

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.)	

COMPLAINANT’S SUGGESTIONS IN OPPOSITION TO SBC’S
MOTION TO MODIFY
ORDER REGARDING COMPLAINT

Comes now Complainant, Delta Phones, Inc. (“DPI”), by its attorneys Newman, Comley & Ruth P.C., and suggests that Respondent’s motion to modify the Commission’s Order Regarding Complaint issued August 19, 2003 should be denied. In support thereof, DPI submits the following to the Commission:

1. On August 19, 2003, Southwestern Bell Telephone Company L.P. (SBC) was ordered by the Commission not to disconnect Delta Phones, Inc., (DPI) from Southwestern Bell facilities. The Commission entered the order to better protect the interest of those customers who might be harmed as a result of this complaint. SBC now seeks to shed this order of the Commission on grounds that it is contrary to the Interconnection Agreement and exposes it to financial harm. DPI submits that these are insufficient grounds upon which to modify the Commission’s order. SBC’s motion should be denied.

2. DPI’s complaint against SBC outlines a serious number of errors in SBC’s billing systems and records, all of which account for inflated and excessive charges which DPI

justifiably contests before this Commission. These charges were levied under SBC's interpretation of the interconnection agreement and so far have not been supported by competent and auditable records. Just as DPI must accept the burdens of the interconnection agreement, it and its customers are deserving of its benefits, which DPI contends have been withheld to its prejudice and hence to the prejudice of its customers. Under the supervision of this Commission, within the parameters of the complaint proceedings afforded by law, DPI has asked for these billing disputes to be favorably resolved. Until that is done, DPI's customers are entitled to the protection of the Commission's order, notwithstanding provisions in the interconnection agreement on deposits, escrows and the computation of disputed or undisputed amounts owed between the parties.

3. SBC attached the affidavit of Gert Andersen in support of its claims of what DPI owes for service. The affidavit is worthless as evidence in that it is the rankest of hearsay.¹ No foundation has been laid for Ms. Anderson's testimony and as a consequence there is no proof of the financial effects the Commission's order may have on SBC. Even presuming that the figures in the Andersen affidavit are accurate, which DPI still disputes, they hardly amount to a significant financial impact on a company of the size and dimension of SBC. By comparison, the figure DPI contends is in dispute is highly significant to a company the size of DPI.

4. In support of its motion, SBC listed complaints DPI has filed against it in other jurisdictions and renders opinions about why DPI has taken certain actions in each. These other complaint cases are questionably relevant to the instant one in the first place and moreover, are not connected to the reasons why SBC seeks to modify the Commission's order. To the extent

¹ To be worthy of any consideration, the testimony in the Andersen affidavit must comply with the requirements of Sections 490.660 – 490.680 RSMo 2000. It does not, and should be disregarded for any purpose.

the Commission finds these other complaint cases of interest, DPI has prepared this further response.

5. DPI engages in a prudent business practice of reviewing its bills for service and paying those that it can verify. SBC engages in a practice of inaccurately billing its customers. This is not restricted to DPI nor is it restricted to SBC billing operations for the state of Missouri. As testified to by Mr. Fallean Mintz in the attached affidavit, 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, Indiana, Michigan, Ohio and Wisconsin, based upon the failures in SBC's billing systems, which render them incapable of producing accurate, auditable bills. There is nothing in the interconnection agreement that allows SBC to haphazardly bill its customers, refuse to accept responsibility for the inaccuracies, and then have the benefit of those inaccuracies in computing what is owed. The inefficiency and inaccuracy of SBC's billing system are the dominant focus of DPI's complaints here and in other jurisdictions.

6. DPI has filed complaints against SBC in Oklahoma, Kansas, Arkansas and Texas. Regarding the complaints in Oklahoma and Kansas, those complaints were dismissed because in DPI's estimation, the benefits of pursuing its dispute with SBC before the respective state commissions were outweighed by the attendant costs. See Mintz affidavit.

7. DPI's complaints against SBC in Arkansas and Texas are still pending. SBC claims that in Arkansas DPI was ordered to pay all undisputed amounts into escrow by dates

certain, and has failed to comply with that order.² To the contrary, DPI is not under any current order to pay amounts into escrow in either Arkansas or Texas. An order to that effect was entered by the Arkansas Commission but both SBC and DPI have requested modification and clarification of the Commission's order, due to disagreements as to the amount that should be paid and the timing of the payments. DPI is also seeking a rehearing of that order. Moreover, pursuant to a portion of that order, DPI has paid SBC two \$50,000 installments. In Texas, an order directing DPI to make a payment to SBC has been stayed at DPI's request until September 18, 2003, when the full Commission will discuss and review the order. DPI has asserted irregularities in the order.

8. In paragraph 7 of its motion, SBC refers to published reports about DPI and its complaints against Bell South in Tennessee and in Kentucky. Again, in this proceeding the relevance of DPI's relationship to Bell South is highly questionable. Nonetheless, --and without going into detail as to what SBC has raised regarding these states,-- as explained by Mr. Mintz in his affidavit, the complaint proceeding in Kentucky may be refiled, and in Tennessee, the costs of continuing the complaint against Bell South, and in fact, continuing in business in that state, were not justified in view of the low number of customers served by the company in that jurisdiction. Mintz affidavit.

9. Starting at paragraph 9 of its motion, SBC attempts to try the complaint case on paper without the benefit of hearing. Five or more pages of its motion are devoted to why SBC disagrees with DPI's complaint. All of this is premature for there is no true record to support the

² SBC attached the affidavit of Jerry W. Gilmore in support of its discussion about activities in adjoining SBC states. Regarding the orders of the Arkansas and Texas Commission, DPI suggests that these speak for themselves, as does the remainder of the pleadings pending in those cases, and need no interpretation from Mr. Gilmore. In any event, his statements are refuted by the affidavit of Falleen Mintz attached to these suggestions.

arguments of this part of SBC's pleading. Furthermore, the discussion lacks any connection to the arguments SBC makes for modifying the Commission's Order Regarding Complaint.

10. DPI will not address all the reasons why the relief in its complaint should be entered. For the sake of brevity, DPI directs the Commission to the attached affidavit of Mr. Mintz, who supplies the factual background for much of the complaint, specifically, the ongoing billing disputes, DPI's entitlement to the Ameritech merger discounts, and the revenue shortfall caused by SBC's unexplained loss of a number of DPI's carrier access billing records.

CONCLUSION

On the basis of the above and foregoing, the Commission should deny SBC's motion to modify the Commission's Order Regarding Complaint.

Respectfully submitted,

NEWMAN, COMLEY & RUTH P.C.

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 5th day of September, 2003, to General Counsel's Office at gencounsel@psc.state.mo.us; Office of Public Counsel at opcservice@ded.state.mo.us; and Anthony K. Conroy, Southwestern Bell Telephone Company, at anthony.conroy@sbc.com.

/s/ Mark W. Comley