



**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF AN INTERCONNECTION AGREEMENT
BETWEEN SOUTHWESTERN BELL TELEPHONE, L.P. AND
SAGE TELECOM, INC.**

Case No. TO-2005-0287

Prehearing Conference – Volume 1

March 21, 2005

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Public Service Commission***

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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

March 21, 2005
Jefferson City, Missouri
Volume 1

In the Matter of an)
Interconnection Agreement Between)
Southwestern Bell Telephone, L.P.) Case No. TO-2005-0287
and Sage Telecom, Inc.)

KENNARD L. JONES, Presiding,
REGULATORY LAW JUDGE.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR
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APPEARANCES:

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1 P R O C E E D I N G S

2 JUDGE JONES: On the record with the
3 prehearing conference in Case No. TO-2005-0287, in the
4 matter of an interconnection agreement between
5 Southwestern Bell Telephone Company, LP and Sage Telecom,
6 Inc. My name is Kennard Jones. I am the judge presiding
7 over this case. At this time we'll take entries of
8 appearance beginning with Southwestern Bell.

9 MR. STEWART: Judge, Southwestern Bell does
10 not appear to be here. I was told that Mr. Bub would be
11 here, but I haven't talked to him.

12 JUDGE JONES: We'll go ahead then. It's
13 just ten o'clock. Maybe he'll be a little bit late. And
14 for Sage?

15 MR. STEWART: Charles Brent Stewart
16 representing Sage Telecom, Inc. My address is 4603 John
17 Garry Drive, Suite 11, Columbia, Missouri 65203.

18 JUDGE JONES: And, Mr. Lumley, are you here
19 for NuVox?

20 MR. LUMLEY: That's correct, your Honor.

21 JUDGE JONES: Okay.

22 MR. LUMLEY: Carl Lumley of the Curtis
23 Heinz firm on behalf of NuVox Communications of Missouri,
24 Inc. My address is 130 South Bemiston, Suite 200,
25 Clayton, Missouri 63105.

1 JUDGE JONES: And for Staff of the
2 Commission?

3 MR. WILLIAMS: Nathan Williams, Missouri
4 Public Service Commission, P.O. Box 360, Jefferson City
5 Missouri 65102.

6 JUDGE JONES: Okay. Well, first the issue
7 of intervention. The Commission hasn't decided this issue
8 yet. It will probably be on the agenda Wednesday, given
9 Tuesday's agenda's already out. I don't know how they're
10 going to go with it either. It's not clear. So I can't
11 give you a head's up on that.

12 So at this point, Mr. Lumley, NuVox is not
13 a party to the case. And I scheduled this prehearing
14 conference because I anticipated some problems and wanted
15 to get an early date because I know we have deadlines.
16 And even though NuVox has not been made a party, because
17 NuVox has raised certain issues that I think the
18 Commissioners would want answers to, I decided not to
19 cancel the prehearing conference and instead use this as
20 an opportunity to discuss some of those issues.

21 Mr. Stewart, because you're the only party
22 here to the agreement, I'll have to direct some of my
23 concerns to you, and I suppose Staff also because Staff
24 has, I assume, said the Commission should approve the
25 agreement; is that correct?

1 MR. WILLIAMS: That's -- Staff's position
2 is that it's acceptable as long as other parties are able
3 to opt into it.

4 JUDGE JONES: And as long as other parties
5 are able to opt into it, and that seems to be the problem
6 with that NuVox has, that it has language in this that
7 either inhibits or prohibits adoption by the party if it's
8 approved. Is that -- is that true, Mr. Stewart?

9 MR. STEWART: Judge, I will admit that I
10 was not consulted when the document was first filed. I
11 have not reviewed the documents that were filed. In fact,
12 Mr. Lumley, and I before we went on the record, we were
13 talking among ourselves about a few things dealing with
14 the document, and frankly, I do not have an answer either
15 for him or for you at this point.

16 I was -- like I say, I'm a little surprised
17 that Mr. Bub is not here. He I think was involved with
18 that filing and I'd have to defer to him. It's my
19 understanding that the position that has been filed by
20 both Southwestern Bell and by Sage is that it is not
21 discriminatory, which I believe has been filed, stated in
22 a filing. Now, beyond that, I'm just not in a position to
23 comment.

24 JUDGE JONES: Okay. Well --

25 MR. WILLIAMS: Judge, I believe the

1 agreements were -- they were submitted to the Commission
2 not in a case, and the companies said they didn't believe
3 that it required any review by the Commission under
4 251/252, but if the Commission chose to conduct that
5 review that it find that they meet the requirements.

6 Staff's taken the position that they should
7 be reviewed under 251 and 252, and that under that review
8 it should be approved. And that's kind of the crux of the
9 ability to opt in, because if they are not considered to
10 be interconnection agreements under 251/252, in particular
11 in the Local Wholesale Complete, then no other party would
12 even have the opportunity to take those terms, as well as
13 Sage.

14 MR. STEWART: And, Judge, I might add, I
15 believe he stated that correctly. I think when the
16 petition or the filing was made, I believe Southwestern
17 Bell and Sage took the position that it was not -- that
18 the LWC was not part of an interconnection agreement under
19 251/252, and I don't think -- again, subject to check with
20 Mr. Bub, I don't think we're waiving that argument at this
21 point.

22 JUDGE JONES: Well, let me understand.
23 Last year only the amendment was submitted. It was
24 rejected as being just part of an agreement. Sage and SBC
25 were told if you want us to look at this, submit it all.

1 You did, and Staff's position is that the whole thing does
2 comprise an interconnection agreement?

3 MR. WILLIAMS: Correct.

4 JUDGE JONES: And that it's not
5 discriminatory and that it's not against the public
6 interest?

7 MR. WILLIAMS: That's correct.

8 JUDGE JONES: Well, if there is language in
9 the agreement, I'll refer to both the private agreement
10 and the amendment as the agreement. If there is language
11 in the amendment or in the agreement, rather, that says no
12 one else can adopt this agreement, isn't that directly in
13 conflict with federal law?

14 MR. WILLIAMS: Well, Staff said it should
15 be approved if it is available to other parties, which
16 would contradict the language in the agreement. That
17 would --

18 JUDGE JONES: And then make the agreement
19 unenforceable then.

20 MR. WILLIAMS: They're still taking the
21 same position they took a year ago, although they're
22 accepting a fallback of review under 251/252. I mean,
23 their position is, we've given you Local Wholesale
24 Complete and the amendment. Now you can review the
25 amendment, but that's all you're reviewing. You're not

1 treating Local Wholesale Complete as part of the
2 amendment. That's their initial. Then their fallback is,
3 if you don't accept that, then review the whole thing,
4 Local Wholesale Complete plus the amendment, and find that
5 it complies with the requirement of federal law under
6 251/252.

7 JUDGE JONES: Well, the Commission's
8 already said we're not going to approve part of it. So to
9 even look at any of it would have to be all of it, the
10 Local Wholesale Complete and the amendment, and would have
11 to be all one agreement. And if in that agreement there
12 is language that is in conflict with federal law, then --
13 let me back up and say this.

14 I assume that the Telecommunications Act is
15 in the public interest and that the provisions are there
16 to serve the public interest. And I forget if it's 251 or
17 252. I believe it's 252 I think that specifically says
18 this agreement should be adopted by anyone else. If
19 there's language in the agreement between Sage and SBC
20 that says it cannot be adopted or that hampers adoption of
21 the agreement, then the agreement can't be in the public
22 interest because it's in conflict with federal law, which
23 is in the public interest.

24 MR. WILLIAMS: I think --

25 JUDGE JONES: Is that Staff's -- do you

1 follow my reasoning?

2 MR. WILLIAMS: Yes, and I -- that's why
3 I've kept emphasizing that it has to be available to other
4 parties.

5 JUDGE JONES: Then what's the point of
6 having that language in there if it's not?

7 MR. WILLIAMS: I think there's some
8 language that probably needs to be modified if it's going
9 to be reviewed and accepted under 251/252.

10 JUDGE JONES: Even if the language stays in
11 there, and if the agreement says it can't be adopted,
12 federal law says it can, and then there's language in the
13 agreement, someone comes along later and says, we want to
14 adopt the agreement. They can't say, you can't adopt it
15 because there's language in here that says you can't,
16 because that would be against federal law.

17 So the language serves no purpose, it
18 doesn't seem, except for the fact that it supports Sage
19 and SBC's position that these two are separate agreements
20 or something like that.

21 I don't know. Maybe taking that language
22 out would concede that point to some degree. I don't
23 know, but I -- I don't understand why language that is --
24 that appears to be on its face illegal can be in the
25 contract.

1 MR. STEWART: Judge, again, I'm not -- I
2 didn't draft the agreement. I don't know what the
3 language is. Frankly, there may be some factual arguments
4 between the parties as to what the language is, what the
5 language says, what does it mean. That may be something
6 we're going to have to resolve at a hearing. I do
7 understand that this same agreement is a 13-state
8 agreement and it's been approved already in several other
9 states. I don't know how many. Please don't ask me
10 which.

11 JUDGE JONES: It's been approved in
12 nine states.

13 MR. STEWART: So the issue has been
14 addressed by other jurisdictions. Whether in Missouri we
15 have -- we're going to have the argument as to what the
16 language is, whether the two -- the language -- the way
17 they interplay is a problem vis-a-vis the Federal
18 Telecommunications Act, again, now that the parties have
19 raised it, we may have to litigate that.

20 But I'm not in a position to go on the
21 record and say what the language says, what it means, what
22 the import of it is, and that's simply -- that's probably
23 my fault personally, Judge, just I -- I'm not up to speed.

24 JUDGE JONES: You know, I wonder if Mr. Bub
25 has been trying to call in. Did he indicate to you that

1 he would be here?

2 MR. STEWART: My last word when I left the
3 office last week was that he would be here this morning,
4 and I haven't heard from him or Paul Lane or any witness.

5 JUDGE JONES: Let's go off the record for a
6 moment. I'm going to call this number and see if he's
7 sitting somewhere in an office waiting on me to call.

8 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

9 JUDGE JONES: Go ahead and enter your
10 appearance.

11 MR. BUB: Thank you, your Honor. Leo Bub
12 for SBC Missouri. Our address is One SBC Center,
13 St. Louis, Missouri 63101.

14 JUDGE JONES: Okay. And --

15 MR. BUB: I apologize for the trouble
16 getting into the bridge, but it's working now.

17 JUDGE JONES: That was my fault. Don't
18 apologize. I should have already had the phone set up and
19 ready to receive your call. You also have on the line --
20 is there someone else on the line?

21 MR. McCAUSLAND: Yes, sir. Robert
22 McCausland. I'm Vice President of Regulatory Affairs for
23 Sage Telecom, Inc., 805 Central Expressway South,
24 Suite 100, Allen, Texas 75013. I am not counsel. My
25 counsel, Brent Stewart, should be present here today.

1 JUDGE JONES: No, I haven't seen him.

2 MR. STEWART: Hi, Bob.

3 JUDGE JONES: No. He's here. Okay. To
4 get you-all up to speed, we have been discussing -- I
5 should back up and say, first of all, NuVox has not been
6 made a party to the case as of yet, and nor have they been
7 denied access to the case. But Mr. Lumley on behalf of
8 NuVox is present today. Also Mr. Nathan Williams of the
9 Staff of the Commission is present.

10 We've been talking about the language in
11 the agreement that concerns the ability of other companies
12 to adopt the agreement and how that language is in
13 conflict with federal law. And if the whole thing, the
14 amendment and the Local Wholesale Complete is considered
15 to be one agreement, then, of course, as an
16 interconnection agreement it has to -- cannot be against
17 the public interest, assuming that the Telecommunications
18 Act is in the public interest, and that provision 252(i)
19 that requires other -- requires the parties to an
20 agreement to allow other teleco companies to adopt the
21 agreement, how can that language persist?

22 Mr. Bub, would you like to give some
23 thoughts on why that language is in the agreement? And
24 it's my understanding that it's in both the amendment and
25 the private agreement. Mr. Bub?

1 MR. BUB: Yes, your Honor.

2 JUDGE JONES: Do you want to share some
3 thoughts with us on the necessity of the language
4 concerning the other telecommunications companies' ability
5 to adopt the agreement between Sage and SBC?

6 MR. BUB: Okay. The interconnection
7 agreement that they have right now is the M2A, and the
8 amendment is amending that. That amended agreement should
9 be adoptable, what is a little outside the realm of the
10 commercial agreement, and that commercial agreement SBC is
11 willing to negotiate separately with any other CLEC
12 similar terms and conditions.

13 JUDGE JONES: I hear you saying similar
14 terms and conditions, which means there could be different
15 terms and conditions; is that correct?

16 MR. BUB: I think they'd be substantially
17 similar. What is a little different in that context is
18 that each CLEC may have unique needs, and what we found in
19 negotiating with CLECs is that they all want slightly --
20 and it could just be terminology as far as material terms,
21 I think. Anyway, we're certainly willing to negotiate
22 with other CLECs similar types of agreements so that they
23 can achieve on a wholesale -- commercial wholesale basis a
24 similar result.

25 MR. WILLIAMS: Leo, this is Nathan. Isn't

1 Bell taking the position that the Local Wholesale Complete
2 agreement is not subject to review under 251/252?

3 MR. BUB: That's our view. And as you
4 know, different states have treated it differently. I
5 think what we -- you know, the goal here is just to get
6 this agreement implemented so Sage can continue in
7 business with the -- the switching arrangement that they
8 have, but under commercial terms rather than a 252
9 agreement, 252/251-type agreement.

10 MR. WILLIAMS: And hasn't Bell said as a
11 fallback that if the Commission finds that it's reviewable
12 under 251/252, it should review it and approve it?

13 MR. BUB: Yes.

14 JUDGE JONES: Mr. Bub, if another company,
15 a CLEC came along and wanted to adopt the amendment and
16 the LWC, could they?

17 MR. BUB: I think there would have to be
18 some negotiations, but I think at the end of the day we
19 could get something substantially similar.

20 JUDGE JONES: Now, I know that earlier you
21 said that the negotiations would be because there are
22 different needs --

23 MR. BUB: Yes.

24 JUDGE JONES: -- between the different
25 companies.

1 Well, I don't suppose a third party would
2 come in and want to adopt an agreement that would not
3 satisfy their needs.

4 MR. BUB: Uh-huh.

5 JUDGE JONES: So then what purpose does
6 language that hinders adoption serve?

7 MR. BUB: Judge, I'm not sure what changes
8 a CLEC might want to make. It may be that all that's
9 needed would be a change in the names of the parties. I
10 think it would be our view that there would need to be
11 some, even if it's just brief, negotiations.

12 JUDGE JONES: Okay. I understand that
13 there may be need for negotiating an agreement, but right
14 now Sage and SBC want the Commission to approve an
15 interconnection agreement as is conceded by you-all in
16 this case. Even though that agreement is comprised of two
17 parts, the Commission apparently from its past decision in
18 an earlier related case will not approve part of it. So
19 now we are at the point where we have one agreement.
20 Although comprised of two parts, it's only one agreement.
21 And if approved by the Commission, that agreement
22 according to the Teleco Act can be adopted as is by any
23 other CLEC.

24 Now, as far as changing the names in the
25 agreement, well, of course that makes sense, but why

1 wouldn't they want to adopt the whole agreement with
2 nothing changed or why wouldn't you want them to?

3 MR. BUB: I guess --

4 MR. STEWART: Leo. Leo.

5 MR. BUB: Just a minute. I guess it would
6 be my view that the Commission refused to approve the
7 amendment before because the other part, the wholesale
8 complete, the other agreement, the wholesale complete
9 agreement wasn't being made public, and to cure that we
10 filed on a public basis, you know, holding nothing back
11 from the public or other carriers the wholesale complete
12 agreement so that it would be open to the light of day for
13 anyone to see, and we're still asking for approval of the
14 amendment.

15 JUDGE JONES: Now, you realize that the
16 Commission is not going to approve only the amendment.

17 MR. BUB: Isn't that the Commission's view?

18 JUDGE JONES: Well --

19 MR. BUB: We weren't sure on that.

20 JUDGE JONES: I'm sorry. You were not sure
21 on that?

22 MR. BUB: We weren't sure that they
23 wouldn't approve only the amendment. We thought that if
24 we disclosed and provided the full agreement so that it
25 would be clear that there was -- what was actually being

1 provided under the wholesale complete agreement, that they
2 would feel comfortable in approving the amendment.

3 JUDGE JONES: So I'll let you -- oh, go
4 ahead.

5 MR. STEWART: Thank you, Judge. Leo, this
6 is Brent. It's my understanding at the conclusion of the
7 last case one of the arguments that Sage and SBC had been
8 making was that the items contained in the Local Wholesale
9 Complete agreement, those services, those arrangements
10 were not subject to the Telecommunications Act. The
11 Commission -- we never litigated that issue.

12 The Commission took the position, I
13 believe, in the Order that we don't know whether
14 whatever's covered under the local wholesale plus
15 agreement is or is not part of the Telecommunications Act,
16 but in any event we can't approve the amendment without at
17 least looking at the LWC. So I don't think we ever had a
18 Commission resolution as to the question of what was
19 covered under the LWC or not.

20 I know Mr. Lumley and I believe the Staff
21 were claiming that the items in the LWC were subject to
22 it. I believe in the agenda discussions we were talking
23 about use of rolling stock or something that was obviously
24 as an example that would not have been subject to the
25 Telecommunications Act but yet could still be part of a

1 contractual arrangement between SBC and a CLEC.

2 Leo, does that -- am I off base on that or
3 is that -- did you understand what I said?

4 JUDGE JONES: Mr. Bub?

5 MR. STEWART: Leo?

6 MR. BUB: I'm sorry, Judge. I think I
7 concur with Brent that it really wasn't litigated.

8 MR. STEWART: That particular aspect was
9 not litigated.

10 MR. BUB: Right. And that's why we thought
11 that it wasn't foreclosed, that it wasn't a decided issue.

12 MR. STEWART: Right. And the idea when we
13 came back -- it was my understanding the idea after having
14 the ruling that we got in the last proceeding and then
15 going through the other litigation in the other states
16 about whether the LWC even needs to be made public or not,
17 because at the time we were arguing that it didn't, we
18 have made it public so that the Commission could take a
19 look at it and the Staff -- well, in the last case the
20 Staff also saw it, but the Commission itself could look at
21 it and see if we were talking about items that were or
22 were not under 251/252.

23 And I think the way the pleading is
24 presented now is in that light, is what we're asking for
25 approval of is the amendment. We still don't believe that

1 the LWC falls within the purview of the Telecommunications
2 Act, but we have at least changed from last time. We have
3 at least at this point brought to the Commission so they
4 can view the LWC and review to see if they concur with us
5 or not that it's not subject to the Telecommunications
6 Act.

7 JUDGE JONES: And it's Staff's position
8 that it is subject to the Teleco Act?

9 MR. WILLIAMS: Judge, yes, as in the last
10 case, this agreement's very similar to what was presented
11 in the -- about a year ago in the prior case. Staff's
12 consistently taken the position that the two documents
13 comprise one agreement that requires review under
14 Section 251 and 252. I don't know if Brent was aware of
15 it, but the way this case started was a filing by Staff
16 because the company submitted under the amendment process
17 to the M2A that we've usually used a letter that provided
18 the amendment, and included with what they've submitted
19 for review, which is the amendment, they provided the
20 Local Wholesale Complete document.

21 They've stayed with their prior position
22 that the amendment is the only thing that's subject to
23 review under 251/252, but they had a fallback position of
24 if the Commission disagrees with that, go ahead and review
25 the entirety of the two documents for whether they comply

1 with 251/252 requirements.

2 MR. STEWART: That's correct. Nathan is
3 absolutely correct. That's how this particular case was
4 started. I had forgotten that.

5 MR. WILLIAMS: And the Staff wanted to get
6 this in front of the Commission a little more squarely and
7 submit it and got this case started, but also allowed an
8 intervention period to get input from other potential
9 parties, which is where we're at now.

10 JUDGE JONES: Well, although we don't have
11 any other parties in the case now, their concerns have
12 been made clear, and I'm back to square one. All this
13 about there being two agreements and one's not subject or
14 whatever I don't even think is relevant at this point.

15 The point is that we have an
16 interconnection agreement that has to comply with 251 and
17 252 of the Teleco Act. If the agreement has language in
18 it that says no one else can adopt it, to me personally as
19 a judge in this case, that's in direct contradiction with
20 the federal act.

21 How can that be? How can the agreement
22 have language in it that contradicts the law that governs
23 it? Mr. Bub?

24 MR. BUB: Well, your Honor, we don't say
25 that nobody can get the same terms. What I said before is

1 that our position is these two are separate agreements,
2 but realize that the fallback position that we've
3 articulated in the petition that you've referred to,
4 Mr. Williams and Mr. Stewart referred to, is that that's
5 how the Commission views it, as one agreement and that
6 they'll only approve it under 252 as a 252 agreement.

7 Under our fallback position, we'll proceed
8 with that, and if the Commission does approve it under
9 those grounds as a 252 agreement, then if the carrier
10 wanted that exact same agreement to MFN into it, they
11 would be limited to what's in there. They have to take
12 the exact terms, basically all or nothing. They could do
13 that if they would want to.

14 As I stated earlier, it would be our
15 preference, though, to sit down with an individual carrier
16 on a carrier-to-carrier basis and talk to them, find out
17 what their needs are so that we can maybe better tailor
18 the wholesale solution to their needs rather than what
19 Sage negotiated with us. If they want the exact same
20 thing and they can meet all the same -- have the same
21 requirements that Sage does in their agreement and they
22 want the exact same thing, well, then they can have it
23 under the MFN terms.

24 But it would be our preference, like I
25 said, to negotiate, to find out what their needs are and

1 discuss on a carrier-to-carrier basis how we would best
2 meet that. If the Commission -- I guess the bottom line
3 for you is that if the Commission does -- is inclined to
4 approve it under 252, then we would allow that to be --
5 have the same agreement to be taken as long as they were
6 taken on an all-or-nothing basis, as is required under the
7 rules, meaning no pick and choose allowed. They'd have to
8 take the whole agreement as is.

9 JUDGE JONES: Well, that would be the point
10 of adopting the agreement.

11 MR. BUB: Right.

12 JUDGE JONES: Okay. Then --

13 MR. BUB: Our experience, though, has been
14 that carriers when they tell us that they want something,
15 they want to adopt an agreement, we sit down and talk to
16 them, turns out they actually want something slightly
17 different, and that would be our preference to negotiate
18 on that basis.

19 JUDGE JONES: Well, that would be a new
20 interconnection agreement to be approved by the Commission
21 then, right?

22 MR. BUB: If we changed it, certainly.
23 Certainly.

24 JUDGE JONES: Well, let me ask you, in
25 NuVox's reply it's my understanding, Mr. Bub, that you

1 played a role in forming the agreement.

2 MR. BUB: Personally, I did not.

3 JUDGE JONES: Well, at Section 1.1 of the
4 LWC it appears that that section requires any company
5 adopting it to agree that the document is not subject to
6 the Teleco Act.

7 MR. BUB: That's our position.

8 JUDGE JONES: Well --

9 MR. BUB: I believe Sage concurs in that.

10 JUDGE JONES: I understand that's
11 your-all's position, but let me direct the question to
12 Staff. And how is it that that language isn't troublesome
13 at least?

14 MR. WILLIAMS: Judge, I think Staff's
15 recommendation was to approve the agreement under 251/252.
16 In light of what NuVox has raised specifically, I think
17 they're right. I mean, it would be a conditional
18 approval. They'd have to modify some of the language to
19 take out those portions that do conflict with the
20 requirements of 251/252.

21 JUDGE JONES: It sounds like the Commission
22 will approve an agreement that will then later be changed.

23 MR. WILLIAMS: I think it would only be
24 approved if they were to change it. I've seen that in
25 other situations.

1 JUDGE JONES: Also it seems that in
2 Section 18 it says that the LWC terminates if any carrier
3 is allowed to adopt it. Well, does it terminate after
4 they adopt it or before they do? Mr. Bub?

5 MR. BUB: I don't believe it would
6 terminate if the Commission approves it on a 252 basis.

7 JUDGE JONES: Right. It sounds like
8 you-all -- if the Commission approves it -- if the
9 Commission finds that this is an agreement that should be
10 approved under 251/252, then all the offending language
11 after the approval would be removed. Is that what I'm
12 understanding?

13 MR. BUB: I don't know what the effect
14 would be on those provisions. Can we maybe call a
15 five-minute recess and let me look at that language
16 specifically?

17 JUDGE JONES: Sure we can.

18 MR. BUB: If we can get it resolved right
19 now, that might be the best thing to do.

20 JUDGE JONES: Okay. We'll take a
21 five-minute recess.

22 (A BREAK WAS TAKEN.)

23 JUDGE JONES: Okay. We can go ahead and go
24 back on the record. Mr. Bub?

25 MR. BUB: Yes, your Honor, I'm ready to

1 proceed. If this might help a little bit, on the
2 background of those particular provisions that we've been
3 discussing, this agreement had been written probably a
4 couple of years ago and it was before the FCC came out
5 with their pick and choose rule.

6 The concern that we had at the time was
7 that if we reached this agreement with Sage on these
8 particular terms that we could both live with, that other
9 carriers might come in and try to pick and choose parts of
10 it. They may say, well, we want to adopt this agreement
11 but we don't like this or that and we want to go and
12 arbitrate those things we don't agree with.

13 What the FCC has since said that you either
14 adopt an agreement or you don't. You take the whole
15 thing, and you cannot pick and choose. So from that
16 perspective, we don't have the same concern that we did
17 before. I can tell you that in that agreement, that
18 language is still there, but it's our understanding that
19 it's not an automatic thing, it's more of an option. So
20 that the parties could if they chose terminate the
21 agreement.

22 But I can tell you that in Texas Michigan,
23 Indiana, I believe in California, that it has been treated
24 as a 252 agreement and approved on that basis subject to
25 other carriers taking the whole thing under 252(i). And

1 we haven't exercised the option to cancel the agreement,
2 and as long as our concerns aren't triggered, like as long
3 as there aren't -- inability to pick and -- piece part
4 this agreement apart, then I don't see any circumstances
5 under which we would try and exercise the option to
6 terminate it.

7 So I guess from our perspective here, the
8 existence of that language in the agreement shouldn't be
9 an impediment to it being approved under 252, if that's
10 what -- if that is the direction that the Commission's
11 taking.

12 JUDGE JONES: Well, I don't know about the
13 direction the Commission is taking, but I try to answer
14 questions in anticipation of what they'll be rather than
15 getting the question and then trying to find the answer.

16 MR. BUB: Certainly, your Honor. I
17 understand.

18 JUDGE JONES: If the agreement has language
19 in it -- I keep going back to this. I don't understand
20 why the language is in the agreement if it serves no
21 purpose.

22 MR. BUB: Well, it does serve a purpose in
23 that we don't know in the future how -- the future's
24 uncertain. We don't know how any Commission -- it's not
25 just the Missouri Commission. It could be any of the

1 Commissions that we deal with, because this agreement was
2 negotiated with us, between us, Sage and SBC, for multiple
3 states. So we really don't know how a particular state
4 might treat it, so that language is in there and does
5 serve a purpose. But in this case, the FCC has now ruled
6 on pick and choose, that that should address our concern.

7 But just in case it doesn't, that language
8 is there and I need to stress that it's only an option,
9 and with the law as it is and if the Commission does
10 approve it under 252(i), allowing carriers to adopt it as
11 is under that situation, I can't see how the parties would
12 exercise the option to terminate it. We would allow -- if
13 a carrier wanted it under -- as an entire agreement, if
14 they wanted it, they could have it under 252(i) if the
15 Commission approved this as a 252 agreement.

16 JUDGE JONES: Okay.

17 MR. BUB: I think that language probably
18 should stay as residual protection, even though we don't
19 anticipate it being needed. We just can't foresee in the
20 future how some commission might treat it.

21 JUDGE JONES: You mean in a different
22 state?

23 MR. BUB: Missouri or a different state,
24 yes, your Honor.

25 MR. WILLIAMS: Judge, although you've not

1 granted NuVox intervention, of course, Mr. Lumley's here
2 and does have a perspective that even Staff doesn't --

3 MR. BUB: I couldn't hear.

4 MR. WILLIAMS: I'm saying Carl's here and
5 he's representing NuVox. While they haven't been granted
6 intervention as another CLEC, they may have a perspective.
7 I'm sure they have a perspective that's different from any
8 of the other parties that are here. The Judge might want
9 to see what input Mr. Lumley might be able to provide,
10 too.

11 JUDGE JONES: I don't think that would be
12 appropriate since they haven't been granted intervention.
13 So I guess the answer to that question is no.

14 Mr. Bub?

15 MR. BUB: Yes, your Honor.

16 JUDGE JONES: Section 18.1, for instance,
17 of the LWC requires that the CLEC be in operation, must
18 already be in operation. Well, I'm not quite sure I
19 understand the concern, one, because a CLEC wouldn't be
20 looking for interconnection if it weren't in operation.
21 It's kind of like saying you can't get gas at this gas
22 station unless you have a car. Well, what's the point
23 unless you do have a car? So why is that language in the
24 agreement?

25 MR. BUB: Your Honor, I don't know.

1 JUDGE JONES: Okay. And then --

2 MR. BUB: I would imagine that if Sage and
3 SBC have had a long course of dealings because Sage has
4 been in operation for a long time, and one of the unique
5 characteristics of a -- of this type of a wholesale
6 agreement is it was tailored to the existing operations of
7 a particular CLEC, and that kind of goes back to the
8 preference that we would have to actually negotiate with
9 the CLEC so that any commercial agreement that we would
10 reach with them would be tailored to their operations.

11 JUDGE JONES: It sounds like the intent of
12 that language would be more specifically and perhaps
13 better served if it said the LWC requires that the CLEC be
14 Sage. Wouldn't that --

15 MR. BUB: This wasn't written with the idea
16 that a particular -- that some other carrier -- it wasn't
17 written with the idea that another carrier would use the
18 agreement as written and with the idea that Sage would be
19 operating under it. So it was tailored to Sage's
20 operations.

21 If the Commission approves this as a 252
22 agreement, then if another carrier wanted to adopt the
23 entire agreement in its entirety, then that would be
24 permitted -- I guess that would be permitted under the law
25 and we wouldn't oppose that.

1 As far as why that specific provision was
2 in there, I expect it was just to reflect the fact that
3 Sage was operating.

4 JUDGE JONES: Also, are there -- are there
5 two private agreements or one?

6 MR. BUB: You mean does this replace the
7 one that was done previously?

8 JUDGE JONES: Are there two Local Wholesale
9 Complete agreements or is there just one?

10 MR. BUB: That was filed?

11 JUDGE JONES: In existence. Do you have
12 one or two agreements with Sage, private agreements?

13 MR. BUB: I think there's agreements
14 with -- your Honor, I guess I'm not understanding the
15 question. Are you asking is this the same agreement that
16 was filed previously?

17 JUDGE JONES: No.

18 MR. BUB: Did we change it?

19 JUDGE JONES: In NuVox's reply it says that
20 the filing letter and SBC and Sage's pleading state that
21 there are two LWC amendments. It appears that only one
22 was submitted. My question is, is that true?

23 MR. BUB: Oh, okay. We're talking about
24 the amendment. I think the amendment that was filed with
25 this case is different than the one that was previously

1 filed. I think there were some changes to it.

2 JUDGE JONES: So then --

3 MR. BUB: Is that what you're asking, about
4 the amendment?

5 JUDGE JONES: Were there any -- were there
6 LWC amendments?

7 MR. BUB: Subsequent to the prior case?

8 JUDGE JONES: Yes.

9 MR. BUB: I believe that's true. I think.

10 JUDGE JONES: Well, Mr. Williams, has Staff
11 looked at one or two -- I'm assuming LWC amendments means
12 that there was another LWC filed last year in the related
13 case, that that LWC has been since amended. Is that true
14 so far?

15 MR. WILLIAMS: What Staff has seen is what
16 was filed in this case.

17 JUDGE JONES: Is it the same as what was
18 filed last year?

19 MR. WILLIAMS: The LWC itself is, but the
20 amendment, any revisions to it were not in the last case,
21 no.

22 JUDGE JONES: Okay. So the LWC is the same
23 as the one that was filed in the last case?

24 MR. WILLIAMS: I believe so.

25 MR. BUB: That was my understanding. I

1 thought that the amendment may have been changed from the
2 last case to this case.

3 JUDGE JONES: So there have been no
4 amendments to the Local Wholesale Complete?

5 MR. BUB: I think that's the same
6 agreement. I could verify that, your Honor, if that would
7 help.

8 JUDGE JONES: It may.

9 MR. BUB: Let me make a note. I'm making a
10 note, your Honor, to verify for you whether or not the
11 wholesale complete agreement that was filed in this case
12 is the same as what was in existence in the prior case;
13 and then with respect to the amendment, whether the
14 amendment as filed in this case --

15 JUDGE JONES: Well, no.

16 MR. BUB: -- is the same as what was filed
17 in the last.

18 JUDGE JONES: I think you're
19 misunderstanding my concern. Put the amendment aside for
20 the moment. Let me ask you, did you sign the Local
21 Wholesale Complete as the attorney for SBC?

22 MR. BUB: The agreement itself?

23 JUDGE JONES: Yes.

24 MR. BUB: I don't believe I signed the
25 agreement. Clients signed that.

1 JUDGE JONES: Who did?

2 MR. BUB: Clients.

3 JUDGE JONES: Who is that?

4 MR. BUB: I believe it was Michael Enbaugh
5 (phonetic spelling).

6 JUDGE JONES: Okay. Well, I'll tell you
7 the reason --

8 MR. BUB: It was David Cole.

9 JUDGE JONES: The only reason I asked you
10 that, Mr. Bub, was to just ask you if you signed one or
11 two LWCs, but it doesn't sound like you're clear on that.

12 MR. BUB: Well, your Honor, the lawyers
13 don't sign agreements, interconnection agreements. The --
14 our industry markets president, David Cole, I believe is
15 the one that signed the Local Wholesale Complete
16 agreement, and I believe it's the same agreement that was
17 filed that was in existence at the prior case. And I
18 think we also disclosed that agreement to Staff, but it
19 was not filed in the case. I don't believe that agreement
20 has changed, but like I indicated, I'll verify that for
21 you.

22 JUDGE JONES: So all the agreements between
23 SBC and Sage that relate to this matter are -- have been
24 submitted to Staff, the amendment, the LWC, whatever, a
25 Post-It note that says yes and no with check boxes,

1 anything that goes on between SBC and Sage with regard to
2 the interconnection has been before the Staff of the
3 Commission or submitted to the Staff; is that right?

4 MR. BUB: Right. But what I don't know,
5 your Honor, is whether the -- this is where I'm unclear,
6 is whether the amendment itself is the exact same as what
7 was filed before. It's my understanding that it changed,
8 but I will verify that.

9 JUDGE JONES: You don't have to verify
10 that. That won't answer the question.

11 MR. WILLIAMS: Leo, I think there was at
12 least one amendment to the LWC document. There may have
13 been two. I think there was some confusion on that. My
14 recollection is there was one submitted but the cover
15 letter referenced two.

16 JUDGE JONES: Mr. Bub, did you hear
17 Mr. Williams?

18 MR. BUB: No, I did not. I'm sorry, your
19 Honor.

20 MR. WILLIAMS: Leo, it's my recollection
21 that there was at least one amendment to the LWC
22 agreement, and it seems to me like the cover letter or
23 something referenced two, although I believe we only
24 received one in the filing, but I assume it was just an
25 error. It may not have been, but it's my recollection

1 that there was some inconsistency on that as to whether
2 there's one or two amendments to Local Wholesale Complete.
3 And I'm talking about it separate from the amendment that
4 you were submitting to the Commission for review. But I
5 do know whatever Staff received has been filed in this
6 case.

7 MR. BUB: Okay.

8 JUDGE JONES: Do you get a clear picture of
9 my concern, Mr. Bub?

10 MR. BUB: I believe, your Honor, you're
11 trying to determine what's been presented and what we're
12 asking for review, whether there's two or one.

13 JUDGE JONES: I know what's been presented,
14 but has everything been presented, is really the question.

15 MR. BUB: I think the answer would be yes,
16 but where I'm uncertain is Nathan's reference to another
17 amendment. I'm not sure, and maybe offline Mr. Williams
18 and I can discuss that and find what the discrepancy is
19 that he's looking at, and then I can have that researched
20 and I can get a definitive answer.

21 But it's my understanding that everything
22 that we have that we're asking to be approved has been
23 presented. Whether or not there's another version, maybe
24 a prior version of the amendment that we're not asking for
25 approval for, I don't know.

1 JUDGE JONES: Okay. That sounds like you
2 and Staff just need to talk about that. That's fine.

3 MR. BUB: I will do that with Mr. Williams.

4 JUDGE JONES: All right. Well, I'll try to
5 sum this up. Generally I can't -- in this particular
6 instance, I am not speaking for the Commission. I have
7 not been directed to deal with this issue, but like I
8 said, I'm dealing with it because it is an apparent issue
9 to me that they may want the answers to.

10 If there's language in the agreement -- and
11 by the agreement I'm referring to the LWC and the
12 amendment as a whole document. If there's language in
13 that agreement that is in contradiction with the
14 Telecommunications Act, how can the agreement be in the
15 public interest?

16 That's the concern that I have now. Is
17 there anything else anyone would like to add on the record
18 while we're here in the prehearing conference?

19 MR. BUB: Your Honor, I guess you need
20 to, in answering that question, look at our petition that
21 we have, basically our share position that these two
22 documents follow different tracks under the law. The
23 first track is the one we're all used to under 251/252,
24 and that's the amendment.

25 In our view that amendment is changing our

1 M2A agreement with Sage to recognize that some things that
2 are no longer subject to the Act have been negotiated
3 outside of this 251/252 agreement. And that's reflected
4 in the amendment, and we're asking for that amendment to
5 be approved pursuant to the Act.

6 Now, as we indicated, as a fallback
7 position, if the Commission will only approve this as a
8 single agreement, meaning the Local Wholesale Complete and
9 the amendment itself as one agreement under 252, then we
10 will accept that. And you have to realize that there --
11 if the Commission's taking that approach, that wasn't
12 contemplated by either Sage or us when that agreement was
13 written.

14 So from that perspective, while it may
15 appear to you that some things in the agreement aren't
16 consistent with the Act, we would disagree with that
17 because they were contemplated to handle things that are
18 subject to the Act and things that are now by subsequent
19 FCC Order outside the Act.

20 But under no circumstances did either Sage
21 or we -- and I guess I can't speak for Sage. But under no
22 circumstances were we negotiating something that was -- or
23 agreeing to something or -- that is inconsistent or --
24 there's absolutely no intent to contradict the Telecom
25 Act.

1 What we were simply trying to do was
2 reflect certain things, certain elements that are going to
3 be provided were no longer subject to the terms of 251 and
4 252 of the Act, and that was the whole reason for the
5 separate wholesale complete agreement.

6 JUDGE JONES: Okay. I understand what
7 you're saying, Mr. Bub. You wrote the agreement and you
8 didn't contemplate that it would be subject to the Teleco
9 Act, so --

10 MR. BUB: It may not completely square with
11 the Commission's idea of what should or shouldn't be in an
12 agreement, but from our perspective, if the Commission
13 does treat this as a 252 agreement and if another carrier
14 wants the entire agreement under 252(i), while it might
15 not make complete sense to us from a business perspective,
16 if that's what they want, they can have it.

17 Our preference, though, is to sit down and
18 negotiate with them on a business-to-business basis
19 something that would be more tailored to their business
20 rather than Sage's.

21 But if that's what they want, if they want
22 the exact same agreement under 252(i) and they take the
23 whole entire agreement, then we would allow that.

24 JUDGE JONES: I understand that. This is
25 what I can't understand, though, is last year this matter

1 was before the Commission. The Commission rejected the
2 amendment saying that the whole thing, the LWC and the
3 amendment needed to be filed and governed by 251/252.
4 Sage and SBC came back and submitted everything to be
5 approved by the Commission.

6 In light of that, it seems like language
7 that's in contradiction with the Federal Act would have
8 been taken out since last year. I mean, between then and
9 now you've certainly had to have contemplated that it
10 would be scrutinized under 251 and 252.

11 MR. BUB: I guess.

12 JUDGE JONES: I mean, back to the car
13 scenario, you leave here, you're going to go to Fulton.
14 You've got a quarter tank of gas. Well, there's no need
15 putting more gas in the car if you're just going to
16 Fulton. Well, what if on the way to Fulton you realize
17 you've got to go all the way to St. Louis? You've got to
18 stop and get more gas.

19 So even though you didn't contemplate that
20 the LWC would be looked at under 251/252, since beginning
21 the trip you realize that it would be subject to that
22 scrutiny, at least in Missouri, and it seems like you
23 would have stopped and gotten more gas or taken out
24 offending language.

25 MR. BUB: Well, your Honor, I guess that

1 gets back to, you know, our what I labeled before pure,
2 p-u-r-e, position that we don't really believe that it's
3 appropriate to treat this local wholesale agreement as an
4 agreement subject to the Act simply because it deals with
5 elements that are no longer subject to 251 of the
6 Telecommunications Act.

7 JUDGE JONES: I understand that, but now go
8 back to your fallback position. Go ahead and fall back
9 and just stay there. There's no point in going on with
10 the --

11 MR. BUB: Right. I understand.

12 JUDGE JONES: Okay. So your fallback
13 position is, if the Commission is going to look at both of
14 these agreements, the amendment and the LWC as a whole
15 agreement subject to 251/252, then you want us to approve
16 it. And if we -- if the Commission approves those
17 agreements or that agreement, under 251/252, then 252(i)
18 it has to be subject to adoption by anyone else, and if
19 there's language in the agreement that says it's not, then
20 it's in contradiction with federal law.

21 MR. BUB: Well --

22 JUDGE JONES: I may be --

23 MR. BUB: -- it talks about an option. I
24 think it's more of an option than an automatic.

25 JUDGE JONES: Okay.

1 MR. BUB: Our view is that that gives us
2 the option, and like I said before, even though other
3 commissions like Texas and Indiana have approved it under
4 252, that option has never been exercised. I guess you're
5 getting into a question of whether we'd be willing to, you
6 know, by removing that waive that position that we have.
7 I don't know if there's any need to go there, just because
8 we haven't exercised that option and don't foresee a need
9 to, as long as this agreement will only be available on an
10 entire basis and subject to -- in accordance with the
11 FCC's rules. Even though there's language in there that
12 you've identified, we still don't see that as an
13 impediment to approval.

14 JUDGE JONES: Well, I don't have anything
15 else. Does anyone have anything you want to add?

16 MR. WILLIAMS: I'd just say I think from
17 Staff's perspective -- from Staff's perspective, that is
18 an impediment.

19 JUDGE JONES: Did you hear Mr. Williams,
20 Mr. Bub?

21 MR. BUB: No, I didn't, your Honor.

22 MR. WILLIAMS: I said from Staff's
23 perspective, I think that is an impediment.

24 JUDGE JONES: He said he thinks it is an
25 impediment from Staff's perspective.

1 MR. LUMLEY: Judge, for the record, when
2 you're saying anyone else, I'm assuming that doesn't
3 include me, and that's why I'm not speaking.

4 JUDGE JONES: It doesn't. That sounds
5 strange.

6 MR. LUMLEY: That's all right. I just
7 didn't want the record to be unclear later.

8 JUDGE JONES: That you chose to remain
9 silent, you mean?

10 MR. LUMLEY: Right.

11 JUDGE JONES: All right. I don't know what
12 you-all might have to talk about, but if you have anything
13 to talk about, feel free to do so.

14 MR. BUB: Your Honor, before I was able to
15 join the call, was there any discussion of the
16 schedule?

17 JUDGE JONES: No. No, we haven't taken it
18 that far. We went right into the substance that I brought
19 you up to speed on.

20 MR. BUB: Thank you.

21 JUDGE JONES: And actually, tomorrow
22 NuVox's request for intervention will be before the
23 Commission, so that issue will be decided. I don't know.
24 I mean, in light of how things have developed today, it
25 seems NuVox's interests are represented anyway, but I'll

1 let the Commission decide what they want to do with that
2 tomorrow.

3 And then if NuVox is granted intervention,
4 then we'll deal with that then. If not, then we'll go to
5 the next step, and I don't know what that will be. We
6 will have to sit down and look at something else for a
7 while and look at this case again and think about how to
8 proceed the best way, given the timeline.

9 MR. STEWART: Well, if I might, Judge, one
10 option would be, regardless of whether NuVox is granted
11 intervention or not, we might be able to accomplish a
12 proposed procedural schedule, joint proposed procedural
13 schedule simply by phone call, rather than actually
14 convening a prehearing conference. I'm willing to do
15 that. I assume Bell and the other parties would be. I
16 understand that we're under the -- on the clock, so we
17 would probably want to get that done as quickly as we
18 could.

19 JUDGE JONES: Okay. Well, I'll let you-all
20 talk today. It may not be necessary. It sounds like
21 Staff was changing their position.

22 MR. WILLIAMS: If Bell's not willing to
23 make the changes so that the agreement is in compliance
24 with 251/252, I would say -- and from what we've heard
25 here, they're still wanting to maintain that language in

1 the agreement, I'd say it shouldn't be approved.

2 JUDGE JONES: I'll let you-all go ahead and
3 talk about that. And with that then, we'll go off the
4 record.

5 MR. BUB: Before we do, Judge, can I ask
6 one question of Mr. Williams?

7 JUDGE JONES: Sure you can.

8 MR. BUB: Could you tell us specifically
9 what you believe is inconsistent with the Act in the
10 agreements?

11 JUDGE JONES: Before you answer that, is
12 that something I need to be here for?

13 MR. BUB: Would you rather us just discuss
14 it off the record, your Honor?

15 JUDGE JONES: Yeah, it would be just as
16 easy.

17 With that then, we'll go off the record.

18 WHEREUPON, the recorded portion of the
19 prehearing conference was concluded.

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