they're receiving.

7 But they don't believe that any of the
8 customers have been disconnected from dial tone or from
9 access to 911. That was one of the questions the
10 Commission had.

11 That's a concern of the Company. If -- if
12 because of the nature of the Complaint, are those
13 customers gonna be disconnected? We've asked that that
14 part of the rule that has been cited in previous
15 Commission cases -- complaint cases be inserted in
16 the -- into the notice of complaint in this case so
17 that those customers are not gonna be affected because
18 of the -- of the nature of the complaint.

19 JUDGE JONES: So Delta is not wanting the
20 Commission to include that rule in an order to do
21 something retroactively? You're trying to prevent
22 Southwestern Bell from disconnecting the customers, or
23 are you trying to get them to reconnect Delta to the
24 electronic operating support system?

25 MR. COMLEY: No, I -- I think the -- the

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1 nature of the request is that -- the nature of the
2 complaint now is not going to constitute a cause for
3 discontinuance of service to those subscribers. That's
4 basically it.

5 No, there's no retroactive request on this.

6 JUDGE JONES: Okay. And, Mr. Lane, SWBT
7 hasn't disconnected any customers -- or the customers
8 are still getting service and paying Delta?

9 MR. LANE: We have not disconnected customers.
10 We have not disconnected Delta at this point, Your
11 Honor. The only customers that have been disconnected
12 are those that Delta tells us, we want you to
13 disconnect this customer.

14 But I -- I, again, have to correct it. The
15 access to the OSS system has nothing to do with Delta's
16 ability to know what customers it has, to bill those
17 customers and to collect for. It has nothing do with
18 that whatsoever.

19 JUDGE JONES: Okay. Let's see. And as far as
20 you know, Mr. Comley, is Delta still billing its
21 customers -- the customers it had prior to the
22 complaint here?

23 MR. COMLEY: My understanding is somehow bills
24 are being generated and they are being paid
25 voluntarily. That's what I understand. And my

1 understanding is that there is really no way to verify
2 that all of the bills are being sent out correctly,
3 so --

4 JUDGE JONES: Delta doesn't -- independent of
5 Southwestern Bell, Delta isn't able to know who its
6 customers are?

7 MR. COMLEY: Without the access to the OSS
8 there's no way of absolutely verifying all of the
9 customers. That's -- that's my understanding, Judge.

10 JUDGE JONES: Is that what you understand?

11 MR. LANE: No, Judge. I -- I -- I -- that is
12 completely wrong. The OSS system is only used for
13 Delta to order something from us.

14 If they want to re-sell service of ours to a
15 customer, they send us an electronic message saying,
16 connect this number at this address, and we work the
17 order for them.

18 But they do their own billing of their own
19 customers. We don't do any billing of theirs of their
20 own customers. Delta bills its own customers using its
21 own systems, whatever they are.

22 And with regard to those customers that they
23 serve via unbundled network elements, the OSS system
24 doesn't have anything to do with that. It -- we don't
25 know who their customers are when they're buying

1 unbundled network elements, they do.

2 When they're doing resale, they're the ones
3 that know -- they know who their customers are and they
4 bill them. It's not access to our systems that they
5 need to bill their customers. That's absurd.

6 There's nothing in the interconnection
7 agreement that pertains to that whatsoever. They do
8 their own billing, period.

9 The interconnection agreement that's on file
10 with this Commission describes what the OSS systems
11 are, what they do and how they're permitted to use them
12 and under what circumstances.

13 They're very thick, Your Honor. But you can
14 read through them. There's nothing to do whatsoever
15 with our doing billing on behalf of Delta Phones. We
16 do not do billing on behalf of Delta Phones.

17 JUDGE JONES: Okay.

18 MR. COMLEY: Maybe I can clear a few things
19 up. I think the purpose of the request was to make
20 sure that the subscribers that Delta Phones is serving
21 would not be con-- con-- disconnected by Southwestern
22 Bell because of the filing of this Complaint.

23 That's -- that's the basis for the request
24 irrespective of our differences about what the OSS
25 system can provide for each of us or whatever.

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1 MR. LANE: And, Your Honor, I'm -- I'm sorry.

2 MR. COMLEY: It's just -- that was requested
3 as it was allowed in two other complaint cases, as I
4 recall. And it was strictly to protect those
5 subscribers from having their service disconnected.

6 JUDGE JONES: And, Mr. Lane, as far as you
7 know, does Southwestern Bell intend to disconnect any
8 of the customers of Delta?

9 MR. LANE: Absolutely, Your Honor. At the
10 appropriate time we will. Let me go and explain a
11 little bit of that, because I don't think that's -- the
12 Commission has a full understanding of it.

13 As of July 30th of this year, Your Honor,
14 Delta Phones owes SBC \$1,323,806. They have not paid
15 anything to SBC on any of its bills that are given to
16 it each month since March the 20th -- almost
17 five months.

18 They do not dispute the entirety of the bill.
19 According to the Complaint, if you look in paragraph 7,
20 they claim the amount in dispute is \$554,969.34.
21 There's almost \$770,000 that's undisputed and unpaid.

22 And, Your Honor, it -- I'm gonna come back to
23 a point, but let me address the question of
24 disconnection for non-payment. We filed our brief and
25 we've explained why 4 CSR 240-33.110 is not applicable.

1 It's not applicable because, by its terms, it
2 only applies to alleged violations of specific rules in
3 Chapter 33.

4 They haven't alleged violation of any rule in
5 Chapter 33, nor can they because every one of those
6 rules, Your Honor, deals with residential customers.
7 It doesn't deal with a business customer or a wholesale
8 customer like Delta Phones.

9 Every single one, 33.040, billing and payment
10 standards for residential customers; 33.050, deposits
11 and guarantees of payment for residential customers;
12 33.060, residential customer fees; 33.070,
13 discontinuance of service to residential customers;
14 33.080, disputes by residential customers; 33.090,
15 settlement agreements with residential customers. That
16 rule doesn't apply to them.

17 Even if it did -- if 33.110 applied, the
18 definition of customers itself says it's an individual.
19 It doesn't extend to a business.

20 But if it were applicable here, it wouldn't
21 bar disconnection, because Delta Phones owes more
22 than -- almost two-and-a-half times to us the amount
23 they claim is in dispute. And under their
24 interconnection agreement, they're required to put
25 disputed amounts into escrow so that we're assured of

1 payment.

2 That's also the agreement that they reached
3 with us on March 21st that Your Honor referred to when
4 referencing paragraph -- either 7 or 18, I'm not sure
5 which, in the complaint.

6 Again, that agreement provided just as their
7 inter-- their interconnection agreement provided that
8 they would paid undisputed amounts, and that they would
9 pay any disputed amounts into escrow so that we'd be
10 assured of payment.

11 I understand the Commission's concern is,
12 well, what happens to the customers. So let me explain
13 what happens to the customers if they fail to pay.

14 Under the Commission's Snap-Back Rule, which
15 is 4 CSR 240-32.120, when a company goes out of
16 business or its service is disconnected, like Delta
17 Phones, any customer that they serve via resale of
18 Southwestern Bell's services continues for a period of
19 30 days.

20 We continue -- we, SBC Missouri, must continue
21 to provide service to those customers for 30 days.
22 Those customers are required to pay us, but we're
23 required to continue to provide them service.

24 Delta Phones is required to notify them, we're
25 required to notify them that their service continues.

1 The only customers whose service doesn't continue are
2 those that are served by unbundled network elements.

3 Mr. Comley told you they don't have any. I
4 disagree with that. But if that's their position, then
5 if they're disconnected under their view of the world,
6 no customer is harmed, because we would continue to
7 provide service to those that are done via resale.

8 But as I said to, Your Honor, that -- we don't
9 agree with them factually. In fact, they are serving
10 their customers via unbundled network elements. And if
11 the service is disconnected, then those customers
12 ultimately would be without service.

13 We don't know who they are. They know who
14 they are. They should notify them or they should make
15 arrangements un-- as they're supposed to under their
16 interconnection agreement, either to pay us or put the
17 money into escrow and they've done neither.

18 We've gone through this with Delta Phones in
19 several other states, Your Honor. They were ordered to
20 put money into escrow in Oklahoma. They failed to do
21 it. They dismissed their complaint.

22 They were ordered to put money into escrow in
23 Kansas. They failed to do it. They disconnected (sic)
24 their complaint.

25 The concern that we have here, Your Honor, is

1 that they're shifting customers away to an affiliated
2 com-- company called Easy Talk. And they're
3 transferring customers without their permission over to
4 Easy Talk.

5 We are concerned that that may be happening,
6 and we're not getting paid, and they're ultimately go
7 out of business and we're not gonna get paid.

8 That's -- those are additional issues that we
9 believe the Commission needs to be concerned about as
10 well.

11 JUDGE JONES: Okay. Mr. Anderson, what's
12 Staff's position on this?

13 MR. ANDERSON: Your Honor, Staff's position so
14 far has just been to listen to the evidence as its
15 presented. The Commission is basically saving the
16 Staff from -- from doing some data requests, although
17 we will probably have some forthcoming unless this
18 issue is resolved.

19 So really at this time we -- we don't hold any
20 position either for SBC or Delta Phones.

21 MR. LANE: Your Honor, if I may say, it --
22 it's my understanding that -- and maybe Staff can
23 address this -- that they've been receiving complaints
24 from other CLECs that customers that are trying to
25 transfer to them from Delta Phones are not being

1 permitted to do so because they're being transferred to
2 another company that's affiliated with Delta Phones.

3 And the Commission, I think, needs to be aware
4 of the complaints that it's receiving through its
5 Staff --

6 JUDGE JONES: Okay. And, Mr. Lane --

7 MR. LANE: -- as are we.

8 JUDGE JONES: -- I want to be sure I
9 understand you. If it's Southwestern Bell -- Bell's
10 position that if Delta doesn't pay what Southwestern
11 Bell believes Delta owes, then the customers who are
12 receiving un-- unbundled network elements will be
13 discontinued -- their service will be discontinued?

14 MR. LANE: Yes, Your Honor. All of Delta's
15 services would be discontinued. But those that they're
16 providing via resale of our service under the
17 Commission's Snap-Back Rule we would continue to
18 provide.

19 I suspect from the billing, that that's the
20 vast majority of their customer base, because there's
21 more billed for resale and more owed for resale than
22 there are for unbundled network elements.

23 But they are -- there is going to be some
24 group of customers who don't receive service at some
25 point when we cut off service just as any customer

1 that, you know, doesn't -- the supplier doesn't get
2 paid, the customer can't acquire the end -- end service
3 or good that they're trying to acquire.

4 That's a fact of life in the
5 telecommunications deal that some companies are
6 experiencing some financial difficulty, and customers
7 have gone through that. It's unfortunate, but it's
8 certainly not a reason and there's no rule that would
9 require us to continue to bear these extremely
10 substantial losses that are far in excess of any
11 amounts that are in dispute between the companies.

12 JUDGE JONES: Mr. Comley, anything else?

13 MR. COMLEY: Yes. Thank you, Judge. And I
14 have looked through the order setting the prehearing
15 conference today. Did not notice that the Commission
16 expected to have arguments on the merits of the various
17 responses and replies concerning our request to have
18 the notice amended.

19 But I want to point out to the Court that
20 irrespective of what Mr. Lane has said concerning
21 4 CSR 240-33.110, our reply to their response notes
22 that on two previous occasions the Commission has
23 included this particular language in its notices of
24 complaint. And there has not been any objection from
25 Southwestern Bell on complaints by CLECs.

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1 And we think that the Commission should take a
2 look at that. There is no justification in this case
3 for the Commission to make any alternate re-- alternate
4 reading of it. I think the Commission has already
5 determined that irrespective of the arguments that
6 Southwestern Bell has been lodging, it believes that
7 CLECs and their customers are protected by that rule in
8 some sense or the other.

9 It should be, nonetheless, inserted in this
10 notice. And I think for the time being, I'll leave
11 that.

12 As far as the disputes that are here,
13 Southwestern Bell has its -- its position that Delta
14 Phones undisputedly owes money to them. And our
15 position is that, well, we're not too sure about that.

16 There has to be some dispute here about how
17 they have levied these charges. And if they have done
18 so wrongfully, perhaps doubling the charges that are
19 there, that has had a serious impact on the way that we
20 service our own customers.

21 I think it would be a terrible result for the
22 competitive positions and policies of this state for
23 Southwestern Bell to engage in a pattern of conduct
24 that would allow it at some point to take over the
25 customers that Delta Phones has fought for. And that's

1 our position on this.

2 I don't think that the Commission should let
3 that fall by the wayside. We think that they should
4 not -- our dispute should be heard by the Commission
5 after all the facts are in, and -- and not at this
6 point.

7 I'm not in a position at this point to -- to
8 tell you all the facts and circumstances that will be
9 the part of the complaint.

10 Our purposes here today were to come before
11 you to say it's apparent that the -- that Southwestern
12 Bell will disconnect our customers. They will have a
13 way of reclaiming those customers.

14 That, I think, would be contrary to the spirit
15 of competition that we are intending by these
16 interconnection agreements in the Telecommunications
17 Act that was passed in 1996.

18 That shouldn't be permitted. So we would
19 request that the Commission go ahead and amend the
20 notice. Mr. Lane has already indicated that there is a
21 substantial threat that they will disconnect those
22 customers for the purposes of getting them themselves.

23 JUDGE JONES: Mr. Lane, why hasn't
24 Southwestern Bell already disconnected the
25 customers -- or disconnected Delta, I should say,

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1 from -- from the --

2 MR. LANE: Your Honor, we -- we're in the
3 process of doing that. And we entered into the
4 agreement with them on March 21st where they said, all
5 right, we'll get right with the world. We'll pay you
6 the undisputed amount. We'll put the disputed into
7 escrow. And on a going-forward basis we'll pay the
8 undisputed and we'll escrow the disputed. And they
9 have failed to do that.

10 So we didn't do it before, because we reached
11 this agreement which said you'd better do what you're
12 supposed to do under the interconnection agreement.
13 And they said, okay, we will.

14 They failed to do that. And so now we're in
15 the position of -- of increasing amounts that are owed
16 to us that are far, far in excess of even what they
17 claim is disputed, because they paid nothing in the
18 last five -- almost five months since this March 21st
19 agreement.

20 JUDGE JONES: Why in five months hasn't
21 Southwestern Bell disconnected?

22 MR. LANE: We tried to work with them for a
23 period of time, Your Honor. We don't disconnect
24 easily.

25 But we've reached a point where they haven't

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1 paid and it's obvious they're not gonna pay. We've
2 watched what they've done in other states when they
3 were ordered to put it into escrow. They failed to do
4 it in every other state.

5 And we're not in a position where we can
6 continue to carry this heavy burden for a company that
7 hasn't paid dime one since March 20th of this year.

8 And, Your Honor, as to the allegation that
9 we're trying to take their customers, let me say that
10 that is absurd. We'll take the customers back for the
11 30-day period that's required under the Snap-Back Rule
12 because that's the Commission's Order.

13 But if the Commission wants to waive that and
14 say, Southwestern Bell, don't take them back, I'll tell
15 you right now that's fine with us. We have no
16 interest.

17 We'll take those customers back only because
18 we're required to pursuant to the terms of the -- of
19 the Commission's rule. But if the Commission wants to
20 waive it, we won't serve them.

21 We're not trying to take their customers back.
22 We're trying to get paid. And they haven't paid for
23 five months.

24 MR. COMLEY: And I think if we're obligated to
25 pay Southwestern Bell, we'd like to do so in accord of

1 the terms of the agreement.

2 JUDGE JONES: Mr. Dandino, does Public Counsel
3 have anything to add?

4 MR. DANDINO: Yes, Your Honor. We don't want
5 the customer to be caught in the middle of all of this,
6 obviously. One of the things that the Snap-Back Rule
7 provides is that -- that in the event that a company
8 goes out of business or -- or that there's a -- a
9 problem with the service is that the company who has
10 the obligation of -- of the carrier of last resort, in
11 this case it'd be Southwestern Bell, would give the --
12 the -- or provide service to the customer for at least
13 30 days.

14 And then -- then the customer has to during
15 that 30 days make a selection, either go with
16 Southwestern Bell or pick another -- another
17 customer -- or another carrier. And that's kind of
18 where we're at now.

19 We certainly wouldn't want the Commission to
20 waive that 30 days, cuz we -- we do want the customer
21 to have that -- that period of time to make that
22 selection.

23 I think one of the problems now, and some of
24 the feedback we're getting, is that the customers are
25 getting confused because they are getting the letter

1 from Southwestern Bell that says that they have this
2 30 days.

3 And then when they're trying to switch, they
4 can't get the release of the line from Delta or from --
5 you know, they're having trouble switching to another
6 CLEC, and there's some -- there's some real problems.

7 And -- and I -- I think there's a -- you know,
8 the Commission needs to -- to discover exactly what the
9 facts are in this, and -- and make sure that the
10 customers can be able to -- to find an alternative CLEC
11 if they so desire.

12 And -- and -- and I -- I think -- and some of
13 the agents that -- for the Delta were surprised when
14 their -- when the -- when the -- when -- when their
15 customers received the letters from Southwestern Bell
16 that -- that they were now -- that they had the 30 days
17 to -- to switch over.

18 It is a very confusing situation. The
19 customers were -- were -- were confused. And this is
20 an unfortunate situation. I -- and I am hoping that
21 things can be resolved where the customers can -- can
22 find a -- you know, can find a -- some type of
23 stability when they had this confusion.

24 That's all I have. Thank you.

25 JUDGE JONES: Thank you.

1 Mr. Lane, has the customers been sent letters?

2 MR. LANE: Some have, Your Honor. There
3 was -- and I don't have the precise date. There was a
4 period of time where they were sent letters. And there
5 was a -- a failure on our part to identify the proper
6 address to most of them. So most of them didn't
7 receive the letter.

8 And we're in the process, Your Honor, of
9 making one final notification to Delta. And -- and
10 after that we would notify the customers, and then they
11 would have 30 days after that notification where they
12 would continue to receive service from us for that
13 period of time. And then they would have to select
14 another carrier.

15 JUDGE JONES: So some --

16 MR. LANE: We're gonna to re-issue it.

17 JUDGE JONES: Some customers have received the
18 letter that says they have 30 days to find someone
19 else?

20 MR. LANE: That was -- it was -- our
21 understanding, Your Honor, because -- and they are on
22 our part only about 10 percent of the Delta
23 customers -- or the resale customers, now, Your Honor,
24 received that notice.

25 And that was a while ago. I don't remember

1 the precise date. But we're gonna re-issue notice
2 before we get to the point of disconnecting all of
3 Delta's services from us.

4 JUDGE JONES: Does -- does Southwestern Bell
5 know if any of the customers who received that notice
6 have already switched?

7 MR. LANE: Well, as I -- as I mentioned to you
8 a minute ago, Your Honor, I mean, I think that's one of
9 the problems in this case is that there's some
10 potential slamming going on that needs to be
11 investigated.

12 Some of these customers are trying to switch
13 to carriers, and the carriers are being told that they
14 can't, because they've been switched to a third carrier
15 called Easy Talk, which is affiliated with Delta
16 Phones.

17 And so Delta Phones is -- apparently, Your
18 Honor, I mean, this needs to be investigated. But the
19 concern is that Delta Phones is agreeing with Easy Talk
20 to shift customers over to them, and those customers
21 then aren't being permitted to select the CLEC that
22 they really want to have to provide them service.

23 And I know Mr. Cecil has been getting calls
24 from CLECs complaining about this, and as we have been
25 getting calls from them.

1 So, yes, there's a serious concern about
2 customers not being able to choose the CLEC of their
3 choice to provide them service.

4 JUDGE JONES: And is there anything else from
5 anyone?

6 MR. COMLEY: I have not been advised of any of
7 the complaints that Mr. Lane is talking about on
8 slamming or otherwise. Again, the only complaint that
9 we've heard about is our competitor.

10 I have no -- I have no knowledge of any
11 customers doing so to the company itself or to any
12 other agency. So this is news to me.

13 JUDGE JONES: Well, I -- I will at this time,
14 since everyone's here, order a Staff investigation to
15 the complaint in general.

16 Mr. Anderson, do you have any idea when Staff
17 will be able to complete an -- that investigation?

18 MR. ANDERSON: Your Honor, if -- if Staff
19 could make a filing advising the Commission of that
20 before week's end of how much time we would need -- I
21 would need to check with --

22 JUDGE JONES: That'd be fine. How about we
23 make a week --

24 MR. ANDERSON: Okay.

25 JUDGE JONES: -- 'til next Tuesday?

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1 MR. COMLEY: And, Judge Jones, could you
2 clarify for me the issues that the Staff would be
3 investigating?

4 JUDGE JONES: The Complaint in general, not
5 just what we talked about today.

6 MR. COMLEY: All right.

7 JUDGE JONES: Okay. If no one has anything
8 else, then, we will conclude the prehearing conference.

9 I will say that because you all are here, I
10 don't know what benefit it might be, but maybe there's
11 some issues you all might be able to work out in the
12 complaint, since there's amounts in dispute and things
13 of that sort.

14 It's apparent that you all didn't come to --
15 come to the prehearing conference with the purpose of
16 trying to work it out, so -- but I just want to extend
17 that. And you all have the use of this room as long as
18 you like, for the rest of the day.

19 Okay. And we'll go off the record.

20 WHEREUPON, the on-the-record portion of the
21 prehearing conference was concluded.

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