

ORIGINAL

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November 17, 2003

FILED

NOV 17 2003

Missouri Public Service Commission  
Attn: Secretary of the Commission  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, Missouri 65102-0360

Missouri Public  
Service Commission

Re: Case No. TO-2004-0207  
Mass Market Impairment Inquiry

Dear Mr. Roberts:

Please find enclosed for filing in the above-referenced case an original and eight (8) copies each of: 1) *Sage Telecom, Inc.'s Response To SBC Missouri's Response To Order Directing Filing*; and 2) *Sage Telecom, Inc.'s Response To SBC Missouri's Proposed Batch Cut Process*.

A copy of this filing has been sent this date to counsel for all parties of record.

Sincerely,

  
Brent Stewart

CBS/bt

Enclosure

cc: Counsel for all parties of record  
Katherine Mudge  
Robert McCausland  
Stephanie Timko

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

ORIGINAL  
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Missouri Public  
Service Commission

In the Matter of a Commission Inquiry into )  
the Possibility of Impairment without )  
Unbundled Local Circuit Switching When )  
Serving the Mass Market )

Case No. TO-2004-0207

**SAGE TELECOM, INC.'S RESPONSE TO  
SBC MISSOURI'S RESPONSE TO ORDER DIRECTING FILING**

COMES NOW Sage Telecom, Inc. ("Sage") and pursuant to the Commission's Order Creating Case and Establishing Deadlines ("Order") issued on November 5, 2003, files its Response to SBC Missouri's ("SBC") Response to Order Directing Filing ("SBC Response") and respectfully shows as follows:

1. Sage respectfully offers the following responses to SBC's response to the impairment issues that the Commission identified in Paragraph 8 of its Order Creating Case and Establishing Initial Filing Deadlines.

2. SBC's Proposal for Geographically Defining the Market for Mass Market Switching. Sage denies that SBC's narrow analysis of the trigger requirements is accurate. Sage will be prepared to present its analysis of the Federal Communications Commission ("FCC") *Triennial Review Order*<sup>1</sup> at the appropriate time.

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<sup>1</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, (2003) ("*Triennial Review Order*").

3. Sage agrees that the FCC directed the state commissions to define a geographic market to be smaller than the entire state. Sage agrees that SBC has cited one sentence out of Paragraph 496 of the *Triennial Review Order*.

4. Sage denies that the Metropolitan Statistical Areas (“MSAs”) are appropriate geographic market areas for Missouri in this proceeding or consistent with the FCC’s *Triennial Review Order* or implementing rules. Sage does not have sufficient information to admit or to deny that SBC’s definition of MSA is accurate. At this time, Sage does not have sufficient information to admit or to deny the remaining portions of the statements made by SBC regarding use of a competitive local exchange company (“CLEC”) switch or advertising. Upon receipt of additional information, Sage will propose a more appropriate geographic market definition.

5. Sage admits that MSAs have been incorporated or “used” in other regulatory proceedings, but denies that MSAs are the appropriate geographic market to be used for the mass market impairment analysis.

6. SBC’s Proposal for Defining the Appropriate DS0/DS1 Cross-over. Sage admits that the *Triennial Review Order* requires the state commissions to determine the appropriate DS0 cutoff. Sage does not admit or deny the remaining statements made by SBC, as they constitute legal opinion and interpretation.

7. Sage does not have sufficient information at this time to admit or to deny SBC’s proposal for defining the cross-over level for Missouri.

8. The Geographic Areas Where SBC is Challenging Impairment Based on Triggers for Mass Market Switching. Sage admits that the Missouri Commission is required to apply the geographic market definition to its trigger and impairment analysis. Sage denies the remaining statements in SBC’s Response. SBC has failed to meet its burden for challenging the FCC’s

national impairment finding for switching in the geographic areas that SBC Response. Specifically, SBC does not provide sufficient evidentiary support or full analysis of all factors to support its assertion that the FCC's triggers have been met in the specified markets. At this time, Sage does not have sufficient information to further respond to SBC's assertions and identification of areas and carriers. Therefore, Sage respectfully urges the Commission to affirm the FCC's finding that CLECs are impaired without access to unbundled local switching for the mass markets in Missouri.

9. The Competitor(s) Which SBC Asserts Satisfy the Triggers for Mass Market Switching in Each Geographic Market. At this time, Sage denies that SBC has met the requirements to establish that certain triggers for mass market switching have been met. SBC failed to provide a public list of competitors offering switching services to serve mass market customers to Sage, as SBC identified the list as Highly Confidential. Therefore, at this time, Sage cannot respond to SBC's list or allegations. However, Sage also submits that SBC failed to provide proper evidentiary support to establish that competitors satisfy the FCC's impairment triggers in the specified geographic markets. Therefore, the FCC's national impairment finding for unbundled local switching for the mass markets applies in Missouri.

10. The specific routes where SBC will be challenging the finding of impairment for dedicated transport. Sage admits that SBC properly quoted the definition of dedicated transport from one sentence in the *Triennial Review Order*. Sage admits that the FCC made certain national impairment findings regarding dark fiber transport, DS3 transport, and DS1 transport. Sage denies SBC's limited analysis of trigger provisions. Sage admits that the FCC outlined certain aspects of state analytical flexibility in paragraph 410 of the *Triennial Review Order* and that paragraph speaks for itself.

11. Sage denies that the transport routes that SBC has identified are not impaired. SBC has failed to meet its burden for challenging the FCC's national impairment finding for dedicated transport for the routes. SBC fails to provide proper evidentiary support or analysis that the FCC's triggers have been met in the specified routes. At this time, Sage does not have sufficient information to respond to SBC's assertions and identification of routes. Therefore, Sage respectfully urges the Commission to affirm the FCC's finding that CLECs are impaired without access to dedicated transport in Missouri.

12. Sage agrees with SBC's first sentence. Sage does not have sufficient information at this point to admit or to deny the remaining allegations made by SBC. Sage notes, however, that it is highly likely that discovery in this proceeding will lead to elimination of routes listed by SBC. Sage will respond when appropriate if SBC attempts to expand its list of routes.

13. The Identity of the Competitors on which SBC Relies to Satisfy Impairment Triggers for Dedicated Transport. Sage denies the allegations made by SBC in its Response. SBC fails to provide proper evidentiary support to establish that identified competitors satisfy the FCC's impairment triggers in the specified routes. Therefore, the FCC's national impairment finding for dedicated transport applies in Missouri.

14. The Specific Customer Locations Where SBC Will Challenge the Finding of Impairment for High Capacity Enterprise Loops. Sage denies SBC has accurately reflected the FCC statements made in paragraph 328 of the *Triennial Review Order*. The Order speaks for itself.

15. Sage denies that the enterprise customer locations identified by SBC are non-impaired. At this time, Sage does not have sufficient information to admit or to deny SBC's statements. SBC has failed to meet its burden for challenging the FCC's national impairment

finding for enterprise loops for the customer locations. SBC alleges without proper evidentiary support or analysis that the FCC's triggers have been met in the specified customer locations. Therefore, Sage respectfully urges the Commission to affirm the FCC's finding that CLECs are impaired without access to enterprise loops in Missouri.

16. SBC Missouri's Batch Hot Cut Proposal. Sage will respond to SBC's Batch Hot Cut Proposal in a separate pleading.

WHEREFORE, for all of the foregoing reasons, Sage Telecom, Inc. respectfully requests that SBC's Response and allegations be denied in all respects and for such other and further relief as the Commission deems just and appropriate.

Respectfully submitted,

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By:   
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ATTORNEYS FOR SAGE TELECOM,  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on counsel for all parties of record as of this date in Case No. TO-2004-0207 via hand-delivery or by depositing same in the U.S. Mail, first-class postage prepaid, this the 17th day of November, 2003.

  
Charles Brent Stewart