

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

In the Matter of the Amendment)	
Superseding Certain 251/252 Matters to)	
Interconnection Matters Under Sections)	
251 and 252 of the Telecommunications)	TO-2005-0287
Act of 1996 between Sage Telecom, Inc.)	
And Southwestern Bell Telephone, L.P.,)	
d/b/a SBC Missouri)	

**SAGE TELECOM, INC.’S AND SOUTHWESTERN BELL TELEPHONE, L.P.,
D/B/A SBC MISSOURI’S OPPOSITION TO
NUVOX COMMUNICATIONS OF MISSOURI, INC.’S
REQUEST TO INTERVENE AND REQUEST FOR HEARING**

Come now Sage Telecom, Inc. (“Sage”) and Southwestern Bell Telephone, L.P., d/b/a SBC Missouri (“SBC Missouri”) and for their Opposition to NuVox Communications of Missouri, Inc.’s Request to Intervene and Request for Hearing, state as follows:

1. On March 4, 2005, NuVox Communications of Missouri, Inc. (“NuVox”) filed its Request to Intervene. In its Request to Intervene, NuVox states that it: “seeks to intervene in this proceeding because the Commission’s decision could adversely affect NuVox’s interests as a provider of telecommunications services in the State.”¹ NuVox then states that it: “opposes the proposed interconnection agreement because the subject interconnection agreement discriminates against telecommunications carriers that are not a party thereto and additionally the agreement is not consistent with the public interest, convenience, and necessity. Accordingly, under Section 252(a) the agreement (or a minimum the offending portions) should be rejected.” Similarly, in its Request for Hearing, NuVox states: “the subject interconnection agreement discriminates against telecommunications carriers that are not party thereto and additionally the agreement is

¹ See Request, paragraph 4.

not consistent with the public interest, convenience, and necessity. Accordingly, under Section 252(e) the agreement (or at a minimum the offending portions) should be rejected.”²

2. The Commission should deny NuVox's Request for Intervention and Request for Hearing for the following reasons. First, NuVox has made only conclusory allegations that the interconnection agreement discriminates against telecommunications carriers not a party to the agreement and that the agreement is not consistent with the public interest, convenience, and necessity. In other words, NuVox has only and merely repeated the statutory standards for rejection found in Section 252(e)(2). Turning those standards into conclusory allegations, without any reasons supporting those allegations or any factual support whatsoever, does not provide an adequate basis for either intervention or hearing.

3. Second, there is, quite simply, no support for NuVox's bare allegations. Sage and SBC ILECs have filed this Amendment (or a substantially similar amendment) to their interconnection agreement and/or their “Private Commercial Agreement for Local Wholesale Complete” (“LWC”) in eleven of the states in which SBC Missouri or its ILEC affiliates serve.³ Of the eleven states in which those filing have been made, nine states (Arkansas, Illinois, Indiana, Kansas, Michigan, Ohio, Oklahoma, Texas, and Wisconsin) have either approved the amendment to the interconnection agreement or allowed it to go into effect by operation of the law. (The amendment to the interconnection agreement is currently pending in California and Missouri.) Thus, no state has ever determined that the amendment to the interconnection agreement (or the

² See Request for Hearing, paragraph 4.

³ Sage does not conduct business in either Connecticut or Nevada and, therefore, Sage and SBC Missouri do not have an interconnection agreement with respect to those two states.

LWC for that matter) discriminates against telecommunications carriers that are not a party thereto or that the agreement is not consistent with the public interest, convenience, and necessity.

4. Third, NuVox has failed to demonstrate that its interest is different from that of the general public and/or that it may be adversely affected by a final order arising from this case. As NuVox's web site indicates, its "vision is to be the leading provider of communications services to businesses in every market" that it serves. Moreover, NuVox has made clear in several cases before the Commission, including at the recently concluded hearing in Case No. TO-2005-0035, that it is solely a provider of business services.⁴ Sage, on the other hand, primarily serves residential customers. Specifically, of the 29,154 lines that Sage serves in Missouri, 27,536 or 94% are residential lines. Thus, there is no reason to believe that NuVox would be adversely affected by the approval of this Amendment to Sage and SBC Missouri's interconnection agreement.

5. Fourth, in its Request for Hearing, NuVox alleges that "the subject documents comprise a single interconnection agreement." Again, this is a conclusory

⁴ Specifically, in Case No. TO-2005-0035, Edward J. Cadieux testified on behalf of NuVox as follows:

Q. Please describe NuVox, its business and its regulatory status in Missouri.

A. NuVox is a facilities-based competitive local exchange company (CLEC) and is certificated in Missouri as a provider of basic local exchange, local exchange and interexchange services. NuVox offers voice, data (including broadband internet) and bundled voice/data services to small and medium-sized business customers in the St. Louis, Kansas City and Springfield metropolitan areas in Missouri and, in total, throughout forty-eight (48) cities across sixteen (16) states in the Midwestern and Southeastern United States. NuVox provides these services through a combination of its own facilities (customer premises integrated access equipment, collocated transmission equipment, and digital and ATM switches) and leased loop and transport facilities.

Exhibit 30, Case No. TO-2005-0035, Rebuttal Testimony of Edward J. Cadieux, December 17, 2005, p. 2.

allegation with absolutely no factual support and is, in fact, false. As Sage and SBC Missouri explained in their Motion for Expedited Treatment, on February 10, 2005, Sage and SBC Missouri filed their “Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996” (“Amendment”).⁵ The Amendment is just that -- an amendment to the existing, underlying interconnection agreement (the M2A) between Sage and SBC Missouri, which remains in effect and will govern the dealings between the parties to the extent that the underlying interconnection agreement is not inconsistent with the Amendment. Thus, NuVox’s statement that this agreement is a separate interconnection agreement is simply and demonstrably false. For all of these reasons, Sage and SBC Missouri respectfully request the Commission to deny NuVox’s Request for Intervention and Request for Hearing.

6. If, however, the Commission feels compelled to allow NuVox to participate in some manner in this approval proceeding, Sage and SBC Missouri have no opposition to the Commission permitting NuVox to participate in this proceeding as *amicus curiae*. This would be consistent with what the Commission has previously done in other cases. In proceedings to review interconnection agreements for approval, the Commission has traditionally limited the participation of companies not parties to the agreement sought to be approved. In the proceeding to review the first interconnection agreement filed in Missouri, the Commission rejected other carriers’

⁵ Attached to and incorporated as exhibits to the Amendment were the Private Commercial Agreement for Local Wholesale Complete (“the LWC”) and two LWC amendments (collectively, the LWC and its two amendments are referred to as the “LWC Documents”).

requests to intervene as parties and instead only allowed them to participate without intervention:

The Commission has considered the request by SWB to keep the interconnection agreement under seal and the application by Mid-Missouri to intervene and review the agreement. After that consideration, the Commission finds that some participation by other telecommunications companies in this proceeding will enable it to better judge whether the interconnection agreement violates the two tests established by the Act. The Commission, therefore, finds that proper persons should be allowed, pursuant to 4 CSR 240-2.075(5), to participate without intervention for the limited purpose of filing initial comments and briefs addressing the federal standard set out below.⁶

When the second interconnection agreement reached in this state was filed with the Commission for approval, MCI again sought to intervene and was again limited by the Commission to participation without intervention:

The Commission will deny MCI's Application to Intervene because MCI can adequately preserve its interests in the interconnection agreement by being granted status as a participant without intervention. The Commission will grant the following entities status as participants without intervention under 4 CSR 240-2.075(5): MCI, Sprint, AT&T, Small Telephone Company Group, and Fidelity. The Commission finds that public interest will be served by their participation in the process. Their participation will be limited to filing comments, making opening statements at the hearing, and filing briefs.⁷

In these proceedings, the Commission gave potential participants approximately two weeks to apply to participate without intervention and an additional week to file comments. It then conducted a hearing about ten days after comments were filed, which was limited to Commission questions only. Staff, OPC, and all participants were then

⁶ In the Matter of the Application of Southwestern Bell Telephone Company for Approval of Interconnection Agreement Under the Telecommunications Act of 1996 With Communications Cable-Laying Company, d/b/a Dial U.S., Case No. TO-96-440, Order Making Interconnection Agreement Public, Encouraging Procedural Schedule, and Granting Participation Without Intervention, issued June 26, 1996, p. 2.

⁷ Order Granting Participation Without Intervention, issued August 16, 1996, in Case No. TO-97-27, p. 2.

permitted to file a brief. This procedure worked well, in that it gave all interested entities an opportunity to review the agreement and convey comments, questions, or concerns to the Commission. Having been advised of any concerns others may have had with the interconnection agreement, the Commission was then able to present questions it deemed relevant and appropriate to the signatories to the agreement and afforded them an opportunity to respond in an open and public hearing. The Commission also provided the opportunity for interested entities to make further comments or arguments in post-hearing briefs. This procedure was particularly well suited for the limited period of review under the Telecommunications Act⁸ and the Commission followed it in many subsequent review proceedings in which other telecommunications companies sought to intervene.⁹

7. Although the Commission's practice and procedural rules no longer provide for participation without intervention, the Commission can still provide a similar opportunity for interested entities to convey comments or concerns to the Commission, as it reviews an interconnection agreement, or an Amendment to an interconnection agreement as is the case here, for approval. Rule 2.075(6) now allows for the filing of

⁸ Section 252(e)(4) provides only 90 days for review of a fully negotiated amendment, as presented here:

SCHEDULE FOR DECISION – If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a). . .the agreement shall be deemed approved. . .No state court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section.

⁹ See Case No. TO-97-94 (U.S. Long Distance Agreement); Case No. TO-97-147 (Fast Connections Interconnection Agreement); Case No. TO-97-260 (Intermedia Interconnection Agreement); Case No. T)-98-12 (Western Wireless Interconnection Agreement); Case NO. TO-98-37 (U.S. Cellular Interconnection Agreement); Case No. TO-98-96 (CMT Partners Interconnection Agreement); and Case No. TO-98-156 (ALLTEL Interconnection Agreement). The Commission has, however, permitted intervention in cases in which other carriers alleged that the interconnection agreement would enable a wireless carrier to send traffic without having first negotiated an agreement for the termination of the traffic. See Order Granting Intervention, issued November 25, 2003, Case No. TK-2004-0180 (Sprint Spectrum Agreement).

briefs *amicus curiae*.¹⁰ Such briefing, coupled with a question and answer session or oral argument as deemed necessary by the Commission, should provide for a timely review of the amendment to the interconnection agreement and allow appropriate input from NuVox.

8. For all of the reasons set forth above, Sage and SBC Missouri believe that the Commission should deny NuVox's Request to Intervene or Request for Hearing, and simultaneously approve the Amendment as soon as possible. However, if the Commission decides that it would like to allow NuVox the opportunity to present its position on Sage and SBC Missouri's Amendment, then the Commission should allow NuVox to file an *amicus curiae* brief.

Wherefore, Sage Telecom, Inc., and Southwestern Bell Telephone, L.P., d/b/a SBC Missouri pray that the Commission denies NuVox's Request for Intervention and Request for Hearing and that it instead approves Sage and SBC Missouri's Amendment as soon as possible, together with any additional and further relief the Commission deems just and proper.

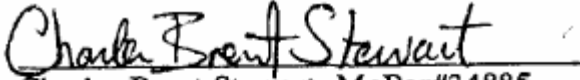
¹⁰ 4 CSR 240-2.075(6) states:

Any person not a party to a case may petition the commission for leave to file a brief as *amicus curiae*. The petition for leave must state the petitioner's interest in the matter and explain why an *amicus* brief is desirable and how the matters asserted are relevant to the determination of the case. The brief may be submitted simultaneously with the petition. Unless otherwise ordered by the commission, the brief must be filed no later than the initial briefs of the parties. If leave to file a brief as an *amicus curiae* is granted, the brief shall be deemed filed on the date submitted. An *amicus curiae* may not file a reply brief.

Respectfully submitted,

SAGE TELECOM, INC.

By:



Charles Brent Stewart, MoBar#34885

STEWART & KEEVIL, L.L.C.

4603 John Garry Drive, Suite 11

Columbia, Missouri 65203

(573) 499-0635

(573) 499-0638 (facsimile)

Stewart499@aol.com

SOUTHWESTERN BELL TELEPHONE, L.P.

By:



PAUL G. LANE

#27011

LEO J. BUB

#34326

ROBERT J. GRYZMALA

#32454

MIMI B. MACDONALD

#37606

Attorneys for Southwestern Bell Telephone, L.P., d/b/a SBC Missouri

One SBC Center, Room 3510

St. Louis, Missouri 63101

314-235-4094 (Telephone)/314-247-0014 (Facsimile)

mimi.macdonald@sbc.com (E-Mail)

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties via e-mail on March 9, 2005.


Mimi B. MacDonald

Dana K. Joyce
Missouri Public Service Commission
200 Madison Street, Suite 800
P. O. Box 360
Jefferson City, MO 65102
gencounsel@psc.mo.gov

John B. Coffman
Office of the Public Counsel
200 Madison Street, Suite 650
P. O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Carl Lumley
Curtis, Oetting, Heinz, Garrett & Soule, P.C.
130 South Bemiston, Suite 200
Clayton, MO 63105
clumley@lawfirmemail.com