

PUC DOCKET NO. 28041

COMPLAINT OF DELTA PHONES, INC., §  
FOR POST-INTERCONNECTION §  
AGREEMENT DISPUTE RESOLUTION, §  
REQUEST FOR EXPEDITED RULING, §  
AND REQUEST FOR INTERIM RULING §  
AGAINST SOUTHWESTERN BELL §  
TELEPHONE, L.P. §

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PUBLIC UTILITY COMMISSION  
OF TEXAS

### ORDER APPROVING ARBITRATION AWARD

Pursuant to the discussion at the September 18, 2003 Open Meeting, this Order approves, without modification, the Corrected Arbitration Award (Award) issued in this proceeding.<sup>1</sup>

#### I. Jurisdiction

The Telecommunications Act of 1996 (FTA)<sup>2</sup> authorizes state commissions to arbitrate open issues between an incumbent local exchange carrier (ILEC) and a requesting telecommunications carrier.<sup>3</sup> The FTA also grants state commissions authority to approve or reject interconnection agreements adopted by negotiation or arbitration.<sup>4</sup> The FTA's authorization to approve or reject these interconnection agreements carries with it the authority to interpret and enforce the provisions of agreements that state commissions have approved.<sup>5</sup> The Public Utility Commission of Texas (Commission) is a state commission responsible for approving interconnection agreements pursuant to the FTA.

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<sup>1</sup> The Arbitration Award was issued on August 15, 2003. The corrected Arbitration Award was issued later that day to cure inadvertent, non-substantive errors.

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151 *et seq.*).

<sup>3</sup> 47 U.S.C. § 252(b).

<sup>4</sup> 47 U.S.C. § 252(e).

<sup>5</sup> *BellSouth Telecomm., Inc. v. MCIMetro Access Transmission Services, Inc.*, 317 F.3d 1270, 1274-1276 (11th Cir. 2003); *Southwestern Bell Tel. Co. v. Public Util. Comm'n of Tex.*, 208 F.3d 475, 479-480 (5th Cir. 2000); *see also Michigan Bell Tel. Co. v. MCIMetro Access Transmission Services, Inc.*, 323 F.3d 348, 356 (6th Cir. 2003).

## II. Procedural History

On June 27, 2003, Delta Phones, Inc. (DPI) filed a request for expedited post-interconnection dispute resolution and interim ruling, asserting that Southwestern Bell Telephone, L.P. d/b/a SBC Texas (SBC Texas) had improperly suspended DPI's ordering capability via SBC Texas's operation support systems (OSS) and threatened DPI with the disconnection of service to DPI's customers as a result of DPI's alleged non-payment of unpaid balances to SBC Texas. DPI further stated that efforts to resolve billing disputes informally between the parties resulted in a March 21, 2003 letter agreement between DPI and SBC Texas. DPI claimed that SBC Texas's suspension of DPI's ordering capability and threat of disconnection violates the terms and conditions of both the interconnection agreement (ICA) and the March 21 letter agreement. DPI requested that the Commission require the immediate withdrawal of SBC Texas's disconnection notice to DPI, and order SBC Texas to cease and desist from the disconnection, disruption, migration, or other activities associated with the disruption of DPI's customers' telecommunications services. Finally, DPI asserted that SBC Texas failed to properly provision the conversion of DPI's resale customers to unbundled network element platform (UNE-P) services.

In its response, SBC Texas noted that DPI has improperly failed to make full payments under the parties' ICA. SBC Texas also stated that while the suspension of provisioning access to SBC Texas's OSS did halt electronic processing of disconnects, as required by the ICA, manual processing remained unaffected and available to DPI. Furthermore, SBC Texas denied the allegations made by DPI that SBC Texas had refused or been unable to provision UNE-P service to DPI. Finally, SBC Texas asked the Commission to require DPI to provide SBC Texas with end-user information necessary to notify DPI end-users of termination, pursuant to the ICA.

On July 14, 2003, the Arbitrators held a prehearing conference in which the parties agreed to forgo the interim hearing and proceed with the expedited hearing. A hearing on the merits was held on July 23-24, 2003. An initial Arbitration Award was filed on the morning of August 15, 2003, and the corrected Arbitration Award was filed later that day.

### III. Commission Findings

The FTA's authorization to approve or reject interconnection agreements carries with it the authority to interpret and enforce the provisions of agreements that state commissions have approved.

2. The Commission is a state commission responsible for approving interconnection agreements pursuant to the FTA.
3. The Commission has reviewed the Award and the pleadings filed by DPI and SBC Texas.
4. The Commission finds that the Award is consistent with 47 U.S.C. §§ 251 and 252.

### IV. Ordering Paragraphs

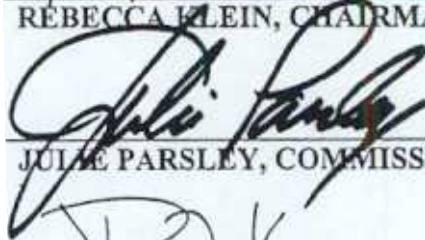
1. The Award is approved without modification.
2. All other motions, requests for relief, general or specific, not expressly granted herein are denied.

SIGNED AT AUSTIN, TEXAS the 29th day of September, 2003.

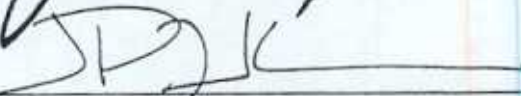
PUBLIC UTILITY COMMISSION OF TEXAS



REBECCA KLEIN, CHAIRMAN



JULIE PARSLEY, COMMISSIONER



PAUL HUDSON, COMMISSIONER