

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

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DELTA PHONES, INC.

Complainant

v.

BELLSOUTH TELEPHONE COMPANY

Respondent

DOCKET NO. 03-00425

IN RE: Interconnection Agreement negotiated by BellSouth
Telecommunications, Inc. and Delta Phones, Inc., Pursuant to Section
251, 252 and 271 of the Telecommunications Act of 1996

COMPLAINT AND PETITION FOR EXPEDITED RELIEF

Now Comes Complainant, Delta Phones, Inc. ("DPI"), a Louisiana corporation, pursuant to the terms of the Tennessee Public Service Commission ("Commission") Rules of Practice and Procedure, the Federal Telecommunications Act of 1996 ("the Act"), and the Interconnection Agreement ("IA" or Agreement") executed between DPI and BellSouth Telecommunications ("BellSouth"), files this Complaint against BellSouth and avers the following:

PARTIES

1. Complainant, Delta Phones, Inc. ("DPI") is a Louisiana corporation, with its principal place of business in Delhi, Louisiana. DPI is a competitive local exchange carrier ("CLEC"), as that term is defined in the Act, and is operating in Tennessee under a

certificate of convenience and necessity issued by this Commission on December 20, 2002, Certificate No. 02-01018. DPI serves approximately 2563 customers in Tennessee on a prepaid basis. DPI's customer base is primarily low-income and credit-challenged members of minority communities. Service providers such as DPI provide one of the only avenues available to these consumers for residential telephone service.

2. Respondent, BellSouth Communications ("BellSouth") is a Georgia corporation, with its principal place of business in Atlanta, Georgia. BellSouth provides local exchange telecommunications services in Tennessee pursuant to a certificate of public convenience and necessity issued by the Commission. BellSouth is an incumbent local exchange carrier ("ILEC"), as that term is defined in the Act.

SUMMARY OF COMPLAINT

3. DPI's complaint against BellSouth raises several issues. First, BellSouth has knowingly and consistently issued bills to DPI that are inflated and inaccurate, billing DPI for customers that are not DPI's, imposing late charges on sums that were not valid charges, double billing DPI customers, and other billing related errors. Without justification, or the benefit of a comprehensive analysis of DPI's billing disputes, BellSouth has also disconnected DPI from the BellSouth systems that DPI requires to service its customers, during the pendency of valid, good faith disputes, in violation of the Parties' IA. Attachment 7, §1.7.2, BellSouth – Delta Phones, Inc. interconnection agreement states, in pertinent part:

"BellSouth reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as

described in Section 2, is not received by the bill date in the month after the original bill date, BellSouth will provide written notice to Delta Phones that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment is not received by the fifteenth day following the date of the notice. . .”

4. In addition, BellSouth has consistently refused to provide DPI with the electronic billing data and systems access necessary to operate its business, thus increasing DPI's costs and hampering its ability to service and bill its customers. BellSouth has also used technician repair calls and visits as occasions to attempt to win back DPI customers, in violation of the interconnection agreement between the parties.
5. To date, BellSouth has overcharged or otherwise damaged DPI, in violation of the terms of the Agreement between the Parties, as well as the terms of the Act, the FCC's Local Competition Rules, and Tennessee Law, in the amount of approximately \$506,071.31, with damages escalating each month at the rates set forth herein. At the present time, Bellsouth has disconnected DPI from the electronic operation support systems required to manage and control customer accounts.

EXHAUSTION OF DISPUTE RESOLUTION

6. DPI has been unable to resolve these disputes after numerous and repeated good faith efforts to do so over the past several months. The Parties have exhausted the informal dispute resolution process as set forth in their IA. DPI has no other choice but to request that this honorable Commission resolve these disputes as to billing and business issues between the parties.

JURISDICTION

7. This Commission has jurisdiction to interpret and enforce the terms of the Parties' Agreement, and to resolve all disputes raised herein, pursuant to 47 U.S.C. § 252 (e), 47 C.F.R. § 51.809, as well as the relevant sections of the TN Code, and the terms of the IA executed between the Parties. §10 BellSouth – Delta Phones, Inc. interconnection agreement:

“Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party shall petition the Commission for resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.”

STATEMENT OF FACTS

8. DPI and BellSouth executed an Interconnection Agreement (“IA” or “Agreement”), together with various attachments incorporated therein on December 20, 2002. The Agreement was filed with the Commission, and was approved by Order of the Commission on December 20, 2002, in Docket No. 02-01018. On August 26, 2002, a second IA was executed between the Parties as a replacement of the initial IA. This second IA, together with various attachments, was approved by this Commission by Order dated December 24, 2002, in Docket No. S-26782.
9. The Agreement, as amended from time to time, provides the terms and conditions pursuant to which BellSouth provides services to DPI for resale to its customers. Included in those services is the provision of both resold services and unbundled network elements (“UNEs”), according to various schedules which list the monthly recurring and nonrecurring charges associated therewith.

10. In December of 2002, management changes at DPI resulted in a preliminary audit of DPI's historic BellSouth carrier billing records. This preliminary audit exposed numerous, potentially significant billing errors associated with DPI's BellSouth bills.
11. Throughout the month of January and the early part of February, 2003, DPI researched and filed Billing Adjustment Request Forms (Form RF1461) as required by BellSouth dispute procedures, disputing various charges that had been erroneously assessed against it by BellSouth. In each and every instance, BellSouth denied DPI's disputes with little or no explanation. When pressed for more detail by DPI personnel, BellSouth was either unable or unwilling to provide the level of detail requested by DPI with respect to both the process and the rationale used by BellSouth in rejecting DPI's disputes.
12. Included within the disputes that DPI submitted to BellSouth, were over \$200,000 in claims relating BellSouth's improper assessment of CREX charges on DPI accounts for toll blocking services to DPI's low-income customers. Despite numerous attempts to secure information from BellSouth regarding the status or resolution of these disputes, BellSouth offered neither, until April 25, 2003, when BellSouth representatives explained that a manager that it had fired for non-performance had lost the dispute data that DPI had submitted related to DPI's valid CREX disputes.
13. On February 14, 2003, DPI notified BellSouth in writing that it had established sufficient factual evidence to support disputes for all or various portions of its carrier bills from BellSouth. (See Exhibit A.) That notice served as a further notice of dispute and request for escalation of said disputes under the terms of the Agreement between DPI and BellSouth.

14. Between February and May of 2003, through email communications, letters and conference calls, the Parties attempted to resolve the matters that DPI had raised in its notice of dispute, and in additional disputes that were raised as DPI's internal audit progressed. During this same time period, DPI engaged the services of nationally recognized revenue assurance and billing reconciliation consultants, in an attempt to calculate as closely as possible the exact amounts due and owing between the Parties under their IA.
15. On April 25, 2003, DPI representatives met with BellSouth representatives in an attempt to work through numerous significant instances of overbilling that DPI's preliminary bill audit had uncovered. At that meeting, BellSouth and DPI representatives outlined all of the issues of dispute between the Parties, and BellSouth committed to expediting the resolution of DPI's disputes. BellSouth also committed to providing DPI with detailed explanations regarding the process by which it evaluated and determined disputes, as well as more explicit detail on the specific resolution of DPI's disputes. BellSouth also committed to providing DPI with electronic billing data to allow DPI to bill for carrier access charges. To date, very little additional detail has been provided regarding either the processes or the resolution of DPI's disputes. In addition, BellSouth has been either unable or unwilling to provide DPI with access to the electronic billing data that it requires to bill for such things as inter-exchange access charges for long distance calls to and from DPI's customers.
16. At the time of the April 25, 2003 meeting, BellSouth representatives also informed DPI that the BellSouth representative that had been in charge of certain aspects of

DPI's disputes had been terminated due to his gross mismanagement of DPI's and other carrier's disputes. As a result of this mismanagement, DPI disputes totaling over \$200,000 were lost. DPI was not notified of this situation until more than 2 ½ months after the disputes had originally been submitted. Once the disputes were re-submitted, over 95% of them were allowed by BellSouth, without interest for the lost time associated with BellSouth mismanagement, and without credit for any late charges that were assessed for sums legitimately withheld by DPI during its good faith pursuit of these valid disputes.

17. On other occasions, BellSouth has "inadvertently misplaced" or "lost" the information that DPI has submitted to BellSouth in support of our billing disputes. BellSouth recently lost another set of dispute data, and rather than admit its mistake and seek to rectify the situation amicably, BellSouth stated that if it does not receive duplicate data within a short time frame, that it will automatically deny any disputes which are based upon the data. This cavalier, monopolistic attitude is characteristic of the manner in which BellSouth has treated DPI throughout the course of the dispute process, leaving DPI with no choice but to file this Complaint.
18. On May 9, 2003, after submitting and escalating multiple disputes worth hundreds of thousands of dollars, BellSouth summarily rejected all of DPI's disputes, without any detail regarding the reason or the process for the rejections. On May 16, 2003, BellSouth denied DPI access to the electronic interfaces that allow it to serve its customers. As a result, DPI is no longer able to service its customers. This action on the part of BellSouth, during the existence of valid disputes, has exposed DPI to significant liability for both slamming complaints and for charges for customers that

DPI has been unable to disconnect for non-payment of their bills. To date, BellSouth has been unwilling to provide DPI with either a manual or electronic solution to these problems. On May 29, 2003, BellSouth notified DPI that it must pay all outstanding invoices, or face the disconnection of its customers. For the state of Tennessee, that amount was \$588,141.46. (See Exhibit B.)

19. Throughout the entire interconnection agreement relationship between BellSouth and DPI, DPI has not once been treated as a customer. In every instance, it has been treated as a competitor. In no instance was this more evident than when DPI had the audacity to challenge the accuracy of its BellSouth carrier bills. The conduct which BellSouth has consistently exhibited would never be tolerated in a truly competitive industry, and has resulted in hundreds of thousands of dollars in damages to DPI, and untold damage to DPI's customer base and the Tennessee communities that it serves.

COUNT I

Billed after Disconnect:

20. Based upon DPI's analysis of the BellSouth billing records and DPI's own internal ordering and provisioning data, there are a significant number of customers for whom DPI has continued to receive bills from BellSouth, after those customers have been ordered disconnected by DPI personnel. These disputes have been submitted to BellSouth, who has rejected them without a complete evaluation of the service and billing records associated with them. DPI has escalated these disputes on multiple occasions for further explanation and resolution. The amount in dispute for this issue at the time of the filing of this complaint is \$19,016.52.

COUNT II

Not DPI Billed Customer:

21. There are significant disputes that DPI has raised with BellSouth regarding customers that BellSouth has billed DPI for that are not DPI customers. These disputes have been submitted to BellSouth, who has rejected them without a complete evaluation of the service and billing records associated with them. DPI has escalated these disputes on multiple occasions for further explanation and resolution. The amount in dispute for this issue at the time of the filing of this complaint is \$53,204.17.

COUNT III

Improper Calculation & Assessment of Zone Charges

22. DPI has been improperly billed for charges related to the calculation of calls between different calling zones. In the hope of resolving this dispute, DPI escalated this issue and submitted it to the Representative that BellSouth provided at the April 25, 2003 dispute meeting between the Parties. In response to DPI's escalation, the BellSouth Representative sent an email to DPI with a link to a web site that contained general information regarding calling zones. As DPI's disputes related to BellSouth miscalculating and overcharging for these calling zone charges, this information was irrelevant to DPI's disputes. Without reviewing any of the account specific information related to the disputes submitted by DPI, the BellSouth Representative

summarily rejected all of DPI's disputes on this issue. DPI has escalated these disputes on multiple occasions for further explanation and resolution. The amount in dispute for this issue at the time of the filing of this complaint is \$464.04. At the current rate of growth, this issue will increase at a rate of approximately \$100.00 per month.

COUNT IV

Double Billing DPI Customers as Both Resale and UNE-P:

23. DPI has encountered numerous instances where BellSouth has charged DPI for customers both under the resale and UNE-P rate schedules during the same billing cycle, resulting in a double billing of DPI customers. These disputes have been submitted to BellSouth, who has rejected them without a complete evaluation of the service and billing records associated with them. In addition, BellSouth has consistently failed to provide any detail regarding either the process or the data that has been used to determine these disputes. DPI has escalated these disputes on multiple occasions for further explanation and resolution. Since DPI only has paper bills in its possession, the amount in dispute for this issue at the time of the filing is too labor intensive to calculate. At the present time, it is unknown what the rate of growth for this issue will be.

COUNT V

Improper Treatment of CREX Credits

24. Since the inception of its interconnection agreement with BellSouth, DPI has been improperly assessed charges for toll blocking services to its low-income customers. Due to failures and deficiencies in BellSouth's systems, it is necessary for DPI to submit disputes for each of its customers on a monthly basis for these improperly assessed charges. In early January 2003, DPI submitted disputes for these improper charges in excess of \$200,000. Despite numerous attempts to gain information regarding the processing of these disputes, DPI received neither credits nor information as to the status of these disputes. It was not until April 25, 2003 that BellSouth informed DPI that it had terminated the employee that had been managing these disputes for non performance, and that the dispute information that DPI had submitted had been lost, requiring DPI to resubmit these disputes.
25. Once DPI re-submitted the information that BellSouth had lost, credits were issued in over 95% of the disputes submitted by DPI. However, these credits were not applied to the outstanding bills that DPI had with BellSouth. At BellSouth's election, it unilaterally determined that the credits for historic disputes dating to January 2003, and for services improperly billed since 2002, would be applied to future invoices. This misapplication of CREX credits has resulted in a current dispute in the amount of \$229,452.03. Each month, these improper billings increase in proportion to the number of customers that DPI has in the state of Tennessee.

COUNT VI

Failure to Provide Electronic Billing Records:

26. Despite numerous formal requests for electronic billing records with which to bill its customers, BellSouth has consistently refused or been unable to provide said electronic billing records to DPI in violation of the IA between the Parties. As a result, DPI has been unable from a practical perspective to issue accurate and timely bills to its customers for the services that it provides using BellSouth's facilities. Attachment 7, §1.1.2, BellSouth – Delta Phones, Inc. interconnection agreement states, in pertinent part:

“If either Party requests multiple billing media or additional copies of bills, the Billing Party will provide these at a reasonable cost.”

27. Currently, DPI is required to translate thousands of pages of paper billing records each month in order to accurately bill the thousands of customers that it serves. The inability or refusal of BellSouth to provide said electronic billing records has resulted in significant damage to DPI's business and is a direct violation of federal and state telecommunication regulations, as well as, the IA agreement between the parties. DPI has escalated these disputes on multiple occasions for further explanation and resolution without success.

COUNT VII

Failure to Provide ADUF Billing Records:

28. DPI began the migration of its customers from a resale to a UNE-P basis beginning in the 1st Quarter of 2003. As a result of this conversion, DPI is now technically capable of collecting carrier access charges for long distance calls to and from its customer's telephone lines, if it can access electronic versions of BellSouth's Carrier Access

Billing data, which BellSouth calls its Access Daily Usage Feed ("ADUF") data. This issue was raised by DPI during the Parties' April 25, 2003 dispute meeting, where BellSouth committed to expediting DPI's access to all electronic versions of the ADUF records. However, despite numerous requests by DPI, BellSouth has been either unable or unwilling to provide the ADUF data that DPI requires in order to bill inter-exchange carriers for these calls.

29. To date, BellSouth has only been able to provide DPI paper copies of ADUF records, making it impossible for a company with thousands of customers in Tennessee to bill for these charges. DPI is now in a position where it must expend considerable time and resources in an attempt to recover these charges from inter-exchange carriers, several months after the fact, raising the likelihood that DPI will not be able to collect the full amount that is due from these carriers. As a result of this violation of the terms of the interconnection agreement between the parties, DPI has been unable to collect these revenues, resulting in significant and ongoing damage to DPI's business. DPI has escalated these disputes on multiple occasions for further explanation and resolution without success. The amount in dispute for this issue at the time of the filing of this complaint is \$397,920.00. At the current rate of growth, this issue will increase at a rate of approximately \$38,445 per month.

COUNT VIII

IMPROPER CUSTOMER CONTACT:

30. BellSouth personnel have used every opportunity to deter DPI customers from taking service from DPI. Attachment I, §3.5, BellSouth – Delta Phones, Inc. interconnection agreement states, in pertinent part:

“Neither Party shall interfere with the right of any person or entity to obtain service directly from the other Party.”

31. On numerous occasions, BellSouth technicians have attempted to convince DPI customers to either not take service from DPI or to leave DPI, by stating that DPI does not have the ability to provide the Customer service. In addition, DPI's BellSouth service records indicate numerous circumstances where DPI customers were illegally directed to BellSouth, in violation of the signed Letters of Authority that DPI customers had executed, and in violation of the terms of state and federal telecommunication regulations. Attachment I, §3.5.2, BellSouth – Delta Phones, Inc. interconnection agreement states, in pertinent part:

“BellSouth and Delta Phones will refrain from contacting subscribers who have placed or whose selected carrier has placed on their behalf an order to change his/her service provider from BellSouth or Delta Phones to the other party until such time that the order for service has been completed.”

32. It is not currently possible to calculate the financial impact that BellSouth's conduct has had on DPI. However, preliminary indications are that the damage could be considerable.

COUNT IX

Invalid Late Charges

33. Throughout the course of the Parties' interconnection agreement, BellSouth has consistently over billed DPI for various services and charges that were not warranted.

As a result of these overbillings, DPI withheld payment of its inflated carrier bill in full at the time they were due. BellSouth knew or should have know that its billing systems were inaccurate and likely to result in an overbilling situation for a carrier such as DPI. In spite of this, BellSouth assessed DPI late charges on its account and has consistently refused to credit said late charges to DPI's accounts. DPI has escalated these disputes for further explanation and resolution. The amount in dispute for this issue at the time of the filing of this complaint is \$12,128.94.

COUNT X

Refusal to Remove RSCP Blocks

34. Since May 16, 2003, when DPI was disconnected from BellSouth ordering and provisioning systems, DPI has been unable to manage any aspect of its customer relationship having anything to do with BellSouth systems. This has resulted in DPI being unable to remove RSCP Blocks, which were placed on DPI customer accounts pursuant to the Letters of Authority ("LOA's") that were executed when DPI customers signed up for service. This in turn has resulted in instances where DPI customers have lodged complaints with both carrier and Commission personnel claiming that DPI has slammed them. DPI has also received numerous complaints from competitive carriers complaining about their inability to migrate DPI customers to their companies due to the presence of the RSCP Blocks on the DPI customer lines. DPI has raised this issue on numerous occasions with BellSouth account representatives, but BellSouth has been either unable or unwilling to assist DPI in the removal of the RSCP Blocks.

35. The refusal or inability to remove the blocks has exposed DPI to significant potential liability for slamming complaints in the State of Tennessee and across the entire BellSouth service territory. BellSouth's actions have also caused significant harm to the nascent competitive local telecommunication market in Tennessee and denied competitive choice to the group of customers that DPI serves, which are those with the least number of competitive alternatives in the first place. The amount in dispute for this issue at the time of the filing of this Complaint is unknown. At the current rate of growth, the potential liability for this issue will increase in proportion to the number of potential complaints.

COUNT XI

Refusal to Allow DPI to Disconnect Customers

36. Since May 16, 2003, when BellSouth disconnected DPI from the BellSouth ordering and provisioning systems, DPI has been unable to disconnect its customers for issues such as non-payment of customer bills or migration. During this period, DPI has repeatedly requested BellSouth for either an automated or manual method for performing this vital task. As a result of BellSouth's inability or refusal to allow DPI to disconnect customers, DPI is now exposed to potentially significant financial harm from non-paying customers. The amount in dispute for this issue at the time of the filing of this Complaint is unknown. At the current rate of growth, this issue will increase in proportion to the number of customers that should have been disconnected for nonpayment.

COUNT XII

WITNESSES

37. Any testimony or evidence is available from the following DPI employees:

- a. Laura Ehlman
- b. Jennifer Jandora
- c. Edward Smiley

38. Additional testimony or evidence is available from the following consultants on the billing system and process issues:

- a. Robert Lock
- b. Penelope Wilbanks
- c. Kerin Montgomery

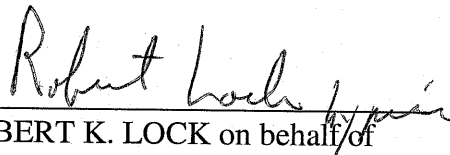
PRAYER FOR EXPEDITED RELIEF

WHEREFORE, for the foregoing reasons, DPI respectfully requests that the Commission:

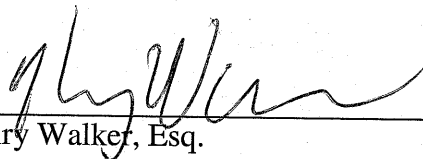
- 1) Require that BellSouth immediately restore electronic ordering and account management capabilities to DPI;
- 2) Require that BellSouth immediately remove all RSCP blocks on DPI customer accounts so that customers may be allowed to switch to other carriers;
- 3) Require that BellSouth immediately institute an electronic process for the disconnection of customers;
- 4) Require that DPI pay all undisputed current charges going forward, until such time as the existing billing disputes are resolved by this Commission;

- 5) Require that a total account by account, USOC by USOC audit of all DPI customer accounts be performed to determine the precise amount that should be credited to DPI and paid to BellSouth;
- 6) Require that BellSouth be ordered to waive all charges associated with DPI customers that DPI has been restricted from disconnecting, from the time that DPI was unable to disconnect said customers due to BellSouth's decision to deny DPI access to either manual or electronic customer account management systems;
- 7) Require that BellSouth immediately cease and desist from any and all activities which attempt to solicit DPI customers according to the terms of the IA between the Parties;
- 8) Require that BellSouth refund all amounts that DPI has overpaid, plus interest at the rate established in the Parties' Interconnection Agreement; and
- 9) Require such other relief as this Honorable Commission deems just and reasonable.

Respectfully Submitted:



ROBERT K. LOCK on behalf of
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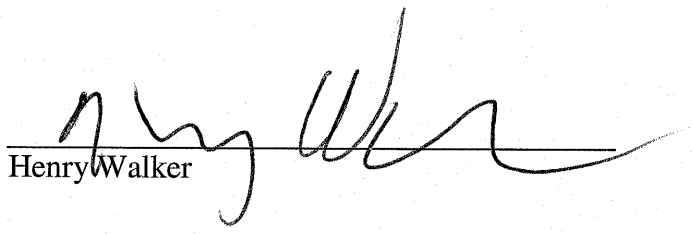
CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be served by United States mail a copy of the within and foregoing Complaint and Petition for Expedited Relief upon the following person, properly addressed as follows:

Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

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This 27th day of June, 2003.


Henry Walker