

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Interconnection Agreement between)
Southwestern Bell Telephone, L.P., d/b/a SBC Missouri)
and Navigator Telecommunications, L.L.C; Arbitrated as) Case No. TK-2006-0042
a Successor Interconnection Agreement to the Missouri)
271 Agreement (“M2A”).)

**SBC MISSOURI’S POSITION ON CONFORMANCE ISSUES
WITH NAVIGATOR TELECOMMUNICATIONS, LLC**

SBC Missouri¹ and Navigator Telecommunications, LLC (“Navigator”) have worked diligently to prepare a successor Interconnection Agreement to the Missouri 271 Agreement (“M2A”) that conforms to the Missouri Public Service Commission’s (“Commission’s”) July 11, 2005 Arbitration Order. While the parties have for the vast majority of issues been able to concur on conforming language,² three issues remain in dispute requiring Commission resolution. For the reasons set out below, SBC Missouri requests the Commission to direct the parties to insert SBC Missouri’s proposed contractual language into the ICA as the language that best conforms to the Commission’s July 11, 2005 Arbitration Order:

Two of the disputes with Navigator involve General Terms and Conditions. The third pertains to the Embedded Base Rider. SBC Missouri has submitted proposed language with regard to each of these disputes and believes that its language is most consistent with the Arbitration Order and should be adopted.

¹ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as “SBC Missouri” or “SBC.”

² The submission of this Agreement does not indicate voluntary agreement to contract provisions a party may have disputed before the Commission. The parties each reserve their rights, pursuant to 47 U.S.C. 252(e)(6), to contest determinations made by the Commission in this case.

General Terms and Conditions

1. **Navigator GT&C 7:** Should the contract contain limits on liability for willful or intentional misconduct? Which parties limitations of liability should be incorporated into this agreement?

The Final Arbitrator's Report considered limitation of liability issues raised by SBC Missouri and various CLECs as a group.³ It is clear from the discussion that the Arbitrator intended to adopt SBC Missouri's proposed language on the subject. This position is confirmed by the Detailed Language Decision Matrix in which the Arbitrator found that "SBC's language is most consistent with Arbitrator's Report."⁴ SBC Missouri utilized the precise language approved by the Arbitrator in Section 7.1.1 as reflected in the Detailed Language Decision Matrix. Navigator, on the other hand, proposes to use the same language which was previously rejected by the Arbitrator.⁵ Accordingly, there is no basis for Navigator's refusal to agree to the language ordered by the Arbitrator. The Commission should require the parties to utilize SBC Missouri's proposed language in Section 7.1.1 of General Terms and Conditions as reflected in the Final Arbitrator's Report.

2. **Navigator GT&C 10:** Which parties language regarding grounds for termination for non payment should be included in this agreement?

This issue involves Section 14.1 of the General Terms and Conditions of the Navigator/SBC Missouri Interconnection Agreement. The Final Arbitrator's Report grouped together several issues concerning nonpayment and procedures for disconnection raised by SBC Missouri and various CLECs.⁶ Included in the discussion was Navigator GT&C Issue 10. The Final Arbitrator's Report concluded, with respect to all of nonpayment and termination issues, that "SBC's proposed language

³ Final Arbitrator's Report, Section I, pp. 66-71.

⁴ Final Arbitrator's Report, Section I, Attachment I.A, p. 206.

⁵ Compare, Conformed Navigator-SBC Missouri Interconnection Agreement, GT&C Section 7.1.1 with Navigator's proposed language in Final Arbitrator's Report, Section I, Attachment I.A , p. 206.

⁶ Final Arbitrator's Report, Section I, pp. 49-52.

is reasonable and should be adopted.”⁷ This decision was confirmed in the Detailed Language Decision Matrix in which the Arbitrator found, with respect to Section 14.1 of the Navigator-SBC contract, that “SBC’s language is most consistent with Arbitrator’s Report.”⁸ SBC Missouri’s proposed language in Section 14.1 is identical to that which the Arbitrator approved and, accordingly, should be made part of the Interconnection Agreement between Navigator and SBC Missouri. Navigator, on the other hand, asks that the same language previously rejected by the Arbitrator now be approved as “conforming” to the Arbitration Order.⁹ That language has already been determined to be inconsistent with the Arbitration Order and cannot be said to conform to that decision.

UNE Rider Issues¹⁰

3. **Navigator/SBC MO UNE Rider 1**: Should the Remand Order Embedded Base Rider be included in Navigator’s ICA?

Recognizing that the Commission previously approved the Remand Order Embedded Base Rider (“Embedded Base Rider”) and that it had previously ordered SBC Missouri to continue to provide service to CLECs for their embedded customer base until new interconnection agreements are reached, the Commission directed the inclusion of SBC Missouri’s proposed Embedded Base Rider and that it be construed consistently with the Commission’s prior decision:

This Commission has already approved the Remand Order Embedded Base Rider as an amendment to existing interconnection agreements. To the extent that the rider fails to address certain provisions, the parties should address them in this agreement or amend the rider prior to its inclusion in the agreement. The Commission ordered in TC-2005-0294 that SBC Missouri continue to provide service to CLECs for their embedded customer base under the terms of that Order until new interconnections are reached. Therefore, the Embedded Base Rider, with customer base construed consistently with the Commission’s decision, is to be included in the agreement.¹¹

⁷ Final Arbitrator’s Report, Section I, p. 52.

⁸ Final Arbitrator’s Report, Section I, Attachment I.A , pp. 135-137.

⁹ Compare, Conformed Navigator-SBC Missouri Interconnection Agreement, GT&C Section 14.1 with Navigator’s proposed language in the Final Arbitrator’s Report, Section I, Attachment I.A, p. 136.

¹⁰ For the convenience of the Commission, a copy of the Embedded Base Rider, filed August 3, 2005 and showing the language in dispute between the parties, is appended as Attachment 1.

¹¹ Final Arbitrator’s Report, Section III, pp. 51-52.

And in the Arbitrator's Detailed Matrix for this issue, the Arbitrator determined that SBC Missouri's "entire rider" is "consistent with the Arbitrator's Report."¹²

Having been previously approved and reaffirmed here, the Arbitration Order clearly contemplated SBC Missouri's proposed Embedded Base Rider being used by the parties as the foundation document, which the parties could supplement as appropriate to effectuate the Arbitrator's decision.

And in negotiations, SBC Missouri did just that. Consistent with the Arbitrator's finding that the Embedded Base Rider must also properly address the obligation to continue to serve embedded base UNE-P customers during the transition period, SBC Missouri has agreed to include language proposed by Navigator referencing "CLEC's existing embedded customer base" in Section 2.1:

2.1 Transitional Provision of Embedded Base. As to each Mass Market ULS or Mass Market UNE-P, after March 11, 2005, pursuant to Rules 51.319(d), as set forth in the TRO Remand Order, [SBC ILEC] shall continue to provide access to CLEC's existing embedded customer base of Mass Market ULS Element or Mass Market UNE-P (i.e., only Mass Market ULS Elements or Mass Market UNE-P ordered by CLEC before March 11, 2005, in accordance with and only to the extent permitted by the terms and conditions set forth in the Arbitrator's Report at page 10 of section 3 ("including adds, moves or changes, as long as the customer was a customer of the CLEC prior to the cut-off date in the TRRO"), for a transitional period of time, ending upon the earlier of. . . .

The additional changes proposed by Navigator, however, go well beyond the language of the Arbitration Order. Rather than seeking to supplement the rider "to the extent the rider fails to address certain provisions," Navigator seeks to strike language in an apparent attempt to gain the right to provide UNE-P to new customers.¹³ In addition, Navigator has proposed to remove a significant portion of the Rider's language relating to certification, disconnections and other UNEs, which far

¹² Final Arbitrator's Report, Section III, Attachment III.A Part 6 Detailed Language Decision Matrix, p. 12 of 37.

¹³ For example, Navigator seeks to strike previously approved language from the second and fourth "whereas" clauses that acknowledges that as a result of the FCC's TRO and USTA II's vacating other parts of the TRO and the FCC's rules, SBC Missouri is no longer legally obligated to provide certain network elements on an unbundled basis; and language in Section 2.1 describing the transitional provision of UNE-P to the embedded base be on an "as is" basis.

exceeds the UNE-P issue addressed in the Final Arbitrator's Report.¹⁴ All of these provisions were contained in the Rider previously approved by the Commission. Navigator also improperly seeks to negate the federally mandated UNE-P transitional pricing scheme for the embedded base of customers.¹⁵

Having failed to show how such revisions are necessary to address subjects that the current Rider "fails to address," the Commission should reject Navigator's proposed revisions. The Commission should direct that the Rider, as proposed by SBC Missouri, be made part of the interconnection agreement between Navigator and SBC Missouri.

WHEREFORE, SBC Missouri respectfully requests the Commission to direct the parties to insert SBC Missouri's proposed contractual language into the ICA as the language that best conforms to the Commission's July 11, 2005 Arbitration Order.

Respectfully submitted,

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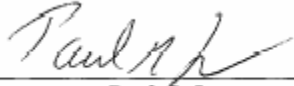
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¹⁴ See, Embedded Base Rider, Sections 1, 1.1(a) and 2.1(a).

¹⁵ See, Embedded Base Rider, Section 2.2, 2.2.1, and 2.2.2.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on August 4, 2005.



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