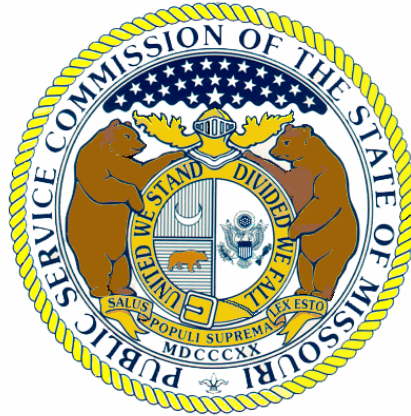


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's)
Petition for Compulsory Arbitration of Unresolved Issues) **Case No. TO-2005-0336**
for a Successor Interconnection Agreement to the)
Missouri 271 Agreement ("M2A").)

FINAL ARBITRATOR'S REPORT

Issue Date: June 21, 2005

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ARBITRATOR: **Kevin A. Thompson, Deputy Chief Regulatory Law Judge.**¹

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¹ The Arbitrator gratefully acknowledges the assistance of Christine Koenigsfeld and Judy Pope, Regulatory Law Judges Nancy Dippell, Vicky Ruth and Morris Woodruff (Seniors), Kennard Jones and Ron Pridgin, and particularly Chief Regulatory Law Judge Colleen M. Dale.

FINAL ARBITRATION REPORT

PROCEDURAL HISTORY

Petition for Arbitration:

On March 30, 2005, Southwestern Bell Telephone, L.P., doing business as SBC Missouri, filed its Petition for Arbitration with the Commission pursuant to Section 4.2 of the M2A, Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as various sections of Title 47, United States Code ("the Act"), and Commission Rule 4 CSR 240-36.040. SBC's petition asks the Commission to arbitrate unresolved issues in the negotiation of interconnection agreements between SBC and various competitive local exchange carriers ("CLECs") to replace the M2A, the generally-available interconnection agreement approved by the Commission on March 15, 2001, in conjunction with its recommendation to the United States Federal Communications Commission ("FCC") that SBC be approved to provide in-region long distance service in Missouri pursuant to Section 271 of the Act.²

The M2A established terms for the resale of SBC's services and for the provision by SBC of interconnection, unbundled network elements ("UNEs"), and various ancillary functions as designated in its attachments. Most CLECs operating in SBC's territory adopted the M2A, which expired on March 6, 2005. However, under Section 4.2 of the M2A's General Terms and Conditions, the terms, conditions, and prices of the agreement will remain in effect for 135 days after its expiration for completion of negotiations and any

²*In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Case No. TO-99-227, (Order Regarding Recommendation on 271 Application Pursuant to the Telecommunications Act of 1996 and Approving the Missouri Interconnection Agreement (M2A), issued March 15, 2001).*

necessary arbitration of a successor interconnection agreement:

4.1 . . . If either party desires to negotiate a successor agreement to this Agreement, such party must provide the other party with a written request to negotiate such successor agreement (Request to Negotiate) not later than 180 days prior to the expiration of this Agreement. A Request to Negotiate does not activate the negotiation timeframe set forth in this Agreement, nor does it shorten the life of this Agreement. The noticing Party will delineate the items desired to be negotiated. Not later than 30 days from receipt of said Notice to Negotiate, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. The Parties will begin negotiations not later than 135 days prior to expiration of this Agreement . . .

* * *

4.2 If either party has served a Notice to Negotiate pursuant to paragraph 4.1 above then, notwithstanding the expiration of the Agreement in accordance with paragraph 4.1 above, the terms, conditions, and prices of this Agreement will remain in effect for a maximum of 135 days after expiration of the Agreement for completion of said negotiations and any necessary arbitration. The Parties agree to resolve any impasse by submission of the disputed matters to the Missouri PSC for arbitration. Should the Missouri PSC decline jurisdiction, the Parties will resort to a commercial provider of arbitration services.

Thus, on July 19, 2005, the M2A will no longer be in effect. SBC's petition also moved the Commission to notify certain non-responsive CLECs that SBC's obligations to them will end on the 136th day following the expiration of the M2A on March 6, 2005; in the alternative, SBC requested that the Commission add the non-responsive CLECs to this arbitration as parties.

Notice of Arbitration:

The arbitration was conducted pursuant to Commission Rule 4 CSR 240-36.040, which governs arbitrations under Section 251 of the Act ("the Rule"). As required by Section (7) of the Rule, the Arbitrator issued a Notice of Arbitration on April 6, making some

39 Competitive Local Exchange Carriers ("CLECs") parties to the arbitration;³ setting April 25 as the due date for responses to SBC's Petition; directing SBC to supplement its Petition; advising the parties of the appointment of the Arbitrator; appointing the Arbitration Advisory Staff; setting the Initial Arbitration Meeting for April 14; and adopting the Commission's standard Protective Order for the purposes of the arbitration.

Initial Arbitration Meeting:

The Initial Arbitration Meeting was held on April 14 as scheduled.⁴ A principal topic of that meeting was the development of a procedural schedule. Section (15) of the Rule authorizes the Arbitrator to vary the procedures and timelines set out in the Rule as necessary to complete the arbitration within the period specified in the Act:

Because of the short time frame mandated by the Act, the arbitrator shall have flexibility to set out procedures that may vary from those set out in this rule; however, the arbitrator's procedures must substantially comply with the procedures listed herein. The arbitrator may vary

³ Including 20 CLECs with whom SBC was actively negotiating: The AT&T Group, including AT&T Communications of the Southwest, TCG Kansas City and TCG St. Louis; the CLEC Coalition, including Big River Telephone Company, L.L.C., Birch Telecom of Missouri, Inc., Ionex Communications, Inc., NuVox Communications of Missouri, Inc., Socket Telecom, L.L.C., XO Communications Services, Inc., Allegiance Telecom of Missouri, XO Missouri, Inc., Xspedius Management Co. of Kansas City, L.L.C., and Xspedius Management Co. Switched Services, L.L.C.; the MCI Group, including MCI WorldCom Communications, Inc., and MCImetro Access Transmission Services, L.L.C.; Charter Fiberlink-Missouri, L.L.C.; Metro Teleconnect Companies, Inc.; Navigator Telecommunications, L.L.C.; Sprint Communications Company, L.P.; The Pager Company; and WiTel Local Network, L.L.C.; also including seven CLECs that notified SBC that they were quitting business: ALLTEL Communications, Inc., Ameritel Missouri, Inc., Business Telecom, Inc., CD Telecommunications, Inc., Magnus Communications, doing business as M Comm, Steve's Wildcat Web, Inc., and Sure-Tel, Inc.; and a third group of 12 CLECs that did not respond to SBC's attempts to open negotiations: Cat Communications International, Inc., Cinergy Communications, Family Tel of Missouri, LLC, ICG Telecom Group, Inc., KMC Data, LLC, KMC Telecom III, LLC, Mark Twain Communication Company, Ren-Tel Communications, Inc., Victory Communications, Inc., Quick-Tel Communications, Inc., The Phone Connection, doing business as Affordable Phone Company, and TruComm Corporation. Not included are another 36 CLECs that entered into Memoranda of Understanding with SBC, agreeing to adopt one of the interconnection agreements produced by this arbitration. On May 18, SBC dismissed FamilyTel of Missouri, LLC, Magnus Communications, Inc., The Pager Company, TruComm Corporation and Steve's Wildcat Web, Inc.

⁴ Present were SBC, the CLEC Coalition, MCI World Com, Navigator Telecommunications, the Pager Company, Sprint, Charter Fiberlink-Missouri, and Charter Communications. The remaining parties, although duly notified, did not appear.

from the schedule in this rule as long as the arbitrator complies with the deadlines contained in the Act.

Procedural Schedule:

After consideration of the proposals submitted by the parties, the Arbitrator issued an Order Adopting Procedural Schedule on April 21 and the arbitration thereafter progressed according to that schedule. The Order Adopting Procedural Schedule was served on all parties by the Commission's Data Center and included notice of the time and place set for the limited evidentiary hearing. Pursuant to the authority cited above, the procedural schedule adopted by the Arbitrator departed in some respects from the timelines set out in Rule 4 CSR 240-36.040 and modified various procedures in order to ensure the completion of the arbitration by the required date.

Responses to the Petition for Arbitration:

Several of the Respondent CLECs timely filed responses to SBC's Petition for Arbitration on April 25.⁵ Others filed no response at all. One CLEC, ICG Telecom Group, Inc., filed its response out-of-time on April 27, together with its Motion to Accept Late Filed Response. In its response, ICG announced its intention to enter into a Memorandum of Understanding with SBC, pursuant to which it will adopt one of the interconnection agreements resulting from this arbitration as its successor interconnection agreement with SBC.

⁵Including Sprint Communications Company, L.P.; the Pager Company; the AT&T Group, including AT&T Communications of the Southwest, Inc., and its affiliates, TCG Kansas City, Inc., and TCG St. Louis, Inc.; Navigator Telecommunications, L.L.C.; the CLEC Coalition, including Big River Telephone Company, L.L.C., Birch Telecom of Missouri, Inc., Ionex Communications, Inc., NuVox Communications of Missouri, Inc., Socket Telecom, L.L.C., XO Communications Services, Inc., Allegiance Telecom of Missouri, XO Missouri, Inc., Xspedius Management Company of Kansas City, L.L.C., and Xspedius Management Company Switched Services, L.L.C.; the MCI Group, including MCI WorldCom Communications, Inc., and MCI metro Access Transmission Services, L.L.C.; the KMC Group, including KMC Data, Inc., and KMC Telecom III, L.L.C.; the Missouri Network Alliance Group, including Missouri Network Alliance, L.L.C., Western Communications, Inc., and Z-Tel Communications, Inc.; WilTel Local Network, L.L.C.; and Charter Fiberlink-Missouri, L.L.C.

Limited Evidentiary Hearing:

Pursuant to the procedural schedule, the parties filed prepared direct and rebuttal testimony. 102 pieces of testimony were filed by 49 witnesses; all but one piece of prepared testimony were received into the record at the opening of the limited evidentiary hearing with the consent of the parties.⁶ The parties also prepared and filed joint Decision Point Lists ("DPLs") on May 20, with cites to the pre-filed testimony and to appropriate legal authorities. The limited evidentiary hearing opened on May 23 and concluded on May 26.⁷ The Arbitrator heard the testimony of 22 witnesses at the limited arbitration hearing and received seven exhibits. The Arbitrator and the members of the Arbitration Advisory Staff addressed questions to various of the witnesses at the limited evidentiary hearing. A few witnesses appeared telephonically.

Arbitration Style:

Rule 4 CSR 240-36.040(5), "Style of Arbitration," provides:

An arbitrator, acting pursuant to the commission's authority under section 252(e)(5) of the Act, shall use final offer arbitration, except as otherwise provided in this section:

(A) Final offer arbitration shall take the form of issue-by-issue final offer arbitration, unless all of the parties agree to the use of entire package final offer arbitration. The arbitrator in the initial arbitration meeting shall set time limits for submission of final offers and time limits for subsequent final offers, which shall precede the date of a limited evidentiary hearing.

* * *

(E) If a final offer submitted by one (1) or more parties fails to comply with the requirements of this section or if the arbitrator determines in unique

⁶The one piece of testimony not received was filed on behalf of The Pager Company, which had settled its dispute with SBC after the testimony was filed.

⁷SBC, AT&T, the CLEC Coalition, MCI World Com, Navigator Telecommunications, Sprint, Charter Fiberlink-Missouri, and WilTel appeared and participated in the hearing. The remaining parties, although duly notified, did not appear.

circumstances that another result would better implement the Act, the arbitrator has discretion to take steps designed to result in an arbitrated agreement that satisfies the requirements of section 252(c) of the Act, including requiring parties to submit new final offers within a time frame specified by the arbitrator, or adopting a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act, and the rules prescribed by the commission and the Federal Communications Commission pursuant to that section.

Rule 4 CSR 240-36.040(19), "Filing of Arbitrator's Draft Report," provides in pertinent part that, "[u]nless the result would be clearly unreasonable or contrary to the public interest, for each issue, the arbitrator shall select the position of one of the parties as the arbitrator's decision on that issue."

Arbitration Standards:

In conducting issue-by-issue final offer arbitration, the Arbitrator shall be guided by § 252(c) of the Act, which provides:

In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement, a State commission shall --

(1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;

(2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

With respect to the public interest in the regulation of telecommunications, the Missouri General Assembly has provided an express statement of public policy to guide the Commission:⁸

⁸ Section 392.185, RSMo Supp. 2002.

The provisions of this chapter shall be construed to:

- (1) Promote universally available and widely affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;
- (4) Ensure that customers pay only reasonable charges for telecommunications service;
- (5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;
- (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;
- (7) Promote parity of urban and rural telecommunications services;
- (8) Promote economic, educational, health care and cultural enhancements; and
- (9) Protect consumer privacy.

Final Arbitration Report:

The Procedural Schedule did not call for an Arbitrator's Draft Report pursuant to Rule 4 CSR 240-36.040(19), but rather for the filing of a Final Arbitrator's Report. Rule 4 CSR 240-36.040(21), "Filing of the Final Arbitrator's Report," provides:

The arbitrator shall file a final report with the commission The final report shall include a statement of findings and conclusions and the reasons or basis therefore, on all the material issues of fact, law or discretion presented on the record. Upon filing, the secretary of the commission shall serve the final report on all parties to the arbitration.

Also pertinent is Rule 4 CSR 240-36.040(19), "Filing of Arbitrator's Draft Report," which provides in pertinent part:

. . . The draft report shall include a) a concise summary of each issue resolved by the arbitrator and b) a reasoned articulation of the basis for the decision on each issue, including how the decision meets the standards set in sections 251 and 252 of the Act. The arbitrator shall issue a decision on the merits of the parties' positions on each issue raised by the petition for arbitration and response(s). . . .

Additional Proceedings:

Rule 4 CSR 240-36.040(24), "Commission's Decision," provides:

The commission may conduct oral argument concerning comments on the arbitrator's final report and may conduct evidentiary hearings at its discretion. The commission shall make its decision resolving all of the unresolved issues no later than the two hundred seventieth day following the request for negotiation. The commission may adopt, modify or reject the arbitrator's final report, in whole or in part.

The Procedural Schedule provides for additional proceedings as follows:

Comments on Final Arbitrator's Report All Parties	June 24, 2005 4:00 p.m.
Oral Argument before Commission All Parties	June 29, 2005 9:00 a.m.
Final Commission Arbitration Decision	July 6, 2005 4:00 p.m.
Successor Interconnection Agreements All Parties	July 13, 2005 4:00 p.m.
Commission Approval of Successor Intercon- nection Agreements	July 19, 2005 4:00 p.m.

DISCUSSION

The parties submitted the open issues requiring resolution in the form of Decision Point Lists (DPLs). Because there are seven distinct Interconnection Agreements in this Arbitration, there are seven separate groups of DPLs. Within each group, the parties submitted a separate DPL on each topical category in which they have unresolved issues.

The DPLs form a voluminous set of 85 documents containing 727 specific disputed points requiring resolution, set out in 2,296 pages.⁹ These points fall into a number of topical categories:

1. General Terms and Conditions.
2. Definitions.
3. Pricing.
4. Resale.
5. Interconnection, including Interconnection Trunking Requirements, Network Interconnection Methods and Network Architecture.
6. Intercompany Compensation, including Reciprocal Compensation.
7. Billing and Invoicing.
8. Out-of-Exchange Traffic.
9. Unbundled Network Elements (UNEs).
10. Collocation , including Virtual Collocation and Physical Collocation.
11. Operations Support Systems (OSS).
12. Rights-of-Way and Access to Structures.
13. Digital Subscriber Lines (xDSL).
14. YZP.
15. Line Splitting.
16. E-911.
17. Performance Measures.
18. SS7.
19. LIDB.
20. CNAM.
21. Operator Services (OS) and Directory Assistance (DA).
22. Numbering Issues.
23. White Pages Issues.

NON-RESPONDING CLECS

In its *Petition for Arbitration*, SBC identified some 19 CLECs that failed to respond to SBC's requests to negotiate a successor interconnection agreement or responded by indicating an intention to cease doing business. At SBC's request, these non-responding CLECs were made parties to this Arbitration. SBC requested that the Commission issue an order notifying the non-responding CLECs that SBC will have no

⁹ There are a total of 128 Decision Points.

obligation to continue to provide wholesale telecommunications services to them beginning July 19, 2005, "unless and until they have an executed successor interconnection agreement in place either by: (a) executing SBC Missouri's originally proposed successor ICA (attached as Exhibit 27); or (b) executing the MOU agreeing to adopt, pursuant to Section 252(i) of the Act, one of the successor agreements resulting from this arbitration."¹⁰ In the alternative, SBC requested that the Commission order that SBC's originally proposed successor interconnection agreement ("ICA") (*SBC's Petition for Arbitration*, Exhibit 27) be adopted as the arbitrated ICA between SBC and each of the 19 non-responding CLECs.

The Arbitrator concludes that SBC must continue to serve these 19 non-responding CLECs after July 19, 2005. However, that service will not be on the terms of the M2A. The non-responding CLECs are parties to this Arbitration and have had every opportunity to participate. They have elected not to do so. Therefore, the Arbitrator will grant SBC's alternative request for relief. The Arbitrator directs that SBC and the 19 non-responding CLECs will do business after July 19, 2005, pursuant to the rates, terms and conditions set out in the Generic Successor ICA proposed by SBC, Exhibit 27 to SBC's *Petition for Arbitration*.

STATEMENT OF FINDINGS AND CONCLUSIONS

Attached hereto in compliance with Commission Rule 4 CSR 240-36.040(21) is the Arbitrator's Statement of Findings and Conclusions, consisting of several topical sections in which each Decision Point identified by the parties is considered in the light of the parties' arguments and the evidence they adduced. The Arbitrator has rendered a

¹⁰ SBC's *Petition for Arbitration*, p. 12.

decision on each such Decision Point or group of related Decision Points and stated the basis therefore. The Arbitrator certifies that each such decision meets the requirements of §§ 251 and 252 of the Act.

Respectfully submitted,

Kevin A. Thompson,
Deputy Chief Regulatory Law Judge,
Arbitrator.

Dated this 21st day of June, 2005, in Jefferson City, Missouri.