

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Southwestern Bell Telephone, L.P. d/b/a SBC
Missouri's Petition to Amend the Section 251/252
Interconnection Agreements between SBC Missouri
and Various Competitive Local Exchange Carriers.

Southwestern Bell Telephone, L.P. d/b/a SBC
Missouri,

Petitioner,

vs.

1-800-RECONEX, Inc., et al,

Respondents.

Case No. TO-2005-0117

MOTION OF QWEST INTERPRISE AMERICA, INC. TO DISMISS

Qwest Interprise America, Inc., formerly US West Interprise America, Inc. ("Qwest"), by its attorneys and pursuant to 4 CSR 240-2.116(4), moves to dismiss the above-captioned Amended Petition filed by Southwestern Bell Telephone, L.P. ("SBC") at the Missouri Public Service Commission ("Commission") as it pertains to Qwest. Qwest bases this Motion to Dismiss on the fact that the Amended Petition for resolution of "disputes" is not ripe for consideration by the Commission.

All communications, notices, orders and decisions respecting this Application and proceeding should be addressed to:

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Qwest requests the Commission and all parties to amend their service lists to include counsel shown above, and requests electronic service of filings by other parties.

In support of this Motion, Qwest states as follows:

SBC has filed its Amended Petition asking that the Commission not only approve its proposed amendment language “as sufficient to conform interconnection agreements to governing law related to UNEs”¹, but also direct the CLECs to incorporate the amendment into their interconnection agreements expeditiously, in order “to put an end to the unreasonable and unlawful propagation of vacated unbundling rules”.² With regard to Qwest, SBC has initiated this Petition prematurely.

In particular, SBC repeatedly claims that it has contacted Qwest three times to amend its interconnection agreements. However, SBC has not given Qwest an appropriate opportunity to negotiate changes to its interconnection agreements with SBC pursuant to any of the various unbundling decisions of the Federal Communications Commission (“FCC”) or the United States Court of Appeals for the District of Columbia Circuit (collectively “TRO decisions”). Accordingly, Qwest submits this Motion to Dismiss to address SBC’s failure to provide an actual controversy ripe for review by the Commission.

Qwest has not sought to continue “unreasonably” or “unlawfully” the unbundling arrangements in its interconnections agreements, which have been impacted by the TRO decisions. Contrary to its claims, SBC has *never* attempted to engage Qwest in amending the interconnection agreements with the language in Exhibit “A” to the Amended Petition. The interconnection agreements between SBC and Qwest outline specific processes for initiating and undertaking good faith negotiation of amendments, as well as resolution of disputes. These

¹ *Amended Petition* at 24.

² *Amended Petition* at 4.

processes must be undertaken before seeking relief on substantive issues from the Commission through the petition process. SBC has failed to adhere to these processes, which makes the substantive issues prayed for in this Amended Petition not ripe for adjudication.

In fact, other state commissions have determined that, based on the information provided in SBC's pleadings, the "dispute" against the other carriers is premature for consideration. For example, the Staff of the Illinois Commerce Commission specifically explained that SBC's claim is "not ripe unless and until it alleges facts sufficient to support its claim, and may not obtain relief from the Commission at this time."³ The Illinois Staff Recommendation further explained that, "[i]n its *Interim Order*, the FCC clearly did not intend to authorize ILECs to use state commissions to effectuate modifications in their interconnections agreements with competitive carriers unless the terms of the interconnection agreements themselves permitted the company to bring a dispute to the Commission for resolution without first negotiating with Defendants to each such interconnection agreement."⁴ The finding by this Commission should be no different.

Because SBC failed to provide the amendment language now proposed in Exhibit "A", SBC contends that an "impasse" has been reached with Qwest in negotiating the amendment. In fact, various personnel from Qwest and SBC have had numerous communications over the past few months about their interconnection agreements. As with standard negotiations of interconnection agreements and associated amendments, when parties have discussions they use that opportunity typically to inquire about the progress of all related outstanding issues, including proposed amendments. SBC has had numerous opportunities, before bringing a Petition before the Commission, to have inquired about when or how Qwest intended to respond to its alleged

³ *Illinois Bell Telephone Company vs. 1-800 Reconex, Inc., et al Complaint pursuant to Section 10-108 of the Illinois Public Utilities Act 220 ILCS 5/10-108 and 83 Illinois Administrative Code 200.170*, Docket 04-0606, Staff Response to Motions (Nov. 10, 2004)("Illinois Staff Recommendation") at 5.

⁴ Illinois Staff Recommendation at 8.

request for negotiations. SBC neglected to utilize those opportunities, which further indicates that SBC has not sought good faith negotiations of an amendment of the interconnection agreements with Qwest to reflect the TRO decisions.

Simply put, SBC never attempted to engage Qwest in good faith negotiations to amend their interconnection agreements in Missouri according to the terms of those interconnection agreements. Nonetheless, Qwest remains willing to enter into negotiations pursuant to the terms of the interconnection agreements and Section 252 of the Telecommunications Act of 1996. To date, SBC has ignored several requests by Qwest for a version of the amendment in Attachment B that Qwest could redline to begin negotiations. If the Commission denies the Motion to Dismiss filed by Qwest, and allows SBC to proceed with its Amended Petition, there will be no opportunity for good faith negotiations of an amendment to the interconnection agreements to reflect the TRO decisions. Accordingly, the Amended Petition as to Qwest should be dismissed for failure to provide an actual controversy ripe for review by the Commission.

CONCLUSION

For these reasons, Qwest respectfully moves that the Amended Petition of SBC as to Qwest be dismissed.

Respectfully submitted,

/s/Mary Ann Young
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Dated: December 13, 2004

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or served electronically on all parties of record this 13th day of December 2004.

/s/Mary Ann Young
Mary Ann (Garr) Young