

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

In the Matter of the Agreement between)	
SBC Communications, Inc. and Sage)	Case No. TO-2004-0576
Telecom, Inc.)	
)	
In the Matter of an Amendment)	
Superseding Certain 251/252 Matters)	Case No. TO-2004-0584
between Southwestern Bell Telephone,)	
L.P., and Sage Telecom, Inc.)	

SBC MISSOURI'S REPLY TO NUVOX AND MCI

SBC Missouri,¹ respectfully replies to the August 5, 2004 Response NuVox² and MCI³ filed concerning SBC Missouri's request for rehearing of the Missouri Public Service Commission's ("Commission's") July 27, 2004 Order rejecting the Amendment to the interconnection agreement between SBC Communications Inc. and Sage Telecom, Inc. ("Sage Telecom").

1. For the most part, the issues NuVox and MCI raise have previously been raised by them⁴ and fully addressed by SBC Missouri.⁵

2. SBC Missouri, however, wishes to respond briefly to NuVox and MCI's claim that SBC is arguing that "vacatur of the FCC TRO rules means that SBC is not obligated to make available to CLECs the network elements that were the subject of those rules."⁶ NuVox and MCI obviously misunderstand SBC Missouri's position.

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

² NuVox Communications of Missouri, Inc. will be referred to in this pleading as "NuVox."

³ MCImetro Access Transmission Services, LLC will be referred to in this pleading as "MCI."

⁴ See, NuVox and MCI's Post-Argument Brief, filed July 14, 2004 in Case No. TO-2004-0576 and TO-2004-0584, pp. 1-6.

⁵ See, Brief of SBC Missouri, filed July 14, 2004 in Case No. TO-2004-0576 and TO-2004-0584, pp. 6-8 (addressing claims of discrimination), 6-10 (addressing application of Sections 251 and 252 of the Act), and 11-13 (addressing claimed filing requirement for voluntary agreements on matters outside the Section 251(b) and (c) requirements).

⁶ NuVox and MCI's Response, p. 5.

Under Section 251(d)(2)(B) of the 1996 Telecommunications Act, a network element must be provided only if the FCC first finds, as to non-proprietary elements, that CLECs would be impaired in their ability to provide to provide services without such access. The USTA II⁷ decision rejected the FCC's impairment analysis and vacated the rules requiring the provision of unbundled circuit switching. Now that the mandate has issued in USTA II, there is no obligation to provide unbundled circuit switching (or the other elements vacated by the USTA II decision).

As a result, there is no question that the provisions of the Private Commercial Agreement pertaining to unbundled local switching (and other elements vacated by the USTA II decision) are not required under Section 251. Both the Act (Section 252(a)) and the FCC's interpretation of the Act in the Qwest⁸ decision make clear that only agreements relating to Sections 251(b) or (c) need be filed with and subject to approval by state commissions. The Private Commercial Agreement between SBC Missouri and Sage Telecom does not meet this requirement and need not be filed with or subject to approval of the Commission.

3. In its request for rehearing, SBC Missouri cited recent orders from the Oklahoma and Kansas Commissions approving virtually identical amendments to the interconnection agreements between SBC and Sage Telecom for the states of Oklahoma and Kansas.⁹ NuVox and MCI, however, criticize SBC Missouri's further citation of a recent order from the Michigan Commission¹⁰ as an "attempt to bury" the reference "in a footnote."¹¹ Had SBC Missouri somehow wished to hide the Michigan Commission's order, which took a different approach than those from Oklahoma and Kansas, SBC Missouri would not have cited the Michigan case at

⁷ United States Telecom Association v. FCC, 359 F. 3d 554 (D.C. Cir. 2004) ("USTA II").

⁸ In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling, U.C. Docket No. 02-89, Memorandum Opinion and Order, October 4, 2002 ("Qwest decision"), para. 8, footnote 26.

⁹ See, SBC Missouri's Application for Rehearing and/or Clarification, p. 3-4.

¹⁰ SBC Missouri, in footnote 5 of its Application, stated that the "Michigan Public Service Commission also granted approval, subject to conditions." SBC Missouri also provided a complete copy of the Michigan Commission's Order, issued August 3, 2004, as Attachment 3 to its Application.

¹¹ NuVox and MCI's Response, p. 6.

all. SBC Missouri's purpose in providing the reference to the Michigan decision was simply to disclose the decision in candor to the tribunal.

WHEREFORE, SBC Missouri respectfully reiterates its request that the Commission approve the Amendment to the interconnection agreement between SBC Missouri and Sage Telecom and to hold any action on the Private Commercial Agreement until the FCC completes its review and renders a decision on the matter. In the alternative, SBC Missouri requests the Commission to clarify the basis for its rejection of the Amendment to the interconnection agreement between SBC Missouri and Sage Telecom.

Respectfully submitted,

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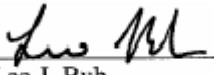
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this document was served on all counsel of record by electronic mail on August 16, 2004.



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