

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Prehearing Conference
8 October 15, 2003
9 Jefferson City, Missouri
Volume 1
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11 Delta Phones, Inc.,)
12 Complainant,)
13 v.) Case No. TC-2004-0064
14 Southwestern Bell Telephone, L.P.,)
d/b/a Southwestern Bell Telephone)
15 Company.)
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18 KENNARD L. JONES, Presiding,
REGULATORY LAW JUDGE.
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23 REPORTED BY:
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1 P R O C E E D I N G S

2 JUDGE JONES: This is Case No. TC-2004-0064,
3 Delta Phones, Incorporated vs. Southwestern Bell Telephone
4 Company, L.P., doing business as Southwestern Bell Telephone
5 Company.

6 My name is Kennard Jones, and I'm the
7 presiding judge over this matter. And if those of you
8 present would please stand and introduce yourselves, I'd
9 appreciate it. Mr. Poston.

10 MR. POSTON: Marc Poston appearing for the
11 Staff of the Missouri Public Service Commission.

12 MR. COMLEY: Mark W. Comley appearing on
13 behalf of Delta Phones, Inc.

14 MR. GRYZMALA: Good morning, your Honor. I'm
15 Bob Gryzmala appearing on behalf of Southwestern Bell
16 Telephone Company, L.P.

17 JUDGE JONES: Thank you.

18 Normally prehearing conferences are set to try
19 to facilitate some sort of settlement between the parties.
20 That apparently won't happen in this case. So my -- I have
21 several primary concerns. One is that we set a procedural
22 schedule with direct testimonies and evidentiary hearing
23 dates.

24 Another of my concerns is Staff's Data
25 Requests to Delta Phones during Staff's investigation in

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1 this matter. And thirdly, I'm concerned with the
2 determination of disputed and undisputed amounts that are at
3 issue in the matter, and from what I understand,
4 Southwestern Bell's not having been paid at all for services
5 since March, this is what they allege, and we'll discuss
6 that further today.

7 So when we're done here today, I'd like for
8 you-all to get together and establish a procedural schedule
9 so that we can move towards a hearing if it's necessary. I
10 don't know, but I'd like to at least have that in mind.

11 And I'm going to ask Mr. Poston, has Delta
12 complied with Staff's Data Requests?

13 MR. POSTON: Delta has complied with all but
14 three Data Requests. Data Request 2, 9 and 14 have not been
15 answered.

16 JUDGE JONES: And Mr. Comley, is there a
17 reason why 2, 9 and 14 haven't been answered?

18 MR. COMLEY: Judge, all I can tell the court
19 is that at this time I do not know when or if ever those
20 Data Requests will be responded to.

21 JUDGE JONES: Is there a reason why they won't
22 or --

23 MR. COMLEY: I have no information on that.

24 JUDGE JONES: It doesn't appear in the record
25 that anything's been filed in opposition to those requests.

1 MR. COMLEY: That is exactly right.

2 JUDGE JONES: Do you oppose them?

3 MR. COMLEY: I don't oppose them, no.

4 JUDGE JONES: Not you personally, but does
5 Delta oppose them?

6 MR. COMLEY: As far as I know, they do not, it
7 does not.

8 JUDGE JONES: You don't know why they haven't
9 responded or if they will?

10 MR. COMLEY: I have no idea.

11 JUDGE JONES: Mr. Poston, what's Staff's
12 position on those Data Requests? It doesn't seem like
13 you're going to get that information. How does Staff feel
14 about that?

15 MR. COMLEY: I've discussed this over with
16 Staff. In the event we don't get these Data Requests, we
17 would move to dismiss this complaint for failure to be able
18 to investigate and confirm or -- to confirm the allegations
19 made in the complaint. We can't investigate without answers
20 to those Data Requests.

21 JUDGE JONES: Okay. There were 16 Data
22 Requests made. It sounds like 13 have been satisfactorily
23 answered. Correct me if I'm wrong, but my initial purpose
24 in wanting Staff to investigate this matter was to determine
25 what amounts were owed Southwestern Bell and what amounts

1 have been paid. Is Staff unable to complete that goal
2 without Data Requests 2, 9 and 14?

3 MR. POSTON: Can you give me a minute to
4 confer?

5 JUDGE JONES: Sure.

6 MR. DANDINO: Your Honor, while they're
7 conferring, can I enter my appearance?

8 JUDGE JONES: If Public Counsel would like to
9 enter their appearance.

10 MR. DANDINO: Good morning, your Honor.
11 Michael Dandino, Office of the Public Counsel, Post Office
12 Box 7800, Jefferson City, Missouri 65102, representing the
13 Office of the Public Counsel and the Public. I apologize,
14 your Honor, for my lateness.

15 MR. POSTON: Your Honor, the Data Requests 2,
16 9 and 14 are not meant to answer the question what amounts
17 are owed and what amounts are not in dispute, what amounts
18 are in dispute.

19 JUDGE JONES: Okay. What do those Data
20 Requests address?

21 MR. POSTON: We specifically listed them in
22 our filing. We have sent subsequent Data Requests that are
23 follow-ups to the initial set trying to pin down the amounts
24 that you're asking about, but the 2, 9 and 14 --

25 JUDGE JONES: I see in the pleading, in the

1 motion that you filed there is a Data Request 2 under
2 paragraph 6. There is a Data Request 9 and 14. Are those
3 the same Data Requests that you are now referring to?

4 MR. POSTON: Right.

5 JUDGE JONES: I'll just take notice of those.

6 Now, Mr. Comley, Southwestern Bell has stated
7 that no amounts have been paid for their services since
8 March of this year. Is that true?

9 MR. COMLEY: I do not know the answer to that,
10 Judge. I have not been given information that refutes that,
11 but I do not know whether it is true.

12 JUDGE JONES: Do you know if any amounts have
13 been paid at all? Do you know anything about what has been
14 paid to Southwestern Bell?

15 MR. COMLEY: I know what we have responded to
16 in the Data Requests about the amounts that are in dispute
17 and not in dispute. That is the extent of my knowledge.

18 JUDGE JONES: Okay.

19 MR. COMLEY: And it is based entirely upon
20 what the witnesses who have responded to the Data Requests
21 have advised me. I have done no independent inquiry about
22 any of this.

23 JUDGE JONES: Okay. Looking at this
24 complainant's statement of disputed and undisputed charges,
25 it appears that the total undisputed amount is \$70,818.07.

1 However, from the complaint filed in July 2003, I gather an
2 undisputed amount of \$208,760.

3 MR. COMLEY: The witness who prepared that
4 schedule will have to explain the discrepancy between those
5 two numbers.

6 JUDGE JONES: So someone else prepared these
7 numbers and you put them in the form of a pleading and
8 submitted them?

9 MR. COMLEY: Exactly.

10 JUDGE JONES: Okay. Well, Delta -- although
11 Delta has partially complied with Data Requests, they
12 haven't fully complied with Data Requests and it doesn't
13 sound like they want to.

14 Also, it appears that Delta hasn't paid any
15 money to Southwestern Bell, and if they have, they certainly
16 haven't paid the amount that's due with regard to the
17 services that have been provided.

18 Mr. Comley, is there any reason the Commission
19 shouldn't dismiss this complaint?

20 MR. COMLEY: Judge, I'm not going to be in a
21 position of arguing about that matter right now.

22 JUDGE JONES: Okay. Well, beyond that, I have
23 nothing further. Does anyone have anything else they'd like
24 to add?

25 MR. GRYZMALA: Your Honor, I would like to

1 make a comment.

2 JUDGE JONES: Yes, you may, Mr. Gryzmala.

3 MR. GRYZMALA: I would like to take a moment
4 to confirm a couple of questions, the answers to questions
5 that your Honor asked.

6 My information is that currently approximately
7 \$1.6 million are owed to SBC by Delta Phones, of which about
8 \$1.5 million is past due. My client has confirmed, has
9 authorized me to represent to the court that the only
10 payment -- rather the last payment made was as was reflected
11 in the pleadings earlier, about \$154,000 on March 25th,
12 2003.

13 From my review of the pleading file, there is
14 an allegation very early on that about \$554,000, I believe,
15 was in dispute under Delta's version of events. That
16 leaves, given the math, about \$1 million not in dispute.

17 I don't want to belabor the point, your Honor,
18 but my client, SBC Missouri, needs to have a prompt and firm
19 recommendation to the Commission to revisit its August 19
20 order not to disconnect service. Prompt because time has
21 passed without any payment whatsoever. Whether the
22 undisputed amount be \$1 million, \$200,000 or \$70,000,
23 nothing has been paid.

24 Firm because, with all due respect to opposing
25 counsel, his client has effectively thumbed its nose at the

1 interconnection agreement which this Commission well knows
2 contains Section 9.3 which has to do with the escrow
3 provisions, the payment of disputed -- or rather undisputed
4 amounts, the remainder being placed into an appropriate
5 escrow arrangement strikes a fair balance.

6 The Commission approved that, and Delta has
7 thumbed its nose at it. That's why it needs to be firm.
8 It's thumbed its nose at the Staff's DRs. It's thumbed its
9 nose at every turn, betting that no action will be taken,
10 but yet it needs to be taken, your Honor.

11 We have generated discovery in response to the
12 discussion in the prehearing -- order setting prehearing
13 conference order. We generated DRs, Data Requests yesterday
14 to Delta Phones, to update you on that status.

15 But at this point we request one of two
16 things, either a very prompt hearing, an immediate hearing,
17 which may be difficult given, as I understand it, the
18 availability of suitable hearing rooms, or an Order from the
19 Commission that effectively turns around its August 19 Order
20 and conditions -- conditions continued service to Delta by
21 SBC Missouri upon Delta's payment of the undisputed amounts
22 owed SBC and its escrow within three days from the date of
23 the Commission's Order directing same, that is the escrow of
24 the disputed amounts.

25 Your Honor, I don't want to take much more

1 time, but something needs to be done. I don't mean to
2 suggest that other states dictate what the State of Missouri
3 does, but the Commission can take notice of what we said in
4 our pleadings and our files about what the states of Kansas,
5 Oklahoma, Texas, Arkansas, Kentucky, I believe North
6 Carolina was just referred to in last Friday's filing. We
7 must do something.

8 I am concerned, my client is concerned that we
9 are not going to be able to arrange a suitable hearing date
10 on an immediate basis, so that we again are pleading for an
11 Order that turns around the August 19 Order in the limited
12 sense of conditioning further service based upon what I
13 outlined earlier, prompt payment, prompt compliance with the
14 interconnection agreement that this Commission approved.

15 That's all I would have, your Honor.

16 JUDGE JONES: Thank you, Mr. Gryzmala. Is
17 there anything from anyone else?

18 MR. COMLEY: Your Honor, just a brief
19 response. I know that you have listened to the arguments of
20 the parties about how the disputed amounts between us have
21 been calculated. I'd remind the court that we have really
22 the unverified statements of the company with respect to
23 what they consider to be disputed amounts based upon records
24 which allegedly have not been verifiable by Delta. I know
25 we've gone in circles about that.

1 I will repeat that at this stage I have very
2 little information to provide in answer to the Commission's
3 questions about the discrepancies between the amounts that
4 are in dispute and the amounts that are stated in the
5 pleadings that have been filed so far, and I do not know
6 whether or not the Data Requests will be responded to on a
7 timely basis if at all. And that's how I can explain those
8 things.

9 At the same time, I think that Delta Phones'
10 position has been that they do not have verifiable
11 information from Southwestern Bell upon which to base a
12 reasoned judgment about what is owed. And that has been, I
13 think, the controversy between the parties and it's still a
14 controversy between them.

15 JUDGE JONES: Thank you, Mr. Comley.
16 Mr. Poston?

17 MR. POSTON: Nothing.

18 JUDGE JONES: Mr. Dandino?

19 MR. DANDINO: I have nothing, your Honor.

20 JUDGE JONES: With that, then, I will leave
21 you-all to figure out a procedural schedule. I'm sure
22 you'll hear from the Commission soon. Thank you.

23 WHEREUPON, the recorded portion of the
24 prehearing conference was concluded.

25