

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of an Interconnection)
Agreement between Southwestern Bell)
Telephone, L.P., and Sage Telecom, Inc.)

Case No. TO-2005-0287

STIPULATION AND AGREEMENT

Come now Sage Telecom, Inc. (“Sage”), Southwestern Bell Telephone, L.P., d/b/a SBC Missouri (“SBC Missouri”), NuVox Communications of Missouri, Inc. (“NuVox”), and the Staff of the Missouri Public Service Commission (“Staff”) (collectively referred to as “the parties”) and state to the Missouri Public Service Commission:

1. The issues the parties jointly proposed to the Commission were:

Issue 1: Is the Local Wholesale Complete Agreement between Sage Telecom, Inc. and SBC Missouri subject to review by the Missouri Public Service Commission?

and

Issue 2: 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)?

2. The parties agree that, if this Stipulation and Agreement is approved by the Commission:

- a. The Commission may resolve Issue 1 referenced herein and in the Issues List based on the record described herein, without hearings or additional evidence¹; and
 - b. Issue 2 referenced herein and in the Issues List is no longer a contested issue.
 - c. The record for review by the Commission will consist of the Missouri Amendment and LWC Documents described herein below.
3. The parties agree that Issue 2 is resolved by this Stipulation and Agreement and, therefore, is withdrawn as a contested issue. Specifically, the parties have reached the following agreements in order to resolve Issue 2.
 - a. The parties agree that Sage and SBC Missouri will file an Amendment entitled: “Missouri Amendment Superseding Certain 251/252 Matters 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 Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996” (“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 have agreed to amend paragraphs 2.1.1 and 6.2 of the Amendment as follows and have agreed to insert a new paragraph 7.9.

Section 2.1.1 will be revised to provide:

¹ As stated in paragraph 11, the parties will file briefs on Issue 1 on or before April 22, 2005, unless they agree otherwise in writing and the presiding officer or Commission approves their agreement.

- 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.

Section 6.2 will be revised to provide:

- 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.

And the new section 7.9 will read:

- 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.

- b. Additionally, Sage and SBC Missouri agree that when they file the Missouri Amendment, they will also attach the Private Commercial Agreement

for Local Wholesale Complete and the amendment thereto² (collectively referred to as the “LWC Documents” in the Amendment, in the Missouri Amendment, and in this pleading), in the same manner as the LWC Documents were attached to the Amendment when it was filed with the Commission on February 10, 2005.

4. If the Commission resolves Issue 1 by determining that the Local Wholesale Complete Agreement between Sage Telecom, Inc and SBC Missouri (the LWC Documents) is subject to review by the Missouri Public Service Commission pursuant to Section 252(e), the parties agree that the Commission should approve the LWC Documents subject to the condition that the provisions of the LWC Documents identified in this stipulation and agreement will not bind 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.

5. The parties agree not to seek extension from 90 days after February 10, 2005 for the Commission to approve or reject the agreement based on the foregoing revisions.

6. The parties request the Commission to approve the agreement within 90 days of February 10, 2005, based on this Stipulation and Agreement.

7. Sage and SBC Missouri adamantly contend that the LWC Documents do not address matters that are subject to Section 251 and, therefore, should not be reviewed by the Commission under Section 252(e). However, to the extent that the Commission for any reason determines that the LWC Documents, or any part thereof, are subject to approval under Section 252(e), and the Commission approves the Missouri Amendment

² The amendment referenced herein is the Amendment to the Private Commercial Agreement for Local Wholesale Complete, dated by Sage on December 30, 2004, and by SBC Missouri on January 6, 2005.

with the LWC Documents, the parties agree that any Competitive Local Exchange Carrier that, pursuant to Section 252(i) of the Telecommunications Act of 1996, adopts the “Missouri Amendment” and the LWC Documents shall not be bound by the following provisions of the LWC Documents found in the Private Commercial Agreement for Local Wholesale Complete (“PCA”):

- a. The second "WHEREAS" clause appearing on p. 4 of 47;
- b. Section 1.11 appearing on p. 7 of 47;
- c. The second sentence of Section 2.37 appearing on p. 10 of 47;
- d. The aspect of Section 5.6 regarding the “commercial nature” of the PCA appearing on p. 13 of 47;
- e. Section 5.6.1 appearing on pp. 13-14 of 47, due to the now non-confidential nature of the agreement;
- f. The first sentence of Section 5.2 appearing on p. 44 of 47; and
- g. Section 1.3 of the Appendix Operator Services and Directory Assistance (OS/DA) of the PCA, to the extent that it implies that the agreement is not subject to Sections 251/252.

NuVox and Staff agree that the Commission should make the foregoing limitations on those parts of the agreement binding on Competitive Local Exchange Carriers a condition of approving the Missouri Amendment and LWC Documents. SBC Missouri and Sage are willing to accept the foregoing as a condition of approval of the Missouri Amendment and LWC Documents, to the extent that the Commission determines that the LWC Documents, or any part thereof, are subject to approval under Section 252(e).

8. The parties agree that the foregoing limitations do not prejudice Sage or SBC Missouri in their positions related to the application of those provisions between themselves or related to the Commission's determination that the LWC Documents are subject to approval under Section 252(e), nor do they affect the Missouri Amendment or LWC Documents as between Sage and SBC Missouri.

9. The parties further agree that if the Commission determines the LWC Documents are not subject to approval under Section 252(e) and it approves the Missouri Amendment under Section 252(e), then Sections 2.2, 2.2.1, and the first, third and fourth sentences of 7.6 of the Missouri Amendment shall not be applicable to any Competitive Local Exchange Carrier that, pursuant to Section 252(i), adopts the Missouri Amendment. NuVox and Staff agree that the Commission should make the foregoing a condition of approval of the Missouri Amendment. SBC Missouri and Sage are willing to accept the foregoing as a condition of approval of the Missouri Amendment.

10. The parties agree that, if the Commission determines that the LWC Documents are subject to approval under Section 252(e) of the Telecommunications Act of 1996 and it approves the Missouri Amendment with the LWC Documents, as to any Competitive Local Exchange Carrier that, pursuant to Section 252(i) of the Telecommunications Act of 1996, adopts the Missouri Amendment and the LWC Documents, then Sections 2.2, 2.2.1, and the first, third, and fourth sentences of 7.6 of the Missouri Amendment shall not be applicable if the provisions of Section 2.1.1 of the Missouri Amendment (as hereby amended) are subsequently invoked and the LWC Documents are thereby deleted from the Missouri Amendment, and the Competitive Local Exchange Carrier is no longer a party to the LWC Documents as a result of such

deletion. NuVox and Staff agree that the Commission should make the foregoing a condition of approval of the Missouri Amendment. SBC Missouri and Sage are willing to accept the foregoing as a condition of approval of the Missouri Amendment.

11. If the Commission approves this Stipulation and Agreement, the parties agree that no testimony will be filed in this case and the Commission may decide the issues based on the record the parties have agreed upon.

12. The parties further agree to submit Issue 1 on briefs that will be filed with the Commission on or before April 22, 2005, unless otherwise agreed to by the parties and approved by the regulatory law judge and/or the Commission.

13. The parties have informed the Office of Public Counsel of this Stipulation and Agreement, and the Office of the Public Counsel has advised them it does not oppose this Stipulation and Agreement; therefore, pursuant to 4 CSR 240-2.115(2)(C), the Commission may treat this agreement as a unanimous stipulation and agreement.

14. If the Commission does not approve this Stipulation and Agreement, it shall become null and void and none of the parties shall be bound by any of the terms hereof.

15. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties waive their respective rights, pursuant to §536.080 RSMo 2000, to present testimony and to cross-examine witnesses, and their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo 2000. The parties agree to cooperate with each other in presenting this Stipulation and Agreement to the Commission for approval, and will take no action, direct or indirect, in opposition to approval of this Stipulation and Agreement.

16. If requested by the Commission, the parties will file suggestions in support of this Stipulation and Agreement.

WHEREFORE, the parties respectfully request that the Commission issue an order approving this Unopposed Unanimous Stipulation and Agreement, or in the alternative, schedule a date as early as possible for a presentation hearing regarding the Stipulation and Agreement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties via e-mail on April 13, 2005.



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