

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Agreement between	)	
SBC Communications, Inc. and Sage	)	Case No. TO-2004-0576
Telecom, Inc.	)	

**SBC MISSOURI'S RESPONSE TO  
APPLICATIONS TO INTERVENE**

SBC Missouri,<sup>1</sup> respectfully opposes the Applications to Intervene in this proceeding filed May 20, 2004 by AT&T Communications of the Southwest, Inc. ("AT&T"), Birch Telecom of Missouri, Inc. ("Birch"), MCImetro Access Transmission Services, L.L.C. ("MCI"), NuVox Communications of Missouri, Inc. ("NuVox") and Xspedius Management Company Switched Services, L.L.C. ("Xspedius").<sup>2</sup>

The private commercial agreement between Sage Telecom, Inc. ("Sage") and SBC Missouri is not subject to the jurisdiction of the Missouri Public Service Commission ("Commission"), and should not in any event be subject to review by a competitor of Sage. Even if the Commission had jurisdiction over the SBC Missouri/Sage private commercial agreement, there is no basis for Sage's competitors to intervene or otherwise participate in any proceeding in which the Commission reviews that agreement. Sage's competitors' ploy to obtain confidential information about Sage's business plans through improperly seeking to interject themselves in this proceeding should be rejected.

1. On May 11, 2004, the Commission in this proceeding issued an Order to Show Cause that directed SBC Missouri and Sage Telecom to explain why the commercial agreement between them was not subject to filing with and approval by the Commission under Sections

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<sup>1</sup> Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri."

<sup>2</sup> Xspedius' Application to Intervene was filed on May 21, 2004.

251-252 of the Telecommunications Act of 1996 (“the Act”). SBC Missouri and Sage Telecom filed their respective Responses to that Order to Show Cause on May 17, 2004.

2. On May 20, 2004, AT&T, Birch, MCI, and NuVox filed Applications to Intervene in this proceeding. Xspedius filed its Application to Intervene the next day. In these Applications, they each indicate that they seek to intervene in this proceeding because the Commission’s decision could adversely affect their interests as a provider of telecommunications services, in particular with respect to their:

Rights under Section 252, subsections (e) and (i) of the Telecommunications Act of 1996. The Commission should only approve agreements that comply with subsection (e) and should make certain that agreements are available under subsection (i).<sup>3</sup>

3. The parties seeking intervention failed to articulate any basis upon which intervention may properly be granted. First, the Commission in this proceeding made no provision for the participation of intervenors. In its May 11, 2004 Order to Show Cause, the Commission directed SBC Missouri and Sage to explain the nature of their private commercial agreement and show cause why it should not be filed with the Commission.<sup>4</sup> That Order also directed Staff to review these pleadings and file a memorandum advising whether the agreement should be filed and considered by the Commission under the provisions of Section 251 and Section 252 of the Telecommunications Act of 1996 (“the Act”). Nowhere in the Order did the Commission provide for intervention in this proceeding by outside third-parties.

4. Second, there is no substantive basis that would support granting these requests to intervene. The agreement at issue here is a private commercial agreement between SBC Missouri and Sage. The terms of this agreement apply only to SBC Missouri and Sage and will not impose any duties, responsibilities, or obligations on or create any rights in any other

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<sup>3</sup> AT&T, Birch, MCI, NuVox and Xspedius Applications to Intervene, p. 2.

<sup>4</sup> The Commission amended this Order to a Notice of Correction issued May 12, 2004.

telecommunications carrier. If the parties seeking intervention here wish to have their own private commercial agreement with SBC Missouri, SBC Missouri remains willing to negotiate such an agreement. Alternatively, these parties are certainly free to continue operating under their previously arbitrated interconnection agreement. These parties have no business in reviewing another competitor's private commercial agreement or gaining insight into that agreement through the guise of adding to the Commission's analysis on the very narrow jurisdictional issue presented here.

5. Fourth, nothing in the Act authorizes state commissions to review voluntarily negotiated agreements, much less allow third parties to intervene in such a proceeding. The appropriateness of the Commission's proceeding with a review of this agreement is currently being considered by the FCC. In response to actions by various state regulators, particularly the Michigan Public Service Commission, SBC filed its Emergency Petition for Declaratory Ruling, Preemption and for Standstill Order to Preserve the Viability of Commercial Negotiations ("SBC Emergency Petition") with the FCC on May 3, 2004. As set forth in that Petition, state commission efforts to assert jurisdiction over non-Section 251 arrangements threaten to derail the private commercial negotiation process which the FCC has strongly and unanimously urged. Accordingly, the Emergency Petition asks the FCC to:

- First, issue an immediate declaratory ruling that an agreement or portion thereof that does not purport to implement any of the requirements of Section 251 is not subject to the requirements of Section 252, including the filing requirements of Section 252(e)(1) and the provisions of Section 252(i);
- Second, preempt the states from requiring the filing and approval of non-251 agreements under the auspices of state law; and
- Third, issue a standstill order enjoining the enforcement of any other state filing requirement for non-251 arrangements pending a final decision on the Emergency Petition.


Sage filed a Memorandum In Support of SBC's Emergency Petition with the FCC on May 4, 2004.<sup>5</sup> In its Memorandum, Sage urges the FCC to grant the Petition filed by SBC stating that "[t]hese actions are urgently required in order to prevent the possibility of irreparable harm to Sage."<sup>6</sup> There is no reason for the Commission to proceed with this case or to permit third party intervention until the FCC has ruled on SBC's Emergency Petition.

6. Finally, disclosure of any information concerning Sage's future business plans would result in harm to Sage if its competitors' learn of those provisions.<sup>7</sup>

WHEREFORE, SBC Missouri respectfully requests the Commission to deny the Applications to Intervene in this proceeding filed by AT&T, Birch, MCI, NuVox and Xspedius.

Respectfully submitted,

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D/B/A SBC MISSOURI

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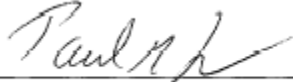
<sup>5</sup> Sage's Memorandum in Support of Emergency Petition for Declaratory Ruling was appended to SBC Missouri's May 17, 2004 Response to Order to Show Cause as Attachment 2.

<sup>6</sup> Sage Memorandum, p. 1.

<sup>7</sup> See, Response of Sage Telecom, Inc. to Order to Show Cause, filed May 17, 2004, at pp. 3-5.

## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this document was served on all counsel of record by electronic mail or first-class, postage prepaid U.S. Mail on May 27, 2004.



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