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Kansas Corporation Commission  
/s/ Susan K. Duffe

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Brian J. Moline, Chair  
John Wine  
Robert E. Krehbiel

In the Matter of the Complaint of Delta )  
Phones, Inc., Complainant, v. Southwestern ) Docket No. 04-SWBT-013-COM  
Bell Telephone Company, Respondent. )

**ORDER 5: ORDERING DELTA TO CEASE OPERATIONS  
IN SWBT EXCHANGES AND REQUIRING A PRESS  
RELEASE BEFORE SWBT DISCONNECTS DELTA'S UNE-P CUSTOMERS**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and being fully advised of all matters of record, the Commission summarizes the arguments of the parties and concludes as follows:

1 On July 7, 2003, Delta Phones, Inc. (Delta) initiated this proceeding by filing a Complaint and Petition for Expedited Relief against Southwestern Bell Telephone Company (SWBT). To serve its customers, Delta primarily resells services from SWBT and also uses SWBT's unbundled network elements (UNE) in a UNE-platform (UNE-P) arrangement. Delta set out nine counts against SWBT that primarily involved incorrect billing, lack of access to billing records, improper customer contact, invalid charges, and unreliable and inconsistent provisioning of service.

2. An emergency prehearing conference was conducted on July 23, 2003, to address allegations needing expedited action, to establish a procedural schedule, and to discuss other

appropriate matters. The Commission issued an Order on July 25, 2003, that required Delta to place the amount it owed SWBT into an escrow account by August 6, 2003. The Order made additional emergency rulings to enable Delta to continue operating its business while this complaint was pending. In light of the amount Delta owed SWBT for undisputed charges, the Commission ordered Delta to develop the information required in K.A.R. 82-13-2 on its UNE-P customer accounts and to provide that information to the Commission and SWBT on the next business day after Delta failed to make a scheduled escrow payment. Finally, the Order established a procedural schedule that required Delta to file Direct Testimony by noon on August 22, 2003, and set an evidentiary hearing for September 23 and 24, 2003.

On August 8, 2003, SWBT filed a Motion to Compel Delta to comply with the Commission's Order 2 or to Show Cause why Delta's Certificate of Convenience and Necessity should not be revoked for failure to comply with the Commission's Order 2. SWBT noted Delta failed to make the escrow payment required in Order 2 and explained SWBT's efforts to obtain Delta's UNE-P customer information. SWBT advised the Commission that when Delta failed to make the August 6, 2003 escrow payment, SWBT suspended Delta's provisioning capabilities and began the formal disconnection process in accordance with K.A.R. 82-13-2. SWBT argued that Delta's UNE-P customers will suffer irreparable harm because, without the UNE-P customer account information, no notification can be provided to the UNE-P customers. As a result, these customers are subject to be disconnected without any prior notice. Furthermore, SWBT argued it faces irreparable harm by not being compensated in accordance with its Interconnection Agreement with Delta for the services it is currently providing.

4. On August 11, 2003, Delta filed a Motion asking the Commission to dismiss its complaint against SWBT. SWBT filed a response to this motion on August 14, 2003, pointing out

Delta did not make a payment to fund an escrow account and had not provided the information on its UNE-P customer accounts to SWBT or the Commission.

5. Delta responded to SWBT's Motion to Compel or Show Cause on August 21, 2003. Delta argued that nothing in K.A.R. 82-13-2 required it to submit its UNE-P customer account information to the incumbent LEC. Delta explained that it never intended to disconnect service from its customers and that SWBT had taken that action unilaterally.

6. SWBT filed a reply to Delta's response on August 26, 2003, noting that it was relying upon the requirements this Commission set out in Order 2, which referred to the information required by K.A.R. 82-13-2, in demanding Delta's UNE-P customer account information. SWBT explained that it has technical circuit identification information for Delta's UNE-P customer accounts but not the names or exact addresses of Delta's retail customers. SWBT asked the Commission to order Delta to provide the UNE-P customer account information within 24 hours of the issuance of the order, require Delta to show cause why its certificate should not be revoked, and investigate whether Delta has the financial ability and technical expertise to operate in Kansas.

7. Commission staff (Staff) filed a reply to Delta's response on August 27, 2003, supporting SWBT's motion to compel. Staff pointed out Delta offered no explanation of how it expects to continue providing service through SWBT's facilities without paying for services Delta has used and will use in the future. Also, Staff noted Delta was ordered to provide subscriber information for UNE-P customers to ensure those customers will not lose service without notice. Staff agreed with SWBT that the Commission should direct Delta to immediately provide Staff and SWBT with all information necessary to identify and send notice to Delta's Kansas UNE-P customers.

8. On September 12, 2003, the Commission issued Order 4. The Commission denied Delta's motion to dismiss the complaint. The Commission ordered Delta to provide its UNE-P customer account information to the Commission and SWBT within two business days of the date of the order. Delta was directed to provide the information outlined in K.A.R. 82-13-2 regarding each of its UNE-P customers. The Commission stated that if Delta did not have the detailed information, Delta was to provide whatever account information it had for each UNE-P customer.

9. In Order 4, the Commission stated its concern about Delta's apparent inability to pay for services provided by SWBT and the possible harm to Delta's customers because of the refusal to provide the UNE-P account information as directed in Order 2. The Commission ordered Delta to show cause within ten business days of the date of the order why its Certificate of Convenience and Necessity should not be revoked.

10. This Commission has jurisdiction over the parties and the subject matter of this docket pursuant to K.S.A. 66-1,188, K.S.A. 66-1,192, and K.A.R. 82-1-219.

### **FINDINGS AND CONCLUSIONS**

11 Delta has not provided any UNE-P account information. Delta's failure to supply the ordered information means that some Delta customers that have been receiving services through a UNE-P arrangement will have their service disconnected without receiving advance written notice.

12. The Commission concludes it is necessary to alert Delta's UNE-P customers through a press release prior to the date SWBT terminates service. SWBT is directed to work with Staff to prepare a press release to be released by the Commission's Public Affairs division as soon as possible after issuance of this order. It is the Commission's understanding that SWBT may be able to identify the exchanges where Delta's UNE-P customers are located. If correct, the press release

need only be sent to the print media outlets that serve those exchanges. Otherwise, Staff is directed to determine the appropriate distribution of the press release.

13. The press release shall inform Delta's UNE-P customers that they must make arrangements with another service provider in order to avoid disruption of their telephone service. SWBT is authorized to disconnect those circuits providing service to Delta's UNE-P customers no sooner than October 20, 2003. Delta is ordered to cease any and all telephone operations in exchanges served by SWBT.

14. Delta provides service in Sprint/United's territories pursuant to an interconnection agreement approved in Docket No. 02-UTDT-645-IAT. Delta is hereby ordered to cease adding customers in Sprint/United's territories.

15. Delta is responsible for all reasonable expenses that have been or will be incurred by SWBT for providing written notice to customers served through a resale arrangement.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Commission Staff is directed to work with SWBT to prepare a press release to be released as soon as possible. The press release shall contain information consistent with paragraphs 12 and 13 above.

SWBT is authorized to disconnect those circuits providing service to Delta Phones, Inc.'s UNE-P customers no sooner than October 20, 2003.

(C) Delta is ordered to cease operations in SWBT exchanges

(D) Delta is ordered to cease adding customers in Sprint/United exchanges.

Delta is responsible for all reasonable expenses that have been or will be incurred by SWBT for providing written notice to customers served through a resale arrangement.

(F) This Order will be served by facsimile. A party has fifteen days from the date of an Order in which to petition the Commission for reconsideration of any final agency action. K.S.A. 66-118b; K.S.A. 2002 Supp. 77-529(a)(1).

(G) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Wine, Com.; Krehbiel, Com.

Dated: OCT 03 2003

ORDER MAILED

OCT 03 2003

 Executive  
Director

Susan K. Duffy  
Executive Director

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