BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Agreement between SBC Communications, Inc. and Sage Telecom, Inc.	)))	Case No. TO-2004-0576

REPLY TO SBC MISSOURI'S RESPONSE AND SAGE'S OBJECTIONS TO REQUESTS TO INTERVENE

COME NOW NuVox Communications of Missouri, Inc., MCImetro Access Transmission Services, LLC, AT&T Communications of the Southwest, Inc., Birch Telecom of Missouri, and Xspedius Communications, LLC (collectively herein referred to as "CLECs") and for their Reply to SBC Missouri's Response and Sage Telecom's Objections to Requests to Intervene state to the Commission:

1. Commission rules permit requests to intervene "within thirty (30) days after the Commission issues its order giving notice of the case, unless otherwise ordered by the Commission." See 4 CSR 240-2.075. The Commission issued notice of this case on May 6, 2004. The Commission did not issue an order changing the standard 30-day filing period and did not otherwise address interventions. CLECs filed their Interventions on May 20 and 21, 2004. Hence, the interventions were timely filed by rule. The interventions also fully met the other requirements of the Commission's rule on interventions.

2. There is no merit to SBC's contention that the Commission must issue an order inviting interventions. (SBC Response, p. 2). The Commission's rules address the matter quite clearly.

3. Further, the Commission should not lend any credibility whatsoever to SBC Missouri's and Sage's lame attempts to try to justify their blatant disregard for the law regarding interconnection agreements. As Staff indicates in its Recommendations, it is plain from the face of the SBC Missouri/Sage documents that those documents constitute an interconnection agreement that must be publicly filed with the Commission under Sections 251 and 252 of the Telecommunications Act. The Texas PUC reached the same conclusion on May 27, 2004 and ordered SBC Missouri and Sage to publicly file these documents in their entirety by June 21, 2004. (Order No. 4, Texas PUC Docket No. 29644, copy attached).

4. Contrary to SBC's and Sage's contentions, the Commission has always recognized that interested parties should be allowed to participate in proceedings concerning whether negotiated interconnection agreements should be approved under Section 252(e).[1] The standard of approval makes it clear such participation is necessary and proper, for the issues to be examined are whether the proposed agreement (or portion thereof) would discriminate against other telecommunications carriers not party to the agreement, and whether the agreement is consistent with the public interest, convenience and necessity. See 47 USC 252(e)(2)(A). These limited proceedings can only last 90 days under the Act, so Sage's purported concerns about litigation costs are overstated to say the least. Truly, more has already been expended by SBC and Sage in resistance to demands that they comply with the law than would ever have been spent had they simply submitted the agreements for approval in the first place.

5. The Commission has indicated in the past that minor amendments to agreements can be considered and approved without opening a case. But it has also made

[1] Sage's reference to arbitration procedures is not on point.

it clear that more significant amendments would result in the opening of a case to allow interested parties to participate, particularly in the absence of a Staff recommendation to approve the amendment without such proceedings. See, e.g., Order Recognizing Adoption of Interconnection Agreement, Case No. LO-2004-0448. Further, even if the Commission were to approve a controversial amendment without giving notice and an opportunity to be heard, interested parties would be able to challenge such action on a procedural due process basis as well as on substantive grounds.

6. The law is clear: interconnection agreements - whether labeled "private commercial agreements" or "double secret special deals" - must be publicly filed for approval; and they must be available for adoption in whole or in part under 252(i) and related FCC rules.

7. It is hard to take SBC and Sage seriously when they complain that aspects of their interconnection agreement are just too secret to be revealed. Most of the agreement has now been publicly filed in several states by SBC and/or Sage, and a copy of such redacted agreement has been filed herein by CLECs. Even the parts that have remained redacted to date must be publicly filed in Texas in a few weeks. But in any event, SBC and Sage have never been able to explain how they could have reasonably expected to keep portions of an unmistakable interconnection agreement secret in light of the clear requirements of Section 252. These two parties should never have presumed that they were empowered to re-write federal law to suit their purposes.

8. It is SBC and Sage that threaten to derail the provisions of the Telecommunications Act, not CLECs, not Staff, not the Texas PUC. Secret, private

interconnection deals are not allowed. Discrimination against other carriers is expressly prohibited.

9. The big picture is ominous indeed. On the one hand, SBC asserts that carriers can either have their own secret deals with it, or they can continue to operate under their existing interconnection agreement. (SBC Response, p. 3). On the other hand, SBC has in other contexts threatened to unilaterally discontinue providing essential network elements despite its interconnection agreement commitments, in direct violation of those agreements and applicable law. The Commission certainly cannot tolerate such misconduct. Like the Texas PUC has already done, and as the Staff has recommended, this Commission should require the public filing of the SBC/Sage interconnection documents and undertake full consideration thereof pursuant to Section 252(e) with the participation of CLECs and other interested parties. Such action will be an important step towards thwarting SBC's gambit to push the industry into chaos in order to increase its continued dominance over local telecommunications services.

WHEREFORE, CLECs request the Commission to approve their interventions and issue its other orders in this case as recommended by Staff and CLECs in their previously-filed comments and recommendations.

Respectfully submitted,

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

/s/ Carl J. Lumley

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, as well as transmitted electronically via electronic mail transmission, this 2nd day of June, 2004, to the following:

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