

OF THE STATE OF MISSOURI

Case No. TO-2004-0576

AFFIDAVIT OF ROBERT W. McCAUSLAND

STATE OF TEXAS)

) $SS:$

Robert W. McCausland, being first duly sworn on oath, deposes and states as follows:

1. I am the Vice President of Regulatory Affairs for Sage Telecom, Inc. (“Sage”). In

2. In the attached “Reply Comments of Sage Telecom, Inc.,” Sage requests confidential

3. The Confidential Information consists of proprietary and trade secret information.

that Sage and SBC Missouri are seeking to protect. However, beginning at paragraph twelve (12) of this affidavit, I describe each of the confidential sections and “whereas clauses” of the LWC Agreement in more detail, and why it is necessary that they not be publicly disclosed. I further support the conclusion that the Confidential Information: (1) has independent economic value; (2) is not generally known to or readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (3) is the subject of significant efforts to monitor its secrecy.

4. Public disclosure of the Confidential Information would cause competitive harm to Sage. Competitive Local Exchange Carriers (“CLECs”) have different strategies for seeking and achieving commercial success. The disclosure of Sage’s competitive strategies to its competitors, including but not limited to the CLECs that have filed Comments in this proceeding, would undermine the likely success of these strategies. That is, the competitive advantage Sage has earned through the investment of considerable time, effort, specialized skills and propriety “know-how” in the difficult process of establishing the terms of the Agreement with SBC (as well as defending the confidentiality of the redacted portions before this and several other commissions) will be eliminated. If the Confidential Information were to be made available to the public, Sage’s competitors will be able to anticipate Sage’s innovative strategies as reflected in the redacted portions of the Agreement and consequently cause competitive harm to Sage. Moreover, some of the redacted provisions of the Agreement relate to matters subject to the attorney-client privilege.

5. The Confidential Information is not known outside Sage and SBC’s respective businesses. The Confidential Information also is not readily ascertainable by Sage’s competitors for the very reason that it does not relate to any of the facilities or services that are required to be made available under §251 of the Telecommunications Act of 1996. Rather, the Confidential Information has to do with processes or ideas that are either entirely unrelated to the provision of

telecommunications services, or are related to innovations that have yet to occur. Sage has employed its proprietary “know-how” in its particular markets (which are predominantly rural and suburban residential) to craft an agreement with enhanced value. Moreover, the specific technical terms of the Agreement were developed and negotiated by an executive with a specific and unique background in the technical areas covered in the Agreement. Thus, the processes and ideas could not be easily duplicated and certainly could not be easily obtained.

6. Sage has taken and will take all reasonable steps in order to protect the Confidential Information. In order to conduct its business operations, it was necessary for Sage to circulate sections of the Agreement to a limited number of individuals within the company. Most high-level employees only received the sections that pertain to the operations of their respective positions. The Agreement has only been circulated to a very limited number of individuals within Sage who have a “need to know” its contents. To track the Agreement internally, a “Tracking Log” system is utilized, which lists accurately which sections of the Agreement have been given and to whom.

7. The Sage employees who are assigned to Regulatory Affairs, an internal department that is significantly involved with the Agreement, were given a detailed briefing at two separate meetings regarding the processes for managing the Agreement. During those meetings, rules were set regarding discussing, copying, e-mailing and referencing the Agreement. There are strict implications for individuals who do not follow those guidelines.

8. As a further protective measure, Sage’s outside counsel is not given access to the Agreement except on a need-to-know basis. Finally, the fact that Sage and SBC are engaged in this proceeding and in similar proceedings at several other state commissions in an effort to protect their proprietary business information is evidence of the extent of the measures taken by Sage and SBC to protect this information.

9. To the extent that Sage's strategy depends on cooperation with SBC Missouri in SBC Missouri's role as supplier to Sage, Sage has unavoidably been required to disclose its strategy to SBC. Throughout the business community, suppliers necessarily gain some insight as to their customers' strategy. The fact that such necessary disclosure is made to Sage's supplier does not warrant an unnecessary disclosure to Sage's other competitors.

10. The Confidential Information is described in more detail below, but generally includes descriptions of (i) Sage and SBC's innovative method of operation not currently used in the telecommunications industry developed through Sage's know-how; (ii) business arrangements Sage has negotiated with SBC that reflect Sage trade secrets along with proprietary business and competitive strategies; and (iii) a highly sensitive and confidential strategic cooperative relationship established between Sage and SBC intended as a means to eliminate a significant, chronic and costly business problem encountered by both companies.

INNOVATIVE METHOD OF OPERATION

11. Portions of the Agreement describe novel long-term strategic initiatives aimed directly toward technological innovation primarily for residential customers in the rural and suburban areas that Sage targets. The innovative method of operation described in this portion of the Agreement is not currently used in the telecommunications industry and was conceived by Sage for the purposes of expanding competitive service offerings and providing a "first-mover" advantage (i.e., the economic benefit that is derived from leading or being first in the marketplace with an innovation). This advantage would be lost if the arrangement is disclosed. The Agreement provides sufficient detail for competitors to understand and develop competitive responses, in an attempt to counteract this method. Also, Sage already has incurred significant costs in developing

the arrangement, associated primarily with the employment of experts and negotiation with SBC. However, for much of this, the fruits of the proposed arrangement will take months, or in some cases even years, to fully develop, test, implement and successfully market to consumers. The future economic value of these innovative programs will most likely not be realized if they are not developed as proprietary and confidential activities. If other CLECs are permitted to obtain details of these programs, they will be able to obtain a “free ride” on Sage’s work to conceive and develop this arrangement, which would therefore deprive Sage of the benefits of its investment. And the release of information related to this effort is likely to jeopardize both this strategic objective, as well as the economic foundation of the Agreement.

12. The provisions of the Agreement that contain information on the above-described innovative method of operation include the tenth through fourteenth “Whereas” clauses, along with Sections 2.8, 2.16, 4.2.6, 4.2.7, 11, 31 and Section 4.7 of Appendix LIDB and CNAM and Section 2.8 of Appendix DUF. Each of these provisions is described below in more detail.

a. **“Whereas” Clause No. 10.** This Clause establishes the groundwork for the innovative method of operation addressed above and contains a level of detail sufficient to result in competitive harm to Sage if released.

b. **“Whereas” Clause No. 11.** This Clause establishes the relationship between parties that will facilitate the innovative method of operation. Sage believes no other CLEC has proposed such a relationship or manner of operation. Knowledge of the details of this relationship could be enough to damage Sage’s competitive stance vis-à-vis other local exchange carriers and reveal Sage’s short and long term competitive strategies.

c. **“Whereas” Clause No. 12.** This Clause discloses the nature, scope and

organization of issues to be addressed during planning and execution of the innovative method of operation addressed above. It, too, contains a level of detail sufficient to result in competitive harm to Sage if released.

d. **“Whereas” Clause No. 13.** This Clause declares the descriptive name under which the activities listed in “Whereas” Clauses 10 through 12 will be undertaken. Sage believes that even the release of the descriptive name or a cursory description of the arrangement as shown within this Clause, would give astute competitors valuable insight into Sage’s proprietary and confidential competitive plans and trade secrets and would thereby cause significant competitive harm. It is for these same reasons that Sage redacted the descriptive names from the Table of Contents.

e. **“Whereas” Clause No. 14.** This Clause sets forth a method of monitoring the status of contract compliance between and among the parties. Further, it identifies the revealing descriptive name addressed above. The disclosure of these provisions could give competitors insight into the nature of the proprietary business-strategic relationship between Sage and SBC and would thereby cause Sage to be harmed competitively if released.

f. **Definition 2.8.** This definition declares the descriptive name addressed in Whereas nos. 11 and 12, above and therefore carries the same significant risk of competitive harm.

g. **Definition 2.16.** This definition also declares the descriptive name by which the activities listed in Whereas Clauses 10 through 12 will be undertaken, and thereby carries the same risk of competitive harm to Sage if released.

h. **Section 4.2.6.** The redacted Section establishes the method by which SBC

will accommodate Sage's business plans and strategies. Disclosure of this Section, therefore, would reveal the nature of the proprietary business-strategic relationship between Sage and SBC, as well as, Sage's long term-business strategy. Sage has invested considerable time, effort, specialized skills and proprietary "know-how" in the difficult process of establishing the terms of the Agreement with SBC, in the significant implementation efforts and in defending the confidentiality of the redacted portions before this and several other commissions. Any economic benefit that will be achieved through Sage's significant investment in working with SBC will be eliminated if this and the other redacted sections that I address are disclosed.

i. **Section 4.2.7.** The redacted Section, like Section 4.2.6 above, includes the descriptive name also addressed above, and thereby the same risks of competitive harm to Sage.

j. **Section 11.** This Section contains the bulk of the terms establishing the innovative business arrangement addressed above. This Section establishes, in detail, the groundwork for the innovative method of operation and the relationship between parties that will facilitate an innovative method of operation is discussed. The Section also discloses the nature, scope and organization of issues to be addressed during planning and execution of the innovative method of operation. Methods of communication between the parties and treatment of confidential and shared information are set forth. The specific methods, programs, techniques and processes that will be used to implement Sage's business plans and strategies also are disclosed. If this Section were to be made available to the public, Sage's competitors would have all of the details necessary to formulate a response to Sage's

innovative competitive and trade secret strategies, thereby depriving Sage of any benefit of its investment in these innovations.

k. **Section 31.** The redacted Section includes the descriptive name that is addressed above and therefore carries the same risks of competitive harm.

l. **Appendix DUF, Section 2.8.** The redacted portion refers to the descriptive name addressed above and therefore carries with it the same risks of competitive harm.

m. **Appendix LIDB and CNAM, Section 4.7.** This Section identifies the descriptive name addressed above and therefore carries with it the same risks of competitive harm. Additionally, this Section sets forth the method under which both parties will access and execute the innovative method of operation.

NEW BUSINESS ARRANGEMENTS

13. In the definitions of “Basic Analog Switching” and “Basic Analog Loop,” as well as in definition 2.18, Sage and SBC have resolved issues that have been, and would have otherwise remained the subject of significant dispute and litigation between them. These definitions constitute a negotiated business arrangement which is customized to Sage’s proprietary business strategy. Sage considers this business arrangement to be of crucial economic significance for expanding (or even retaining existing) services to rural, residential customers, and hence considers the definitions to be “trade secret.” Following is additional detail:

a. **Definition 2.3 “Basic Analog Switching”.** The redacted language refers to the definition under 2.18, which is highly confidential.

b. **Definition 2.4 “Basic Analog Loop”.** The redacted language entails Sage’s requirements relating to transmission characteristics, something that required know-how and significant experience to develop, and something for which Sage has expended significant resources in order to do. This, like the other redacted language, is trade secret in that it was developed specifically to further Sage’s future business plans and competitive strategies.

Therefore, like the other redacted language, competitive harm would result from its release.

c. **Definition 2.18.** Here, Sage has recreated an old industry term in a manner that has significant potential to facilitate Sage’s deployment of new and innovative products to customers. Like other redacted provisions, the release of this trade secret provision would deprive Sage of any benefit from its investment in deploying the concept and would cause competitive harm to Sage.

HIGHLY-CONFIDENTIAL PROVISION TO ADDRESS A COSTLY BUSINESS PROBLEM

14. Section 15 of the Agreement establishes a cooperative relationship between the parties to address a very costly business problem. Sage (and SBC) would be irreparably harmed if this portion of the LWC agreement were to be publicly revealed for reasons that would be obvious to most readers of the Section.

15. Key portions of Section 15 relate to matters that are subject to the attorney-client privilege.

CLOSING POINTS

16. The Confidential Information is not known outside Sage and SBC’s respective

businesses. The Confidential Information also is not readily ascertainable by Sage's competitors. Sage has employed its proprietary know-how in its particular markets to craft an agreement with enhanced value for its customers and for its business.

17. Sage has taken and will continue to take all reasonable steps in order to protect the Confidential Information. Aside from the procedures outlined in my prior affidavit, the fact that Sage and SBC are engaged in this proceeding and in similar proceedings at several other state commissions and a federal court in Texas in an effort to protect their proprietary business information is evidence of the extent of the measures taken by Sage and SBC to protect this information. Moreover, the fact that Sage has so far incurred costs in excess of \$150,000.00 in these actions, a significant amount for a company the size of Sage, demonstrates that Sage believes the redacted information has substantial independent economic value.

FURTHER AFFIANT SAITH NOT.

Dated at Allen, Texas, this 6th day of July, 2004.

Robert W. McCausland

Subscribed and sworn to before me this 6th day of July, 2004.

Notary Public

My Commission Expires: _____