BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of an Interconnection Agreement between Southwestern Bell Telephone, L.P., and Sage Telecom, Inc.	)))	Case No. TO-2005-0287

NUVOX COMMUNICATIONS OF MISSOURI, INC.'S REPLY TO SBC/SAGE OPPOSITION

Comes Now NuVox Communications of Missouri, Inc. (NuVox) pursuant to 4 CSR 240-2.080(15) and for its Reply to SBC/Sage's Opposition to NuVox' requests to intervene and for hearing states to the Commission:

1. The Commission instructed interested persons to submit requests for hearing, not substantive briefs identifying and arguing the defects in the SBC/Sage agreement. Of course, both Staff and SBC/Sage sought approval of the documents "only and merely" in conclusory terms based on the statutory language, so there would not seem to be any legitimate basis for the argument that NuVox' request for hearing did not go into sufficient detail.[1] Nonetheless, in reply to SBC/Sage's assertion that the NuVox request for hearing did not supply factual support, NuVox provides the following examples of ways in which the proposed agreement discriminates against other carriers and violates the public interest:

a. Based on the Commission's determination in the prior proceedings that these documents comprise a single agreement (whether classified as an agreement to

[1] Alternatively, based on the SBC/Sage objection to conclusory pleadings, the Commission should simply dismiss the application, reject the pending filing, and wait for the filing of a more detailed request for approval of the documents.

amend or an agreement, it does not matter)[2], section 1.11 of the LWC portion of the agreement is against the public interest, for it requires an adopting carrier to agree that the document is not subject to sections 251/252. In other words, even though the Commission determines that the document is subject to adoption under Section 252, the adopting carrier would have to agree that it is not subject to adoption and, therefore, presumably waive its right to adopt. Such provisions that contravene the Commission's prior determination regarding the nature of the documents are against the public interest and should not be allowed to remain in the documents. In a similar vein, sections 18.6 and 18.7 state that the LWC terminates if any carrier is allowed to adopt it. The Commission should not approve an agreement that includes provisions that contradict its prior determination that the submitted documents are all a single agreement subject to Section 252. Such provisions discriminate against other carriers by attempting to preclude adoption, and thereby violate the public interest as established by the policy underlying Section 252(i).

b. On the other hand, even if the Commission were to reverse course and accept the continuing SBC/Sage argument that the LWC is not part of the agreement, then there are provisions of the Amendment that discriminate against other carriers and violate the public interest. Section 2.2 of the Amendment provides that if the LWC becomes inoperative, then the Amendment becomes null and void. If the Amendment is a freestanding document, as SBC/Sage contends, then it would be discriminatory to allow the status of an independent and unregulated arrangement (the LWC under the SBC/Sage argument) to have any impact on the continued validity of the Amendment as adopted by another carrier not party to the LWC. Likewise, section 2.2.1 of the Amendment refers to

[2] In their Motion for Expedited Treatment (page 2), SBC/Sage admit it is not material.

Section 18.7 of the LWC which in turn provides that the Amendment would be invalidated if a carrier is allowed to adopt the LWC. Section 7.6 of the Amendment says that the LWC controls over the terms of the Amendment, yet under this scenario the adopting carrier would not be party to the LWC. If the LWC were truly separate from the Amendment (it is not), all of these linkage provisions would be discriminatory and against the public interest, for they would make the Amendment subordinate to an agreement that would not be available to the adopting carrier.

c. Either way, the Commission should require the documents to be consistent with its determination regarding their inter-relatedness and availability for adoption. If the documents constitute a single agreement subject to adoption, all contrary provisions should be deleted prior to approval. If the documents are totally independent, then all provisions of the Amendment that refer to the LWC should be stricken prior to approval.

d. The Amendment contains a provision (section 2.1.1) that states that the LWC shall be deleted as to any adopting carrier, but not as to Sage, in the event of any action by any court, whether final or not, whether in Missouri or not. Yet, SBC/Sage argue in their filings that only Missouri court decisions are pertinent to this matter. This effort to try to dilute the Commission's determination that the LWC is part of the agreement and must be available for adoption is against the public interest.

e. Section 6.2 of the Amendment provides that it shall have retroactive effect for Sage back to July 1, 2004. Yet, footnote 1 of the Amendment expressly prohibits any retroactive effect for adopting carriers. Such discrimination is not permitted under Section 252.

f. Section 18.1 of the LWC requires that the CLEC must already be in operation. Hence, the document discriminates against new carriers.

g. It also remains unclear whether the complete set of documents has been submitted. The filing letter and SBC/Sage pleadings state that there are two LWC amendments. It appears that only one was submitted. Moreover, the Amendment (section 2.1) refers to only one LWC amendment.

2. These examples more than adequately demonstrate that there are serious issues to consider in this matter. Whether or not any other state has been made aware of these problems, this Commission should not turn a blind eye to them.

3. SBC/Sage tacitly admit that Sage wants to use the documents in connection with services to business customers, stating that Sage "primarily" serves residential customers. Hence, there is no merit to their speculative contentions regarding the impact of NuVox' current customer base on its interests in these documents. Moreover, on their face these documents are to remain in place until 2011, making them of interest regardless of any immediate business plans.

4. As demonstrated in the prior proceedings, these documents state over and over again that they are a single agreement. For example, Section 5.6 of the LWC requires the parties to defend the "indivisible nature" of the LWC and the Amendment. In the filing letter (page 2), SBC/Sage states that the documents "contain provisions that have been negotiated as part of an entire agreement and the provisions are integrated with each other in such manner that each provision is material to every other provision." Staff addresses this point in some detail in its Application. The Commission should ignore the

SBC/Sage effort to gloss over these provisions in arguing that the documents are not a single agreement.

5. NuVox is an interested party with due process rights. The SBC/Sage campaign to limit those rights by objecting to NuVox participation and otherwise seeking to limit that participation is contrary to law.

WHEREFORE, NuVox prays the Commission to grant its requests for intervention and hearing.

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

Carl J. Lumley, #32869
Leland B. Curtis, #20550
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)
clumley@lawfirmemail.com
lcurtis@lawfirmemail.com

Attorneys for NuVox Communications of Missouri, Inc.,

Certificate of Service

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 11th day of March, 2005, either by e-mail or by placing same in the U.S. Mail, postage paid.

/s/ Carl J. Lumley

Dana K. Joyce
Missouri Public Service Commission
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

John B. Coffman
Office Of The Public Counsel
P.O. Box 2230
200 Madison Street, Suite 650
Jefferson City, MO 65102
opcservice@ded.mo.gov

Nathan Williams
Missouri Public Service Commission
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, MO 65102
Nathan.Williams@psc.mo.gov

Mark Comley
AT&T Communications of the Southwest, Inc.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537
comleym@ncrpc.com

Legal Department
Sage Telecom, Inc.
805 Central Expressway
Allen, TX 75013

Charles B. Stewart
Sage Telecom, Inc.
4603 John Garry Drive, Suite 11
Columbia, MO 65203
stewart499@aol.com

Paul Lane
SBC Missouri
One Bell Center, Room 4300
St. Louis, MO 63101
paul.lane@sbc.com

Mary Ann Young
Xspedius Communications (Kansas City)
2031 Tower Drive
P.O. Box 104595
Jefferson City, MO 65110-4595
myoung0654@aol.com