

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

Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's)	
Petition for Compulsory Arbitration of Unresolved Issues)	
For a Successor Interconnection Agreement to the)	Case No. TO-2005-0336
Missouri 271 Agreement ("M2A"))	

**SBC MISSOURI'S RESPONSE TO STAFF'S
MEMORANDUM OF LAW**

SBC Missouri¹ respectfully submits this Response to Staff's Memorandum of Law filed April 15, 2005, with the Missouri Public Service Commission ("Commission").

1. In its Memorandum, Staff points to Case No. TO-98-14 and states that the Commission has previously determined that parties are not authorized to change the deadline for filing requests for arbitrations under Section 252 of the Act by agreeing to a "start date" for purposes of requesting interconnection.²

2. That case has no application here. SBC Missouri and the various CLECs with whom it has been negotiating a replacement interconnection agreement for the Missouri 271 Interconnection Agreement ("M2A") have not attempted to arbitrarily set a "start date" to vest the Commission with jurisdiction to hear this arbitration. Rather, the parties have followed the mandatory process set out in the M2A, and approved by this Commission, for reaching a successor interconnection agreement.

3. The M2A is an interconnection agreement reached through voluntary negotiation and arbitration pursuant to Sections 251 and 252 of the federal Telecommunications Act of 1996 ("the Act"). Recognizing the potentially overwhelming number of issues that could be raised during negotiations of the successor agreement that might require protracted negotiations or Commission resolution, the M2A provides a 270-day period that was to commence no later than 135 days before the

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

² Staff's Memorandum, p. 2.

M2A's expiration and conclude no later than 135 days after the M2A's expiration, for the completion of all negotiations and, if necessary, arbitrations for establishing a successor interconnection agreement. Sections 4.1 and 4.2 of the General Terms and Conditions of the M2A state:

4.1 . . . If either party desires to negotiate a successor agreement to this Agreement, such party must provide the other party with a written request to negotiate such successor agreement (Request to Negotiate) not later than 180 days prior to the expiration of this Agreement. A Request to Negotiate does not activate the negotiation timeframe set forth in this Agreement, nor does it shorten the life of this Agreement. The noticing Party will delineate the items desired to be negotiated. Not later than 30 days from receipt of said Notice to Negotiate, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. The Parties will begin negotiations not later than 135 days prior to expiration of this Agreement . . . (emphasis added)

. . .

4.2 If either party has served a Notice to Negotiate pursuant to paragraph 4.1 above then, notwithstanding the expiration of the Agreement in accordance with paragraph 4.1 above, the terms, conditions, and prices of this Agreement will remain in effect for a maximum of 135 days after expiration of the Agreement for completion of said negotiations and any necessary arbitration. The Parties agree to resolve any impasse by submission of the disputed matters to the Missouri PSC for arbitration. Should the Missouri PSC decline jurisdiction, the Parties will resort to a commercial provider of arbitration services.

4. The Commission approved the M2A on March 15, 2001, in conjunction with its recommendation to the Federal Communications Commission ("FCC") that SBC Missouri be approved to provide in-region long distance service in Missouri pursuant to Section 271 of the Act.³ SBC filed the M2A with the FCC in its August 20, 2001 Application to the FCC for authority to provide in-region, interLATA service originating in Missouri. In concluding that SBC Missouri had taken the statutorily-required steps as required by Section 271 of the Act, to open its local exchange markets in Missouri to competition, the FCC specifically recognized "the hard work of the . . .

³ In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Case No. TO-99-227, Order Regarding Recommendation on 271 Application Pursuant to the Telecommunications Act of 1996 and Approving the Missouri Interconnection Agreement (M2A), issued March 15, 2001.

Missouri Commission to facilitate the development” of the successful 271 application and the significant steps it took “to facilitate the opening of markets” in Missouri to competition.⁴ In providing background on the Missouri Commission’s efforts, the FCC specifically noted with approval the Missouri Commission’s approving the M2A and the role it played in its recommendation that the FCC grant the 271 Application:

In November 1998, SWBT notified the Missouri Commission of its intent to file with the Federal Communications Commission (the Commission) an application to provide interLATA telecommunications service in Missouri. In response, the Missouri Commission initiated a proceeding, which was open to participation by all interested parties, to examine SWBT’s compliance with requirements of section 271. On June 28, 2000, SWBT filed for approval of the Missouri 271 Interconnection Agreement (M2A). On March 15, 2001, the Missouri Commission issued an order approving the M2A and recommending that the “FCC grant SWBT’s application for authorization to provide in-region, interLATA services in the state of Missouri.”⁵

5. As the M2A, by its terms, expired on March 6, 2005, the negotiations that occurred were required to, and did, commence by October 22, 2004. SBC Missouri’s actions in commencing the negotiations of a successor interconnection agreement and initiating this arbitration of unresolved issues comply with the requirements of Sections 4.1 and 4.2 of the M2A and were timely. The Commission should therefore proceed with this arbitration.

6. In its Memorandum, Staff also suggests that the Commission could hear this arbitration under Section 386.230 RSMo (2000)⁶ if the parties agree to do so.⁷ As the issues in need of resolution

⁴ In the Matter of Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194, Memorandum, Opinion and Order, released November 16, 2001, paras. 3-4.

⁵ Id., para 6 (internal citations omitted).

⁶ Section 386.230 RSMo 2000 states:

Whenever any public utility has a controversy with another public utility or person and all the parties to such controversy agree in writing to submit such controversy to the commission as arbitrators, the commission shall act as such arbitrators, and after due notice to all parties interested shall proceed to hear such controversy, and their award shall be final. Parties may appear in person or by attorney before such arbitrators.

⁷ Staff’s Memorandum, pp. 2-3.

here pertain to rights and obligations under the Act, SBC Missouri does not agree to submit this proceeding to the Commission under Section 386.230.

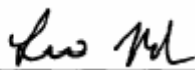
7. Staff suggests that the Commission could determine that “the 135th to 160th day timeframe is not jurisdictional but rather is in the nature of a statute of limitations, i.e., an affirmative defense that is waived if not timely pled.”⁸ As noted above, the Commission’s authority to arbitrate here flows from Sections 4.1 and 4.2 of the M2A, which was previously approved pursuant to Section 252(e) of the Act. Having followed the procedures specified in Sections 4.1 and 4.2 of the M2A, no further inquiry is necessary.

WHEREFORE, SBC Missouri respectfully requests the Commission to assume jurisdiction over this arbitration and proceed with the resolution of disputed issues as presented by the parties.

Respectfully submitted,

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⁸ Staff’s Memorandum, p. 3.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on April 20, 2005.

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