



Paul G. Lane
General Counsel – Missouri/Kansas

SBC Missouri
One SBC Center
Room 3520
St. Louis, MO 63101

314.235.4300 Phone
314-247-0014 Fax

paul.lane@sbc.com

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The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
Suite 100
Jefferson City, Missouri 65101

In re: Amendment Superseding Certain 251/252 Matters to Interconnection Agreements
Under Sections 251 and 252 of the Telecommunications Act of 1996 between
Sage Telecom, Inc. and Southwestern Bell Telephone, L.P., d/b/a SBC Missouri

Dear Judge Roberts:

On December 27, 2001, Sage Telecom, Inc. ("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., a Texas limited partnership, doing business as SBC Missouri ("SBC Missouri"). Sage and SBC Missouri recently agreed to an amendment to that Interconnection Agreement, entitled: "Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996" ("Amendment"), which is attached hereto. Sage and SBC Missouri request that you file this Amendment and bring it to the attention of the Commission for approval under Section 252 of the Telecommunications Act of 1996 (the "Act").

This Amendment is similar to the Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996 ("Replaced Amendment") that Sage and SBC Missouri filed with the Commission on May 4, 2004. However, it is different in several respects, most of which are summarized at the end of this letter. Additionally, attached to and incorporated as exhibits to the Amendment are the Private Commercial Agreement for Local Wholesale Complete ("LWC Agreement") and two amendments thereto¹ between Sage and SBC Missouri (as well as a Sage affiliated CLEC and other SBC ILECs). 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 Replaced Amendment constituted a "total package that ultimately constitutes the entire agreement"² between the parties, that the agreement included Section 251 matters, and dissolved

¹ Collectively, the LWC Agreement and its two amendments are referred to in this letter as the "LWC Documents."

² See Sage Telecom, L.P. v. Public Utility Commission of Texas, W.D. Texas Case No. A-04-CA-354-SS (October 7, 2004), p. 10.

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.³ As a result, on October 11, 2004, SBC Texas publicly filed the complete LWC Agreement under protest, reserving its rights for appeal.

Sage and SBC Missouri maintain that the federal court in Texas incorrectly decided the case. Moreover, Sage and SBC Missouri emphasize that a Texas federal court decision is not binding precedent in the State of Missouri. Furthermore, Sage and SBC adamantly contend that the entire LWC Documents do not constitute an interconnection agreement subject to approval under Section 252 of the Act.⁴

Sage and SBC Missouri are filing the LWC Documents because the Commission determined that the Replaced Amendment and the LWC Agreement were an “indivisible agreement” and because the Commission determined that it would not approve the Replaced Agreement unless Sage and SBC Missouri also submitted the LWC Agreement.⁵ Accordingly, while Sage and SBC Missouri believe that only the Replaced Amendment is subject to Commission review under Section 252, the LWC Documents are provided with the Amendment. 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 252.⁶ Sage and SBC Missouri note that the Replaced Amendment and the LWC Agreement contain provisions that have been negotiated as part of an entire agreement and the provisions are integrated with each other in such a manner that each provision is material to every other provision.

Please note that the LWC Documents and the Amendment were not intended to, and do not, constitute a successor interconnection agreement to the M2A, as amended, between Sage

³ Id. at p. 17.

⁴ See Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Agreements under Section 252(a)(1), WC Docket No. 02-89, Memorandum Opinion and Order, 17 FCC 19337, 19340-41 at paragraph 8, n. 26 (2002), wherein the FCC held that interconnection agreements regarding matters not subject to Section 251 need not be publicly filed and/or reviewed by state commissions under section 252. The FCC stated: “we find that only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1). Id. In evaluating whether agreements were subject to filing and review under Section 252, the FCC in Qwest analyzed agreements on a provision-by-provision basis. For example, the FCC held that certain provisions within an agreement were subject to the filing requirements only because they were to be used to resolve disputes over Section 251(b) and (c) obligations. Id. at 9. Thus, the Qwest decision indicates that *only* those provisions that relate to Section 251(b) and (c) obligations are subject to the public filing and review requirements of Section 252.

⁵ 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, p. 4.

⁶ 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 and otherwise seek review of any such treatment and related determinations.

and SBC Missouri. To the extent that the Commission determines that the entirety of the LWC Documents or any part thereof are subject to approval under Section 252, the approved provisions would act as a further amendment to the parties' existing interconnection agreement.

Since the complete LWC Agreement has now been publicly filed in Texas and elsewhere, Sage and SBC Missouri do not request confidential treatment of the LWC Agreement.

As previously stated, the Amendment is similar to the Replaced Amendment that Sage and SBC Missouri filed with the Commission on May 4, 2004. However, it is different in the following material respects. First, the Amendment is by and between Sage and SBC Missouri, not Sage, Sage Telecom of Texas, L.P. and the SBC Incumbent Local Exchange Carriers ("SBC ILECs"). Second, the Replaced Amendment referenced an effective date of July 1, 2004. That date has been replaced throughout the Amendment by the phrase "Amendment Effective Date," which is newly defined in Section 6.1 of the Amendment to mean "ten (10) calendar days after the Commission has approved this Amendment under Section 252(e) of the Act or, absent such Commission approval, the date this Amendment is deemed approved under Section 252(e)(4) of the Act." Third, there is a new Section 2 which addresses the status of the LWC Agreement under Section 252. Fourth, Section 5.1 of the Amendment includes specific reservation of rights language related to Voice Over Internet Protocol traffic and/or traffic utilizing in whole or in part Internet Protocol technology. Fifth, Section 4.4 has been removed from the Amendment. Sixth, Section 5.4 has been added to the Amendment, which indicates that the LWC Agreement is not subject to Intervening Law/Change of Law provisions in the Amendment, nor is it subject to any change of law, intervening law, successor rates, and/or similarly purposed provisions in the interconnection agreement or any future interconnection agreement. Seventh, as indicated above, Section 6 of the Amendment defines Effective Date and further provides that the provisions adopted by other telecommunications carriers shall only apply prospectively from the date that the MFN provisions become effective between SBC Missouri and the Adopting CLEC following the date that the Commission approves or is deemed to have approved the Adopting CLEC's MFN Provisions as between SBC Missouri and the Adopting CLEC. Eighth, this Amendment adds Sections 6.2 and 6.3. Section 6.2 indicates that as of the Amendment Effective Date, the Amendment replaces the Replaced Amendment. Section 6.3 indicates that the effective date of the LWC Agreement will be the same date as the Amendment Effective Date. Ninth, this Amendment adds a new section, Section 7.6, which addresses how conflicts, if any, will be handled between the Amendment and the LWC Agreement. Finally, the Amendment has been changed to reflect Missouri references. Sage and SBC Missouri request that the Commission approve this Amendment under Section 252.

Sage and SBC Missouri respectfully request expedited treatment in connection with the Replaced Amendment. Specifically, Sage and SBC Missouri respectfully request that the Commission rule on this Replaced Amendment no later than **March 1, 2004**. As the Commission is aware, on February 4, 2005, the Federal Communications Commission ("FCC") issued its *Order on Remand, In the Matter of Unbundled Access to Network Elements, et al.*, WC Docket No. 04-313, *et al.*, February 4, 2005. In order to ensure a smooth transition, the Replaced Amendment should go into effect before the effective date of the FCC's *Order on Remand*. Specifically, the parties desire Sage to be able to continue to add new customers utilizing SBC

Missouri switching services pursuant to the terms and conditions set forth in the LWC Agreement and the two amendments thereto, which are incorporated as exhibits to the Replaced Amendment. Further, because the Replaced Amendment is not effective until ten (10) days after approval by the Missouri Public Service Commission ("Commission"), the approval from the Commission must be no later than **March 1, 2005**. This request is made as soon as it could have been, namely, within days after the FCC released its *Order on Remand* and the parties had an opportunity to review it.

Very truly yours,

/s/ Robert W. McCausland

Robert W. McCausland
for Sage Telecom, Inc.

A handwritten signature in cursive script, appearing to read "Paul G. Lane".

Paul G. Lane
Attorney for Southwestern Bell Telephone, L.P.,
d/b/a SBC Missouri

Attachments