

**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 POSITION STATEMENTS**

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

1. On March 31, 2005 the Commission issued its “Order Adopting Procedural Schedule” which, among other things, directed the parties to agree on and file a list of issues on April 6, 2005 and for each party to file that same date its position on each issue with a summary of the factual and legal points relied on by the party in a simple and concise manner.

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)?**

It is the Staff's position that, as the Commission determined in Case No. TO-2004-0576, the Local Wholesale Complete Agreement, including amendment, is a portion of a single agreement and, therefore, it together with the remainder of the agreement—the “Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996” that SBC Missouri and Sage submitted on February 10, 2005—is subject to review by the Missouri Public Service Commission pursuant to Section 252(e) of the Telecommunications Act of 1996. The following nonexhaustive list shows the indivisible nature of the Local Wholesale Complete Agreement, as amended, and the

Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996: (1) the following acknowledgement by SBC Missouri and Sage in the February 10, 2005 submittal letter that is attached to the Staff's motion to open this case filed February 25, 2005, "Sage and SBC Missouri note that the Replaced Amendment and the LWC Agreement contain provisions that have been negotiated as part of an entire agreement and the provisions are integrated with each other in such a manner that each provision is material to every other provision"; (2) the language, "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, . . . ." found in section 5.6 of the Local Wholesale Complete Agreement; and (3) the language, "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. . . ." found in section 2.2 of the Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996.

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."

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.

Further, it is the Staff's position that the entirety of the interconnection agreement must meet the requirements of Act, not merely those provisions found in that portion of the agreement that SBC Missouri and Sage have labeled "Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996." SBC Missouri and Sage do not dispute that at least a portion of the agreement is subject to review by the Commission. In their February 10, 2005 submittal letter that is attached to the Staff's motion to open this case filed February 25, 2005, Sage and SBC Missouri state, "Sage and SBC Missouri request that you file this Amendment and bring it to the attention of the Commission for approval under Section 252 of the Telecommunications Act of 1996 (the "Act")." The Staff believes that the following statements by the Commission in its July 27, 2004 Order in Case No. TO-2004-0576 are equally applicable here, except that in this case SBC Missouri and Sage have asked, as a last option, that the Commission to review the entire agreement for approval under Sections 251 and 252:

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. 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.

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

It is the Staff's position that the "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 submitted to the Commission February 10, 2005, should be reviewed together as 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 52.2 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.”

WHEREFORE, the Staff submits the above position statements.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

**/s/ Nathan Williams**

Nathan Williams  
Senior Counsel  
Missouri Bar No. 35512

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-8702(Telephone)  
(573) 751-9285 (Fax)  
[nathan.williams@psc.mo.gov](mailto:nathan.williams@psc.mo.gov)

### **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 6<sup>th</sup> day of April 2005.

**/s/ Nathan Williams**

Nathan Williams