

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

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

**SAGE TELECOM'S OPPOSITION TO REQUESTS TO INTERVENE**

Sage Telecom, Inc. ("Sage") respectfully submits this opposition to requests to intervene filed by the following parties, who will be referred to herein as "Petitioners": MCImetro Access Transmission Services, LLC; NuVox Communications of Missouri, Inc.; AT&T Communications of the Southwest, Inc.; Birch Telecom of Missouri, Inc., Xspedius Management Co. Switched Services, LLC, d/b/a Xspedius Communications and Xspedius Management Co. of Kansas City, LLC, d/b/a/ Xsepdius Communications (collectively, "Requests to Intervene").

The Requests to Intervene should be denied for three fundamental reasons. First, as a matter of policy, the Commission has never allowed interventions in arbitration cases and as a general rule has only rarely allowed interventions in 252(e) proceedings. That same policy should apply here, especially given, as discussed below, the highly confidential nature of the information obviously being sought by Sage's competitors.

Second, Sage is concerned that Petitioners' principal purpose in seeking intervening in these cases is to obtain confidential information about Sage's business strategies and plans, information that may be derived from inspecting an unredacted copy of the commercial agreement between Sage and SBC Missouri Inc. ("SBC").<sup>1</sup> As Sage explained in its May 17, 2004 Response Of Sage Telecom, Inc. To Order To Show Cause:

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<sup>1</sup> While Sage believes that the mere intervention into this proceeding would not entitle Petitioners to see the confidential portions of Sage's agreement with SBC, participation as an

Public disclosure of those aspects of the Sage/SBC agreement that concern arrangements between Sage and SBC that are not required under Section 251 would cause significant competitive harm to Sage. CLECs have different strategies for seeking and achieving commercial success. The disclosure of Sage's competitive strategies and plans to its competitors would undermine the likely success of those strategies and plans. Such unnecessary disclosure of non-251 aspects of the agreement will, in turn, reduce the willingness of Sage and other CLECs to enter into such non-251 agreements.<sup>2</sup>

As Sage further argued, the Commission's standard protective order may not provide adequate protection for Sage's commercially sensitive information.<sup>3</sup> The portions of the Sage/SBC Agreement that have been redacted reflect innovative business plans and strategies that Sage has conceived of to gain a competitive advantage in marketplace competition with other CLECs, such as Petitioners. If these Sage plans and strategies are disclosed (even under protective order) to the very lawyers who are representing other CLECs in business negotiations with SBC, Sage will lose any competitive advantage it achieved by first conceiving of these plans and strategies. The Commission should not allow this proceeding to be used to thwart innovation by requiring an innovator like Sage to disclose its innovations to its competitors.

On May 20, 2004, the CLEC Coalition submitted in this docket the redacted copy of the commercial agreement between Sage and SBC that Sage and SBC had filed with the PUC of Texas. That copy of the commercial agreement redacts only a small fraction of the total contents of the agreement. In light of this public disclosure, it is not necessary to allow Petitioners to intervene as parties. The disclosure of the remaining portions to competitors such as Petitioners

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intervenor would give parties a platform from which to demand the right to view an unredacted copy.

<sup>2</sup> Response of Sage Telecom Inc. to Order to Show Cause, filed May 17, 2004, at 4.

<sup>3</sup> *Id.* at n.6.

would undermine the likely success of Sage's commercial strategies and plans, would discourage CLECs in the future from entering into innovative agreements with SBC, and is unwarranted.<sup>4</sup>

Sage also opposes the Requests for cost reasons. Sage has entered into a commercial agreement with SBC—with the endorsement of FCC Chairman Powell—in part to be freed of the perpetual (and costly) litigation that has attended CLEC/ILEC contractual relations since the Telecommunications Act of 1996 was enacted. The intervention or other participation of parties such as Petitioners in proceedings such as these would complicate the proceedings, increase Sage's litigation costs, and undermine this important and legitimate goal of Sage.

Sage respectfully requests that the Commission deny the Requests.

Respectfully submitted,

/s/ **Charles Brent Stewart**

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<sup>4</sup> To the extent that Sage's strategy depends upon cooperation with SBC in SBC's role as supplier to Sage, Sage has unavoidably been required to disclose its strategy to SBC. Throughout the business community, suppliers necessarily gain some insight as to their customers' strategy. The fact that such necessary disclosure is made to Sage's supplier does not warrant an unnecessary disclosure to Sage's competitors.

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent via electronic mail to counsel for all parties of record in Case No. TO-2004-0576, as well as to counsel for those parties seeking intervention therein as reflected in the records of the Commission's Electronic Filing Information System, this 28<sup>th</sup> day of May, 2004.

**/s/ Charles Brent Stewart**

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Charles Brent Stewart