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August 11, 2003

FILED³

AUG 11 2003

**Missouri Public
Service Commission**

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

Re: Delta Phones, Inc. v. Southwestern Bell Telephone Company, L.P.,
d/b/a Southwestern Bell Telephone Company SBC Missouri
Case No. TC-2004-0064

Dear Judge Roberts:

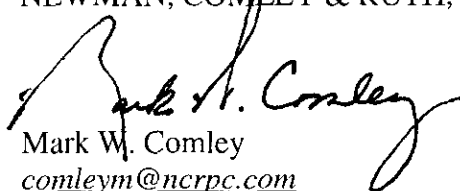
Enclosed for filing in the above-referenced matter please find the original and five copies of Delta Phones, Inc.'s Reply to SBC Missouri's Response in Opposition to Motion for Issuance of Amended Notice of Complaint.

Should you have any questions regarding this filing, please contact me. Thank you.

Yours truly,

NEWMAN, COMLEY & RUTH, P.C.

By:


Mark W. Comley
comleym@ncrpc.com

MWC:tgg

Enclosures

cc: Office of Public Counsel
General Counsel's Office
Paul G. Lane
Robert Lock

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

AUG 11 2003

Missouri Public
Service Commission

DELTA PHONES, INC.,
Complainant,

v.

Case No. TC-2004-0064

SOUTHWESTERN BELL

TELEPHONE COMPANY, L.P., d/b/a
SOUTHWESTERN BELL TELEPHONE
COMPANY,

Respondent

**DELTA PHONES, INC.'S REPLY TO SBC MISSOURI'S
RESPONSE IN OPPOSITION TO MOTION FOR ISSUANCE
OF AMENDED NOTICE OF COMPLAINT**

COMES NOW Complainant Delta Phones, Inc. (hereinafter "Delta Phones"), by and through its attorneys of record, and for its Reply to SBC Missouri's Response in Opposition to Motion for Issuance of Amended Notice of Complaint states the following to the Missouri Public Service Commission (hereinafter the "Commission"):

1. In its response to Delta Phones' Motion for Issuance of Amended Notice of Complaint (hereinafter "the response"), Southwestern Bell Telephone L.P., d/b/a SBC Missouri (hereinafter "SBC"), SBC argues that the Commission should not issue an amended notice of complaint because Delta did not seek any immediate relief or ask the Commission to act on an expedited basis regarding the billing disputes it alleges in its complaint. Delta Phones did not seek any immediate relief or ask the Commission to act on an expedited basis related to the issues in its complaint because the Commission has previously denied such requests for relief to other CLECs. Specifically, when

Nuvox Communications of Missouri, Inc. (hereinafter "Nuvox") requested expedited relief in a motion related to a complaint it filed against SBC on April 14, 2003, Case No. XC-2003-0421, regarding issues related to collocation services, the Commission denied the motion. In a notice regarding Nuvox's request for expedited orders, the Commission stated that it would not grant Nuvox relief on an expedited basis without hearing from SBC. However, in the same notice, the Commission also directed that SBC could not terminate Nuvox's collocation services on the basis of Nuvox not paying disputed charges to SBC for the same since the issue was part of the subject matter of the underlying complaint. The Commission relied upon 4 CSR 240-33.110 stating that the rule "appears to prohibit SBC Missouri from refusing to process new requests for collocation on the basis of the issues that are the subject matter of this complaint."

2. In the response, SBC also contends that the Commission should deny Delta Phones' request for an amended notice of complaint because 4 CSR 240-33.110 is not applicable to its complaint. By so contending, SBC fails to recognize that the Commission has already determined otherwise in at least two other previous complaint matters involving CLEC's and SBC. In *Nuvox Communications of Missouri, Inc. v. SBC*, Case No. XC-2003-0421, the Commission's notice of complaint included the following language in bold font:

Pursuant to 4 CSR 240-33.110, pending the resolution of this complaint, Respondent shall not discontinue service to Complainant on the basis of the issues that are the subject matter of this complaint.

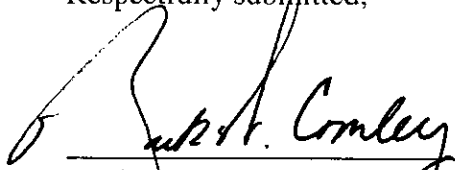
Likewise, in *XO Missouri, Inc V.S.B.C.*, Case No. LC-2003-0570, regarding overcharges for power under SBC's collocation tariff, the Commission issued a notice of complaint including this same provision, again in bold font. As established by these previously issued notices of complaint, the Commission has interpreted 4 CSR 240-33.110 to include complaints brought by CLEC's and should

interpret it in the same manner here to preclude SBC from discontinuing services to Delta Phones on the basis of issues that are subject matter of this complaint.

3. Furthermore, in both of the above matters wherein the Commission issued notices stating that SBC was precluded from discontinuing services that were the subject of the complaints, SBC did not file any objection to the Commission's application of 4 CSR 240-33.110 to the CLECs' complaints against it. Due to SBC's failure to object in both of these prior proceedings, and the Commission's previous interpretation of 4 CSR 240-33.110 to apply to complaints brought by CLECs, Delta Phones submits that SBC has waived its argument herein. There is no justification for the Commission to now determine that 4 SR 240-33.110 does not apply to such complaints.

WHEREFORE, Delta Phones, Inc. respectfully requests the Commission to enter an amended Notice of Complaint specifically including the directive, "pursuant to 4 CSR 240-33.110, pending the resolution of this complaint, Respondent shall not discontinue service to Complainant on the basis of the issues that are the subject matter of this complaint."

Respectfully submitted,



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Attorneys for Delta Phones, Inc.

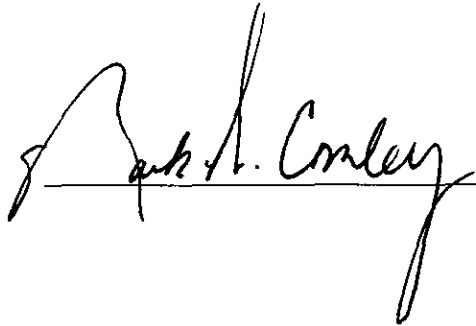
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via facsimile, or hand delivered, on this 1st day of August, 2003, to:

Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

General Counsel's Office
P.O. Box 360
Jefferson City, MO 65102

Anthony K. Conroy
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101
Fax: 314-247-0014



A handwritten signature in cursive script, reading "Anthony K. Conroy", is written over a horizontal line.