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

SAGE TELECOM, INC. AND SOUTHWESTERN BELL TELEPHONE, L.P., D/B/A SBC MISSOURI'S BRIEF REGARDING ISSUE 1

Executive Summary

The Missouri Public Service Commission ("Commission") should approve the "Missouri Amendment Superseding Certain 251/252 Matters to Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 ("Missouri Amendment") between Sage Telecom, Inc. ("Sage") and Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") (collectively referred to as "the Parties") under Section 252(e) because the Missouri Amendment does not discriminate against a telecommunications carrier not a party to the agreement and the implementation of the Missouri Amendment is consistent with the public interest, convenience, and necessity. In doing so, the Commission need not and should not review the Private Commercial Agreement for Local Wholesale Complete ("LWC Agreement")[1] and the

[1] As the Commission is aware, the LWC Agreement includes, *inter alia*, a market-based substitute for the UNE-P, something SBC Missouri is not legally required to provide. Under the LWC Agreement, SBC Missouri and other SBC incumbent local exchange carriers ("ILECs") (collectively, "SBC") will provide Sage with a range of wholesale products and services for a period of years. Some of these products and services relate to the implementation of Section 251 obligations, such as provisions addressing Section 251(b)(5) reciprocal compensation and provisions setting forth the price 2-wire analog loops the FCC has determined ILECs must unbundle pursuant to Section 251(c)(3). Those matters are all set forth in the Missouri Amendment. Other provisions, however, relate to items that are not required by law, and that Sage did not request to be provided pursuant to Section 251. These other items, including but not limited to the UNE-P replacement, were not negotiated under the auspices of Section 251, nor did they purport to implement any ongoing Section 251 obligation. Rather, they were negotiated on a strictly *voluntary and commercial* basis—the very type of arrangement the Federal Communications Commission ("FCC") has expressly sought to encourage. Like any private commercial agreement negotiated on an arm's length basis, the LWC Agreement reflects a series of trade-offs. SBC made concessions, and so did Sage. Terms that, in and of themselves, may not have been acceptable to one of the parties were deemed acceptable because of some other term(s) of the LWC Agreement. Indeed, since the LWC Agreement is with all SBC

amendment thereto (collectively referred to as the "LWC Documents") for the following reasons.

First, only agreements that are triggered by a competitive local exchange carrier ("CLEC") request for interconnection, services, or network elements pursuant to section 251 must be filed with a state commission. The LWC Documents were not triggered by a CLEC request for interconnection, services, or network elements pursuant to section 251 and, therefore, need not be filed with a the Commission. Second, to the extent that a particular element need no longer be unbundled under §251(d)(2) (e.g., unbundled local switching), it falls outside the scope of the ILEC's duty to negotiate under §251(c)(1). Accordingly, it also lies outside the scope of the §252 filing and review requirement. Third, that offerings that fall outside the scope of §§251(b) and (c) need not be filed with and/or approved by state commissions is consistent with the core purposes of the Telecommunications Act of 1996 ("the Act"). Fourth, this reading gives substance to the most favored nations ("MFN") provisions in §252(i). Fifth, this result is consistent with the FCC's *Qwest ICA Order*[2] which requires Bell Operating Companies ("BOCs") to file with state commissions all contracts that create an ongoing obligation pertaining to the requirements set forth in §§251(b) and (c). Finally, requiring that non-251 arrangements be subject to §252 would frustrate the market-based goals of the Act and the FCC's call for commercial negotiations between ILECs and CLECs.

ILECs and not a state-specific agreement, trade-offs were made, not only among different provisions, but among different states. Thus, terms that SBC or Sage may not have accepted in some states were deemed acceptable when applied uniformly across the entire SBC regions.

[2] Memorandum Opinion and Order, *Qwest Communications International Inc. for Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under section 252(a)(1),* 17 FCC Rcd 19337, FCC 02-276 (2002) ("*Qwest ICA Order*").

After nine years of litigation and three remands, the Parties (and undoubtedly many other CLECs and ILECs) would like nothing more than to bring certainty to their business and to establish wholesale arrangements that make business sense for all concerned. The Commission should not take any action to derail the commercial negotiation process, and should recognize 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 MFN provisions of Section 252(i).

Finally, at this time, with the provisions that are set forth in the Parties' Stipulation and Agreement, no party contends that the Missouri Amendment is discriminatory or not in the public interest. The Commission should forthwith approve the Missouri Amendment, so that Sage and SBC Missouri can implement its terms and conditions as well as LWC Documents without the requirement of obtaining Commission approval of the LWC Documents. Missouri is the only state in which Sage is not operating under the LWC Agreement. However, to the extent that the Commission for any reason determines that the LWC Documents or any part thereof is subject to Section 252, Sage and SBC Missouri respectfully request that the Commission approve the LWC Documents or their pertinent parts under Section 252.[3, 4]

[3] Like in Texas and the other states that treated the LWC Agreement as subject to Section 252, Sage and SBC Missouri fully reserve their respective rights to appeal or otherwise seek review of any such treatment and related determinations.

[4] On December 27, 2001, Sage filed its Notice of Adoption of the Missouri 271 Interconnection Agreement ("M2A") of Southwestern Bell Telephone Company, now known as Southwestern Bell Telephone, L.P., d/b/a SBC Missouri. The Missouri Amendment and the LWC Documents were not intended to, and do not constitute, a successor interconnection agreement to the M2A, as amended, between Sage and SBC Missouri. To the extent that the Commission determines that the entirety of the LWC Documents or any part thereof is subject to approval under Section 252, the approved provisions would act as a further amendment to the Parties' existing interconnection agreement.

Background

On March 31, 2004, the FCC Commissioners declared their unanimous judgment that the interests of consumers will best be served by ILECs and CLECs engaging in good-faith negotiations to arrive at commercially acceptable arrangements that would provide a substitute for unbundled network elements.[5] The FCC Commissioners urged SBC Missouri, Sage, and other carriers to use "all means at their disposal" to "maximize" the success of such efforts.[6]

On April 3, 2004, the Parties announced that they had reached a commercial agreement fulfilling the vision and the request of the FCC to engage in private, negotiated, business-to-business commercial agreements, to bring to an end 8 years of legal and regulatory uncertainty.[7]

On April 5, 2004, FCC Chairman Powell issued a statement commending both Sage and SBC for successfully "demonstrate[ing] that commercial, market-based agreements can be accomplished."

On May 4, 2004, SBC Missouri submitted to the Commission an Amendment to the Parties' interconnection agreement entitled: "Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996." ("Original Amendment"). On May 14, 2004, the Staff of the Missouri Public Service Commission ("Staff") filed an "Application to Open

[5] *See* Press Statement of Chairman Michael K. Powell and Commissioners Kathleen Q. Abernathy, Michael J. Copps, Kevin J. Martin and Jonathan S. Adelstein On Triennial Review Next Steps, March 31, 2004, attached hereto as Exhibit A.
[6] *Id.*
[7] Following the Court of Appeal's decision in *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), SBC issued a statement on March 3, 2004, offering, in part, "to negotiate commercially reasonable UNE-P wholesale rates with AT&T, MCI and other competitors to keep local phone competition flourishing for consumers throughout its 13-state service territory."

Case to Review Amendment to Missouri 271 Interconnection Agreement." In that pleading, Staff requested that the Commission review the Amendment because of the relationship between the Original Amendment and the LWC Agreement.

On July 27, 2004, the Commission rejected the Parties' Original Amendment to their interconnection agreement.[8] The Commission determined that the Amendment and the LWC Agreement were an "indivisible agreement" and that it would not approve the Amendment unless SBC Missouri and Sage also submitted the LWC Agreement.[9]

Accordingly, on February 10, 2005, the Parties jointly filed an amendment to their interconnection agreement entitled: "Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996" ("Amendment").[10] The Parties indicated that the Amendment was similar to the Original Amendment that the Parties filed with the Commission on May 4, 2004.[11] Additionally, the Parties attached to and incorporated as exhibits to the Amendment the LWC Documents.[12] The Parties specified that while they believe only the Amendment is subject to Commission review under Section 252, they provided the LWC Documents

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[8] *See Order Consolidating Cases, Rejecting Amendment to Interconnection Agreement, and Denying Intervention, In the Matter of the Agreement between SBC Communications, Inc. and Sage Telecom, Inc.*, Case NO. TO-2004-0576, and *In the Matter of an Amendment Superseding Certain 251/252 Matters between Southwestern Bell Telephone, L.P., and Sage Telecom, Inc.*, case NO. TO-2004-0584, July 27, 2004.

[9] *Id.* at p. 4.

[10] Sage and SBC Missouri note that on October 7, 2004, the U.S. District Court for the Western District of Texas, Austin Division, found that the LWC Agreement along with the Amendment constituted a "total package that ultimately constitutes the entire agreement" between the parties, that the agreement included Section 251 matters, and dissolved the temporary restraining order that had been preventing the Texas PUC from enforcing its order that required SBC Texas to publicly file the LWC Agreement. *See Sage Telecom, L.P. v. Public Utilities Commission of Texas*, W.D. Texas Case No. A-04-CA-354-SS (October 4, 2004), p. 10. As a result, on October 11, 2004, SBC Texas publicly filed the complete LWC Agreement under protest, reserving its rights for appeal.

[11] The Parties also indicated that it was different in several respects, most of which were identified in the February 10, 2005 filing letter.

[12] The Parties note that the February 10, 2005 filing letter refers to two amendments to the LWC Agreement. That reference is in error as there is only one Amendment to the LWC Agreement between the Parties, which is the Amendment to the Private Commercial Agreement for Local Wholesale Complete dated by Sage on December 30, 2004, and by SBC on January 6, 2005.

with the Amendment.[13] Nevertheless, if the Commission for any reason determined that the LWC Documents or any part thereof were subject to Section 252, the Parties respectfully requested that the Commission approve the LWC Documents or their pertinent parts under Section 252(e).

On April 13, 2005, Sage, SBC Missouri, NuVox Communications of Missouri, Inc. ("NuVox"), and Staff entered into a Stipulation and Agreement. Under the terms of the Stipulation and Agreement, Sage, SBC Missouri, NuVox, and Staff agreed that Sage and SBC Missouri would file an Amendment entitled: "Missouri Amendment Superseding Certain 251/252 Matter to Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996" ("Missouri Amendment") on or before April 22, 2005, which will replace the Amendment that was filed with the Commission on February 10, 2005. The Missouri Amendment contains the same provisions as the Amendment with the following three exceptions. Sage and SBC Missouri agreed to amend paragraphs 2.1.1 and 6.2 of the Amendment as follows and agreed to insert a new paragraph 7.9. Paragraphs 2.1.1, 6.2, and 7.9 will now provide as follows:

> 2.1.1 In the event that, as a result of an action by the Federal Communications Commission, the Commission, a federal court with jurisdiction within Missouri (District Court, 8th Circuit Court of Appeals, United States Supreme Court, United States Court of Appeals on review of an FCC decision), or a Missouri state court, the LWC Documents need not have been filed with or approved by the Commission pursuant to 47 U.S.C. § 252, the LWC Documents shall be automatically deemed deleted from this Amendment, as of the date such action becomes, and for so long as it remains, legally effective. Such deletion shall not in any way affect the effectiveness and enforceability of the LWC Documents between SBC Missouri and CLEC, in accordance with their terms, if SBC Missouri and CLEC are parties to the LWC Documents.

[13] The Parties note that providing the LWC Documents is consistent with the Commission's July 27, 2004 Order. Specifically, in that Order although the Commission determined that it would not approve the Original Amendment unless the Parties also submitted the LWC Agreement, the Commission did not make any determination with regard to whether it would review the LWC Agreement pursuant to Section 252(e).

6.2 As of the Amendment Effective Date, this Amendment wholly replaces, for the State of Missouri only, both (i) that certain "Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996" filed with the Commission on May 4, 2004 (and subsequently not approved by the Commission by order dated July 27, 2004 ("Order")) by and between the SBC Missouri and certain other SBC ILECs (as defined therein), and Sage Telecom, Inc. and Sage Telecom of Texas, L.P., and (ii) that the certain "Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996" filed with the Commission on February 10, 2005, by and between SBC Missouri and Sage (collectively, the "Replaced Amendments"). The Replaced Amendments shall be void and of no further effect with respect to Missouri, neither having been implemented between SBC Missouri and Sage.

7.9 SBC Missouri and Sage agree to the terms and conditions set forth in the Stipulation and Agreement filed April 13, 2005 in the Missouri Public Service Commission case styled *In the Matter of an Interconnection Agreement between Southwestern Bell Telephone, L.P., and Sage Telecom, Inc.*, Case No. TO-2005-0287.

Additionally, the Parties agreed that when they filed the Missouri Amendment, they would also attach the LWC Documents that were filed with the Commission on February 10, 2005. The Parties are filing the Missouri Amendment and LWC Documents contemporaneously with the filing of this Brief.[14]

Finally, Sage, SBC Missouri, NuVox, and Staff agreed that the filing of the Missouri Amendment and the LWC Documents would not lead to an extension of the 90-day period which commenced on February 10, 2005, for the Commission to approve or reject the Missouri Amendment or the Missouri Amendment with the LWC Documents. The parties specifically requested that the Commission approve the Missouri Amendment

[14] In the Stipulation and Agreement, if the LWC Documents are determined by the Commission to be subject to its review pursuant to Section 252(e), the Staff and NuVox agreed that Commission should approve the LWC Document subject to the conditions set forth in the Stipulation and Agreement regarding the effect on a Competitive Local Exchange Carrier that, pursuant to Section 252(i) of the Telecommunications Act of 1996, adopts the Missouri Amendment and the LWC Documents. SBC Missouri and Sage have agreed to accept those conditions.

or the Missouri Amendment with the LWC Documents within 90 days of February 10, 2005.

Argument

A. Filing and Approval Are Not Required under Section 252

The scope of the Section 252 filing requirement is addressed in, and subject to the limitations of Section 252(a)(1). Specifically, Section 252(a)(1) provides that: "[u]pon receiving a request for interconnection, services, or network elements pursuant to section 251 an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of Section 251."[15] It then provides that any such agreement "shall be submitted to the State commission under subsection (e) of this section."[16] Under Section 252(a)(1), therefore, the only agreements that must be filed with a state commission are ones that are triggered by "*a CLEC request for interconnection, services, or network elements pursuant to section 251*."[17] Here, there is no dispute that the commercial agreement between Sage and SBC Missouri does not fall within that ambit because Sage did not make a request for interconnection, services, or network elements pursuant to §251. Therefore, the LWC Documents need not be submitted to or approved by the Commission.[18]

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[15] 47 U.S.C. §252(a)(1).
[16] *Id*.
[17] *Id.* (Emphasis added).
[18] The LWC Agreement was negotiated at a time of considerable uncertainty about what SBC's Section 251 obligations would be and whether (and when) some of those obligations would be lifted as a result of the D.C. Circuit's decision. It was not negotiated "in response to a request for interconnection, services, or network elements pursuant to section 251." To the contrary, it was a negotiation, the express purpose of which was to find mutually acceptable *business* terms outside the context of any regulatory requirement. In this regard, the parties agreed to a UNE-P substitute against a backdrop in which both parties recognized that the UNE-P requirement had been vacated and thus could be altered significantly, if not eliminated altogether. Neither party knew what the ultimate rules would be, and both sought business certainly at a

Even if one assumes that, whether specifically requested or not, to the extent an agreement purports to address the rates, terms, and conditions under which the parties will fulfill their obligations to provide interconnection, services, or network elements under Section 251, those provisions must be filed, there is no legal or logical basis to require filing and approval of a commercial arrangement relating to products or services *not* clearly covered by Section 251, and thus not even purporting to implement Section 251.[19]

SBC Missouri and Sage are not contending that, as to facilities and services that must be offered under Section 251, filing and review is not necessary simply because the parties have decided not to follow federal-law obligations (for example, TELRIC pricing) in a particular instance. Section 252(a)(1) contemplates that, as to such facilities, services, or interconnection, the parties may negotiate "without regard to the *standards* set forth in subsections (b) and (c) of Section 251," but that does not change the fact that these are services or network elements being offered "pursuant to Section 251." Accordingly, *all* of the rates, terms, or conditions under which the parties agree to provide interconnection, services, or network elements pursuant to subsections (b) and (c)—including those rates, terms, or conditions that deviate from the required *standards*

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time of considerable regulatory uncertainty. That is why the LWC Agreement contains no change of law provision. It is also why the very first "whereas" clause of the LWC Agreement states: "Whereas, both [parties] have been and continue to be subject to significant regulatory and business uncertainties and risks due, in part, to the continuous and laborious cycle of regulatory orders and order-vacating appeals, as has been illustrated with regard to unbundling obligations of ILECs as defined in recent FCC orders under 27 U.S.C. §251(d)(2), and in the recent decision in *USTA v. FCC*, No. 00-1012 (U.S.C. App. March 2, 2004)." The fact of the matter is that the negotiation that resulted in the UNE-P replacement could in no way be characterized as a negotiation under the auspices of Section 251(c).

[19] Although Section 252(a)(1) requires the filing of "agreements," not various terms of agreements, any analysis of the Section 252(a)(1) filing requirement ultimately must rest on the terms that must be filed. It cannot be the case that the scope of the filing requirement hinges not on the substance of the provision at issue, but on its packaging. If that were the rule, parties would simply segregate all non-251 terms of their agreements and place them in separate agreements. To rule, therefore, that a term that would otherwise not have to be filed becomes subjected to Section 252(a) if it is packaged in the same agreement with terms that do have to be filed would exalt form over substance.

for meeting those obligations – must be filed. However, requiring the filing and review of terms that deviate from the "standards" set forth in subsections (b) and (c) is not the same thing as requiring the filing and review of terms for products and services that fall outside the scope of subsections (b) and (c) altogether. The former must be filed; that latter need not be, as SBC Missouri and Sage have done by filing the Missouri Amendment.

That Section 252(a)(1) only requires the filing of those rates, terms, and conditions under which the parties address their Section 251(b) and (c) obligations is buttressed by Section 251(c)(1) of the Act. That section provides that ILECs must negotiate under Section 252 "the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection." To the extent that a particular element need no longer be unbundled under Section 251(d)(2), it falls outside the scope of the ILEC's duty to negotiate under Section 251(c)(1). Accordingly, it also lies outside the scope of the Section 252 filing and review requirement.

Interpreting Section 251(a)(1) in this manner is also consistent with the core purposes of the 1996 Act. Sections 251(b) and (c) set forth the provisions that Congress deemed essential to the development of local competition. It would make sense, therefore, that Congress would insist that the terms under which carriers endeavor to meet these requirements be reviewed by state commissions. Conversely, there would appear to be no reason why Congress would subject arrangements for other services and facilities to the same scrutiny. Since Congress did not deem such arrangement important enough

to require it in the first place, it would be odd to construe the Act as requiring state approval of the terms on which a carrier purports to provide such arrangements.

This reading also gives substance to the MFN provisions in Section 252(i). Section 252(i) does not require that *all* of the terms of an interconnection agreement be made available. Rather, it requires only that incumbent LECs "make available any interconnection, services, or network elements provided under an agreement approved under this section to which it is party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." By filing the rates, terms, or conditions that the parties negotiate to meet an obligation to provide interconnection, services, or network elements required by Section 251 – even if those rates, terms, or conditions deviate from the required standards of subsections (b) and (c) – an ILEC will be ensuring that all CLECs are able to exercise their MFN rights. Section 252(i) requires no more.

Finally, this result is also consistent with the FCC's *Qwest ICA Order*.[20] In the *Qwest ICA Order*, the FCC determined that BOCs have an obligation to file with state commissions all contracts that: "create[] an ongoing obligation *pertaining* to resale, number portability, dialing parity, access to rights of way, reciprocal compensation, interconnection, unbundled network elements, or collocation," *i.e.*, the requirements of Sections 251(b) and (c).[21] At the same time, the FCC made clear that its order does not require the filing of "all agreements between an incumbent LEC and a requesting

[20] Memorandum Opinion and Order, *Qwest Communications International Inc. for Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under section 252(a)(1)*, 17 FCC Rcd 19337, FCC 02-276 (2002) ("*Qwest ICA Order*").
[21] *Id*. at paragraph 8.

carrier."[22] Moreover, the FCC specifically premised this conclusion on its holding that "only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1).[23]

Thus, for example, the FCC determined that dispute resolution and escalation clauses "relating to the obligations set forth in sections 251(b) and (c)" must be filed, because "the means of" resolving and escalating such disputes effectuate the Act's requirement of providing the items required by Sections 251(b) and (c) on a non-discriminatory basis.[24] Similarly, in its subsequent *Notice of Apparent Liability for Forfeiture* ("*NAL*") against Qwest, the FCC specifically mentioned Qwest's failure to file agreements concerning specific Section 251(b) and (c) obligations, as well as administrative and procedural provisions pertaining to those obligations, as violating Section 252's requirements as interpreted by the FCC in its *Qwest ICA Order*.[25] These decisions are fully consistent with the conclusion that Section 252 requires filing with a state commission only those arrangements that are themselves required under Sections 251(b) or (c).

B. Requiring That Non-251 Arrangements Be Subject to Section 252 Would Frustrate The Market-Based Goals of the Act and the FCC's Call for Commercial Negotiations.

The conclusion that non-251 arrangements of commercial agreements are not subject to Section 252 is not only consistent with the language of the 1996 Act; it also fully comports with the underlying goals of the Act. In particular, requiring the filing of such terms for state review would frustrate the market-based goals of the 1996 Act

[22] *Id*. at note 26.
[23] *Id.*
[24] *Id*. at paragraph 9.
[25] Qwest Corporation Apparent Liability for Forfeiture, *Notice of Apparent Liability for Forfeiture*, File No. EB-03-IH-0263, 19 FCC Rcd at paragraph 26, notes 81 and 83 (2004).

generally, as well as the specific call by all of the FCC Commissioners for negotiations for commercially acceptable arrangements between ILECs and CLECs.

If non-251 arrangements of commercial agreements were subject to filing under Section 252 for state review, state commissions might insist that the parties change the terms of the agreements as a precondition to their approval. If carriers cannot be confident that the tradeoffs made in negotiations will be preserved, they are far less likely to enter into such negotiations in the first place. This risk is accentuated by the fact that commercial agreements such as the LWC Documents are applicable region-wide. As such, they are based on a balancing of interests across several states. Rejection of an agreement or a specific term by just one state thus upsets the calculus upon which the entire agreement is based. A region-wide agreement such as the Sage-SBC deal could be disrupted if one or more states disapprove of the terms for its own state. For example, an agreement that might make economic sense at a price averaged across an entire region might make no sense if a major state ruled that the price had to be changed for its state.

Even if an agreement ultimately were approved by all respective state commissions, contentious and costly proceedings would well precede any such approval, thereby undermining two of the main benefits of a commercial deal: the elimination of regulatory uncertainty and of regulatory costs. Certainly after eight years of contentious litigation and three remands, many ILECs and CLECs have a compelling need for business certainty and to direct their resources to running their businesses, not to fighting costly regulatory battles. This is especially important to CLECs, such as Sage, who as part of their business plans are striving to reduce unnecessary regulatory costs. To deny them the ability to address those needs through commercial negotiations is to withhold

one of the most important benefits of – and therefore inducements to – a commercial deal. If the Commission truly wants negotiations to succeed, it must allow parties to reap the fruits of a negotiation.

The FCC has previously recognized, in another context, the need for expeditious action "so as not to impede unduly the development of potentially procompetitive new business arrangements."[26] The FCC also has directed SBC, Sage, and other ILECs and CLECs to use "all means at their disposal"[27] to successfully conclude commercial negotiations. That directive will remain unfulfilled as long as the threat that such agreements will be subject to state commission review and approval under Section 252.

Conclusion

For all of these reasons, the Commission need not and should not review or approve the LWC Documents. Rather, the Commission should approve the unopposed Missouri Amendment and expressly determine in its approval of the Missouri Amendment, that the LWC Documents are neither subject to its review or approval. However, to the extent that the Commission for any reason determines that the LWC Documents or any part thereof is subject to Section 252, Sage and SBC Missouri respectfully request that the Commission also approve the LWC Documents or their pertinent parts under Section 252(e).

[26] In the Matter of AT&T Corp., et al., v. Ameritech Corp., File No. E-98-41, *Memorandum Opinion and Order*, 13 FCC RCD. 14,508, 14, 523, paragraph 30 (1998) ("Ameritech Teaming Agreement Standstill Order").
[27] March 31 release.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties via e-mail on April 22, 2005.


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