

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

In the Matter of an Interconnection)
Agreement between Southwestern Bell)
Telephone, L.P. and Sage Telecom, Inc.)

Case No. TO-2005-0287

STAFF'S RESPONSE TO ORDER DIRECTING FILING

COMES NOW the Staff of the Missouri Public Service Commission and for its response to the Commission's April 25, 2005 Order Directing Filing states:

1. In its order the Commission stated:

. . . . The Commission will require the Staff of the Commission to file a pleading stating whether the Amendment or the Private Commercial Agreement with its appendix discriminate against a nonparty, telecommunications carriers or are against the public interest, convenience and necessity.

Although the Commission is aware that Staff stated in its brief filed on April 21, that "the interconnection agreement, as modified by the Stipulation and Agreement of the parties, does not discriminate . . .", the Commission questions whether Staff is able to make this statement without the clause, "as modified by the Stipulation and Agreement of the parties."

2. As stated in more detail in the paragraphs following, in Staff's opinion, certain provisions of the Local Wholesale Complete documents are discriminatory and against the public interest. The Stipulation and Agreement addresses these provisions; therefore, the Staff's favorable recommendation is dependant upon the Stipulation and Agreement.

3. It is the Staff's position that the "Missouri Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996" and the "Private Commercial Agreement for Local Wholesale Complete," as amended, and filed with the Commission April 25, 2005, are a single

interconnection agreement that is subject to being adopted by other competitive local exchange carriers. This interconnection agreement would meet the limited requirements of the Act, if those provisions that require acknowledgment that the agreement is not subject to Sections 251 or 252 of the Telecommunications Act of 1996 or similar law and those provisions that are rendered meaningless if the agreement is viewed as a single interconnection agreement are stripped from the agreement. Anything less would be discriminatory and against the public interest as it would require an adopting carrier, by adopting the agreement, to agree to positions inconsistent with the very reason it is able to adopt the agreement and with a Commission determination that the entire agreement is subject to Section 251 and 252. In particular, those provisions are found in the “Private Commercial Agreement for Local Wholesale Complete,” as amended, at sections 1.11, 5.6—to the extent “commercial nature of the Agreement” means the agreement is outside Sections 251 and 252 of the Act, that part of 5.6.1 which requires agreement and acknowledgment that the “Private Commercial Agreement for Local Wholesale Complete,” as amended, should not voluntarily be made publicly available, that part of 5.2.2 that states, “It is the express intent of the Parties that this Agreement is a private, commercial arrangement that is not subject to Sections 251 and/or 252, or any similar state law.”

4. The foregoing concerns of the Staff on the foregoing issue are addressed in the Stipulation and Agreement where SBC Missouri agrees that, if the Commission reviews the LWC documents, or any part of them, for approval under section 252(e) and the Commission approves both the Missouri Amendment and the LWC documents, then a competitive local exchange carrier that adopts the Missouri Amendment and LWC documents pursuant to 252(i) will not be bound by the following provisions in the LWC documents found in the Private Commercial Agreement for Local Wholesale Complete:

- a. The second "WHEREAS" clause appearing on p. 4 of 47;
- b. Section 1.11 appearing on p. 7 of 47;
- c. The second sentence of Section 2.37 appearing on p. 10 of 47;
- d. The aspect of Section 5.6 regarding the "commercial nature" of the PCA appearing on p. 13 of 47;
- e. Section 5.6.1 appearing on pp. 13-14 of 47, due to the now nonconfidential nature of the agreement;
- f. The first sentence of Section 52.2 appearing on p. 44 of 47; and
- g. Section 1.3 of the Appendix Operator Services and Directory Assistance (OS/DA) of the PCA, to the extent that it implies that the agreement is not subject to Sections 251/252.

5. As indicated in its brief, the Staff's position is dependent upon the Stipulation and Agreement, *i.e.*, the clause, "as modified by the Stipulation and Agreement of the parties," is essential to Staff's conclusion.

WHEREFORE, the Staff submits the foregoing in response to the Commission's Order Directing Filing.

Respectfully submitted,

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/s/ Nathan Williams

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 27th day of April 2005.

/s/ Nathan Williams