

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 5th day of
May, 2005.

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

**ORDER APPROVING INTERCONNECTION AGREEMENT
AND ORDER APPROVING STIPULATION AND AGREEMENT**

Syllabus: This order finds that the “Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Section 251 and 252 of the Telecommunications Act of 1996” and the “Private Commercial Agreement for Local Wholesale Complete”, which together constitute an Interconnection Agreement, filed by Southwestern Bell Telephone, L.P. and Sage Telecom, Inc., subject to a Stipulation and Agreement, is not discriminatory or against the public interest and should be approved. This order also approves the Stipulation and Agreement between the parties and directs the parties to comply with its terms.

Background

In consolidated cases, Case Nos. TO-2004-0576 and TO-2004-0584, Southwestern Bell Telephone, L.P. and Sage Telecom, Inc., submitted for Commission approval an Amendment to their Interconnection Agreement but did not submit a private agreement called the Private Commercial Agreement for Local Wholesale Complete Agreement (LWC). Having found that the amendment and the LWC comprise one agreement, the

Commission concluded “that it is – by definition – against the public interest to approve one part of an interconnection agreement without considering all parts of that agreement together as whole.” The Commission therefore rejected the amendment. In response to the Commission’s order, SBC and Sage submitted both the amendment and the LWC to the Commission. The Staff of the Commission then moved the Commission to open this case to review the Interconnection Agreement, which is comprised of the amendment and the LWC.

Because this matter is the successor to the consolidated cases, the Commission invited those telecommunications companies that requested intervention in that case to intervene in this one. NuVox Communications of Missouri, Inc., requested, and was granted, intervention. A prehearing conference was held and the parties filed a Stipulation and Agreement on April 13, 2005.

The Stipulation and Agreement

The parties jointly proposed the following two issues:

- (1) Is the LWC subject to review by the Commission?
- (2) Should the Commission approve only the Amendment or both the Amendment and the LWC?

Rather than request a hearing, the parties agreed to submit briefs on the first issue. The second issue is resolved by the Stipulation and Agreement.

As part of the Stipulation and Agreement, the parties revised two sections of the Amendment and added another.¹ Through these Sections, the parties agreed that if it is determined that the LWC need not have been included with the Amendment, then it would be separated from the Amendment. Further, the parties agreed that the revised

¹ The parties amended Sections 2.1.1 and 6.2, and added Section 7.9.

Amendment would replace the Amendments filed in the consolidated cases² and initially, in this case. Lastly, the added Section sets forth SBC and Sage's agreement with the Stipulation and Agreement.

The parties also agreed that if the Commission determines that the LWC is subject to Commission approval and the Commission approves both the Amendment and the LWC, then certain Sections of the LWC would not bind a Competitive Local Exchange Carrier that later adopts the Amendment and the LWC. Generally, these Sections concern the private nature of the LWC and that the document should not be subject to regulatory scrutiny.

The parties further agreed that if it is determined that the LWC need not have been submitted to the Commission then certain Sections of the Amendment will not be applicable to an adopting carrier. The parties agree that the Commission should make the conditions set forth in the Agreement, conditions of approval of the Amendment and the LWC.

Lastly, the parties informed the Commission that the Office of the Public Counsel does not oppose the Stipulation and Agreement.

Discussion

Under 47 U.S.C. Section 252(e) of the Telecommunications Act of 1996, any interconnection agreement adopted by negotiation must be submitted to the Commission for approval. In the consolidated case, TO-2004-0576 and TO-2004-0584, the Commission concluded that the Amendment and the LWC were indivisible and that neither was a stand-alone agreement. Because the Amendment and LWC comprise one interconnection agreement, the Commission may reject the agreement if it finds that it is discriminatory or inconsistent with the public interest, convenience and necessity.

² Case Nos. TO-2004-576 and TO-2004-0584

In its brief, on the issue of whether the LWC is subject to Commission review, Staff stated that the interconnection agreement, as modified by the Stipulation and Agreement, does not discriminate against nonparties and that implementation of the agreement would be consistent with the public interest, convenience and necessity. NuVox also stated that subject to the Stipulation and Agreement, the Commission should approve the interconnection agreement. Public Counsel has not filed an objection to the Stipulation and Agreement.

Modification Procedure

The Commission has a duty to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act.³ In order for the Commission's review and approval to be effective, the Commission must also review and approve or recognize modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection.⁴ This duty is in keeping with the Commission's practice under its own rules of requiring telecommunications companies to keep their rate schedules on file with the Commission.⁵

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all modifications, in the Commission's offices. Any proposed modification must be submitted for Commission approval or recognition, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

³ 47 U.S.C. § 252.

⁴ 47 U.S.C. § 252(h).

⁵ 4 CSR 240-3.545.

Modifications to an agreement must be submitted to the Staff for review. When approved or recognized, the modified pages will be substituted in the agreement, which should contain the number of the page being replaced in the lower right-hand corner. Staff will date-stamp the pages when they are inserted into the agreement. The official record of the original agreement and all the modifications made will be maintained in the Commission's Data Center.

The Commission does not intend to conduct a full proceeding each time the parties agree to a modification. Where a proposed modification is identical to a provision that has been approved by the Commission in another agreement, the Commission will take notice of the modification once Staff has verified that the provision is an approved provision and prepared a recommendation. Where a proposed modification is not contained in another agreement, Staff will review the modification and its effects and prepare a recommendation advising the Commission whether the modification should be approved. The Commission may approve the modification based on the Staff recommendation. If the Commission chooses not to approve the modification, the Commission will establish a case, give notice to interested parties and permit responses. The Commission may conduct a hearing if it is deemed necessary.

Conclusion

The Commission, under the provisions of Section 252(e)(1) of the Telecommunications Act of 1996,⁶ is required to review negotiated interconnection agreements. It may only reject an agreement if it finds that implementing the agreement

⁶ 47 U.S.C. § 252(e)(1).

would be discriminatory to a nonparty or that it is not consistent with the public interest, convenience and necessity.⁷

Commission rule 4 CSR 240-2.115 (1) states that the parties may file a stipulation and agreement as a proposed resolution to all or any part of a contested case and that the Commission may resolve all or any part of a case based on a stipulation and agreement. Based upon its review of the Amendment and the LWC between Sage and SBC and the Stipulation and Agreement between the parties to this matter, the Commission concludes that, subject to the Stipulation and Agreement, the Agreement is neither discriminatory nor inconsistent with the public interest, convenience and necessity and should be approved. Also, Commission rule 4 CSR 240-2.115(2)(A) states that if no party timely objects to a stipulation and agreement, the Commission may treat it as unanimous. Because Public Counsel does not oppose the Stipulation and Agreement, the Commission will treat it as unanimous.

The Commission notes that prior to providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

IT IS THEREFORE ORDERED:

1. That the “Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Section 251 and 252 of the Telecommunications Act of

⁷ 47 U.S.C. § 252(e)(2)(A).

1996” and the “Private Commercial Agreement for Local Wholesale Complete”, which together constitute an Interconnection Agreement, are approved.

2. That the approval of the Interconnection Agreement is conditioned on those conditions set out the Stipulation and Agreement.

3. That the Stipulation and Agreement is approved and the parties thereto are directed to comply with its terms.

4. That this order shall become effective on May 11, 2005.

5. That this case may be closed on May 12, 2005.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Davis, Chm., Gaw, and Appling,
CC., concur.
Murray, C., concurs, with separate
concurring opinion to follow.
Clayton, C., dissents.

Jones, Regulatory Law Judge