

**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 BRIEF**

COMES NOW the Staff of the Missouri Public Service Commission and for its brief states:

1. On April 13, 2005 the Commission issued its “Order Changing Procedural Schedule” which, among other things, directed the parties to file their briefs supporting their positions on the first issue listed by the parties in their list of issues filed April 6, 2005.

**ISSUE ONE**

2. The first stated issue is the following: **Is the Local Wholesale Complete Agreement between Sage Telecom, Inc. and SBC Missouri subject to review by the Missouri Public Service Commission pursuant to Section 252(e)?**

3. It is the Staff’s position that, like the Commission determined in Case No. TO-2004-0576, the Private Commercial Agreement for Local Wholesale Complete, including amendment, (“Local Wholesale Complete documents” or “LWC documents”) is a portion of a single agreement. Together with the remainder of the agreement—the “Missouri Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996” (“Missouri Amendment”) that Southwestern Bell and Sage have submitted to the Commission—the LWC documents are subject to review by the Missouri Public Service Commission pursuant to Section 252(e) of the Telecommunications Act of 1996. That the Local Wholesale Complete documents and the Missouri Amendment are

portions of one agreement is evident from the following language, which is not necessarily exhaustive of the provisions showing the indivisible nature of the documents:

- “The Parties have concurrently negotiated an ICA amendment(s) to effectuate certain provisions of this Agreement (‘Related ICA Amendments’).” Section 5.5 of the Local Wholesale Complete documents.
- “Included within the foregoing is the obligation of each Party and its Affiliates to support and defend the indivisible nature of this Agreement and Related ICA Amendments, . . . .” Section 5.6 of the Local Wholesale Complete documents.
- “For the Term, SAGE agrees to (i) a rate for an unbundled 2-wire analog loop (or a facility that is being used to provide the equivalent transmission capacity) equal to those prices noted in the LWC Pricing Schedule (which pricing and commitment shall be included in the Related ICA Amendments . . . .” Section 1.3 of the Local Wholesale Complete documents.
- “The terms and conditions, including pricing, contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, Addenda, and other documents or instruments referred to herein and incorporated into this Agreement by reference constitutes the entire agreement between the Parties with respect to the subject matter hereof . . . .” Section 53.1 of the Local Wholesale Complete documents.
- “Should the LWC Agreement become inoperative (and thus make the LWC Amendments inoperative as well) in the State of Missouri, this Amendment shall immediately become null and void for all purposes in the State of Missouri. . . .” Section 2.2 of the Missouri Amendment.

- “If the LWC agreement is terminated or invalidated under Section 18.7 of the LWC Agreement, then Section 18.7.3 of the LWC Agreement shall control to the extent inconsistent with Section 2.2.” Section 2.2.1 of the Missouri Amendment.
- “The LWC Documents are not subject to Section 5.1-5.3 inclusive, hereof, nor are the LWC Documents subject to any ‘change of law,’ ‘intervening law,’ ‘successor rates’ and/or any similarly purposed provisions of the current ICA or future interconnection agreement(s).” Section 5.4 of the Missouri Amendment.
- “Notwithstanding Section 7.6, the effective date of the LWC Documents for the State of Missouri shall be the same date as the Amendment Effective Date. Notwithstanding Section 7.6, the termination and/or expiration of the LWC Documents shall be controlled by the provisions set forth in the LWC Agreement.” Section 6.3 of the Missouri Amendment.
- “This Amendment contains provisions that have been negotiated as part of an entire Amendment and integrated with each other in such a manner that each provision is material to every other provision.” Section 7.1 of the Missouri Amendment.
- “The Parties agree that each and every rate, term and condition of this Amendment is legitimately related to, and conditioned on, and in consideration for, every other rate, term and condition in this Amendment. The Parties agree that they would not have agreed to this Amendment except for the fact that it was entered into on a Missouri-specific basis due to the Order, and included in the totality of rates, terms and conditions listed herein, and that it is an indivisible whole, intended to bind SBC Missouri and CLEC (including as defined, its current and future Affiliates) under the current ICA(s) and any future interconnection agreement(s), unless the Parties expressly agree

otherwise in accordance with Section 1.2 of this Agreement.” Section 7.2 of the Missouri Amendment.

- “To the extent there is a conflict or inconsistency between the provisions of this Amendment and the LWC Documents (including all their accompanying Appendices), the provisions of this Amendment shall control in the State of Missouri and apply but only to the extent of such conflict or inconsistency. To the extent there is a conflict or inconsistency between the provisions of this Amendment and the provisions of the Agreement (including all incorporated or accompanying Appendices, Addenda and Exhibits to the Agreement but excluding the LWC Documents or this Amendment), the provisions of this Amendment shall control and apply but only to the extent of such conflict or inconsistency. To the extent there is a conflict or inconsistency between the provisions of the LWC Documents and the provisions of the Agreement (including all incorporated or accompanying Appendices, Addenda and Exhibits to the Agreement but excluding this Amendment), the provisions of the LWC Documents shall control and apply but only to the extent of such conflict or inconsistency. As used in this Section, ‘this Amendment’ excludes the LWC Documents.” Section 7.6 of the Missouri Amendment.

4. Section 251(a) (1) of the Telecommunications Act of 1996 obligates telecommunications carriers “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; . . .”

5. Section 252(a)(1) of the Telecommunications Act of 1996, in most pertinent part, provides: “The agreement, including any interconnection agreement negotiated before February 8, 1996, shall be submitted to the State commission under subsection (e) of this section.”

6. Section 252(e) provides:

(e) Approval by State commission

(1) Approval required

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for rejection

The State commission may only reject

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that-

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title, or the standards set forth in subsection (d) of this section.

7. As stated in its position statements, it is the Staff's position that the entirety of the interconnection agreement must meet the requirements of the Act, not merely those provisions found in that portion of the agreement that Southwestern Bell and Sage have labeled "Missouri Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996." The following statement by the Commission in its July 27, 2004 Order in Case No. TO-2004-0576 is equally applicable here:

The Commission has a duty, pursuant to the Telecommunications Act, to examine interconnection agreements and to reject those that are discriminatory or not in the public interest.

In that case, SBC Missouri and Sage declined to disclose to the Commission the version of the Local Wholesale Complete documents they had executed at that time and the Commission concluded:

Here, the Commission cannot determine whether the agreement is discriminatory, because the parties have not presented an agreement to the Commission for approval; rather they have presented a select part of an agreement.

In contrast, here SBC Missouri and Sage have disclosed to the Commission their agreement, not a select part of the agreement; and the Commission should review the entire agreement to determine whether it is discriminatory or not in the public interest.

8. The second stated issue is the following: **Should the Missouri Public Service Commission approve the amendment to the interconnection agreement Sage Telecom, Inc. and SBC Missouri and/or the amendment to the interconnection agreement Sage Telecom, Inc. and SBC Missouri with the local wholesale complete agreement as an attachment pursuant to Section 252(e)(2)(A)?**

9. The Missouri Amendment and Local Wholesale Complete documents, when revised as the parties have agreed in the Stipulation and Agreement filed in this case April 13, 2005, are a standalone interconnection agreement that is subject to being adopted by other competitive local exchange carriers. The Staff believes that the agreement would meet the limited requirements of the Act, *i.e.*, the agreement would not discriminate against a telecommunications carrier not a party to the agreement and implementation of the agreement would be consistent with the public interest, convenience, and necessity and, therefore, the Commission should approve them.

WHEREFORE, the Staff prays the Commission to determine that the Missouri Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996 and Private Commercial Agreement for Local Wholesale Complete, including amendment are an interconnection agreement subject to review under section 252(e) of the Telecommunications Act of 1996 and that the interconnection agreement, as modified by the Stipulation and Agreement of the parties, does not discriminate against a telecommunications carrier not a party to the agreement and implementation of the agreement would be consistent with the public interest, convenience, and necessity.

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 21<sup>st</sup> day of April 2005.

**/s/ Nathan Williams**

Nathan Williams