

**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)
For a Successor Interconnection Agreement to the) Case No. _____
Missouri 271 Agreement ("M2A"))

**PETITION FOR ARBITRATION AND
MOTION FOR ISSUANCE OF ORDER OF NOTIFICATION**

SBC Missouri¹, pursuant to Section 4.2 of the M2A, Section 252 of the Federal Telecommunications Act of 1996 (the "Act"), and 4 CSR 240-36.040, respectfully requests the Missouri Public Service Commission ("Commission") to: (1) arbitrate the unresolved issues between SBC Missouri and the Competitive Local Exchange Carriers ("CLECs") with whom SBC Missouri has been actively negotiating a successor interconnection agreement to the Missouri 271 Interconnection Agreement ("M2A"); and (2) issue an order notifying the CLECs who have failed to respond to SBC Missouri's requests to negotiate a successor interconnection agreement that beginning July 19, 2005, SBC Missouri will have no obligation to provide wholesale telecommunications services to them unless they have an executed successor interconnection agreement in place.

THE M2A

1. Most CLECs that operate in SBC Missouri's exchanges have entered into the M2A, which is the interconnection agreement the Commission approved on March 15, 2001, in conjunction with its recommendation to the Federal Communications Commission ("FCC") that SBC Missouri be approved to provide in-region long distance service in Missouri pursuant to

¹ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri" or "SBC."

Section 271 of the Act.² The M2A established terms for the resale of SBC Missouri's services and for the provision by SBC Missouri of Interconnection, Unbundled Network Elements, and Ancillary Functions as designated in the Attachments to the M2A.

2. By its terms, the M2A 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 were to remain in effect for a maximum of 135 days after its expiration for completion of negotiations and any necessary arbitration of a successor interconnection agreement. On July 19, 2005, the M2A will no longer be in effect.

THE PARTIES

3. Anticipating the M2A's expiration, SBC Missouri and several CLECs have actively been negotiating separate successor interconnection agreements to the M2A. Through negotiations, the parties have resolved a number of issues and reached substantial agreement respecting most provisions for successor interconnection agreements. A significant number of issues, however, remain unresolved, necessitating arbitration. (The names of these approximately 20 CLECs, each of whom SBC Missouri names here as a Respondent, and the available contact information for each of them, are set out in Exhibit 1.)

4. A number of CLECs have entered into a written Memorandum of Understanding ("MOU") with SBC Missouri, in which the CLECs indicated that they did not intend to engage in bilateral negotiations to develop a successor interconnection agreements or to participate in arbitration proceedings. Instead, they agreed that at the conclusion of the arbitration they would

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.

adopt, pursuant to Section 252(i) of the Act, one of the successor agreements resulting from this arbitration. (The names of these 36 CLECs, none of whom SBC Missouri names as a Respondent, are set out on Exhibit 2. The MOUs executed by them are appended as Exhibit 3.)

5. Some CLECs, when contacted by SBC Missouri to negotiate a successor interconnection agreement, informed SBC Missouri that they planned to discontinue service and terminate their interconnection agreements with SBC Missouri. (The names of these approximately seven CLECs, each of whom SBC Missouri names here as a Respondent, and their contact information, are set out on Exhibit 4.)

6. Certain CLECs have failed to respond to SBC Missouri's request to negotiate a successor interconnection agreement to the M2A. These CLECs have not affirmatively indicated what alternative arrangements they may have for service, if any, after the M2A is no longer in effect. (The names of these approximately 12 CLECs, each of whom SBC Missouri names here as a Respondent, and their contact information are set out on Exhibit 5.)

7. Petitioner Southwestern Bell Telephone, L.P. is a Texas limited liability partnership,³ duly authorized to conduct business in Missouri,⁴ with its principal Missouri office at One SBC Center, Room 3520, St. Louis, Missouri 63101. SBC Missouri is authorized to do business in Missouri as SBC Missouri and its fictitious name is duly registered with the Missouri

³ A copy of the Limited Partnership Agreement was filed with the Commission on October 12, 2001, and is incorporated here by reference. See In the Matter of the Application of Southwestern Bell Telephone Company To Transfer Property and Ownership of Stock Pursuant to Section 392.200, RSMo., Case No. TO-2002-185, October 12, 2001.

⁴ A copy of a certificate from the Missouri Secretary of State certifying that Southwestern Bell Telephone, L.P. is a foreign limited partnership duly authorized to transact business in the State of Missouri was filed with the Commission on January 7, 2002, and is incorporated here by reference. See In the Matter of the Application of Southwestern Bell Telephone Company to Transfer Property and Ownership of Stock Pursuant to Section 392.300, RSMo., Case No. TO-2002-185, January 7, 2002.

Secretary of State.⁵ SBC Missouri is a “local exchange telecommunications company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the State of Missouri as each of those phrases is defined in Section 386.020, RSMo. 2000. All correspondence, pleadings, orders, decisions, and communications regarding this proceeding should be sent to:

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The electronic mail address, fax number, and telephone number for SBC Missouri’s attorneys are contained in the signature block of this Petition.

8. SBC Missouri does not have any pending or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment, or decision has occurred within three (3) years of the date of this Application.

9. SBC Missouri does not have any annual report or assessment fees that are overdue in Missouri.

⁵ A copy of the registration of the fictitious name “SBC Missouri” was filed with the Commission on January 17, 2003, and incorporated here by reference. See In the Matter of the Name Change of Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company to Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, Case No. IN-2003-0247, January 17, 2003.

BACKGROUND ON NEGOTIATIONS
AND TIMELINES OF PETITION FOR ARBITRATION

10. The negotiations that took place for the replacement interconnection agreement for the M2A were required to be, and were, conducted pursuant to Sections 4.1 and 4.2 of the General Terms and Conditions of the M2A, which the Commission specifically approved on March 15, 2001 in Case No. TO-99-227, in connection with SBC Missouri's Section 271 long distance application. Under these sections, all negotiations and, if necessary, arbitrations were required to be completed within a prescribed 270-day period that was to commence no later than 135 days before the M2A's expiration and conclude no later than 135 days after the M2A's expiration:

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.

As the M2A, by its terms, expired on March 6, 2005, the negotiations that occurred were required to, and did, commence by October 22, 2004; and the 135 to 160-day period during

which either party was permitted to file for arbitration under Section 252(b)(1) of the Act began on March 6, 2005, and will end on March 31, 2005, inclusive.

11. SBC Missouri's actions in commencing the negotiations of a successor interconnection agreement and initiating this arbitration of unresolved issues comply with the requirements of Sections 4.1 and 4.2 of the M2A and were, therefore, timely. On September 3, 2004, SBC Missouri sent to each CLEC identified in Exhibits 1-5 a letter notifying such parties that the M2A would expire on March 6, 2005. The letter set forth the language of Section 4.1 of the M2A's General Terms and Conditions, and conveyed that SBC Missouri wished to negotiate a successor agreement to the M2A, including any provisions from the M2A that were contained in other interconnection agreements. SBC Missouri attached to the letter the terms that SBC Missouri wished to negotiate. (A copy of this letter, which will be referred to as the "Notice to Negotiate," is attached as Exhibit 6.).

12. Next, on September 20, 2004, SBC Missouri distributed an accessible letter ("AL No. CLEC04-324") to each CLEC shown as a party to the M2A (or having an interconnection agreement with M2A provisions in it). SBC Missouri also posted the letter on its publicly accessible website for CLECs at <https://clec.sbc.com>. This website is maintained as a location where SBC Missouri may post notices and communications to CLECs, and where CLECs may post their responses. The letter emphasized again that the M2A expiration date of March 6, 2005, was "rapidly approaching" and provided further information concerning the successor negotiations "in order to accomplish this task in a resource and cost efficient manner." The letter also suggested four options for CLECs to consider: (1) request bilateral negotiations; (2) negotiate collectively in a smaller group; (3) execute a joint stipulation (that was included within the letter) stating that "the CLEC will not engage in either negotiation or active participation in

an arbitration proceeding in exchange for adopting a Successor Agreement resulting from the arbitration proceeding;” or, (4) adopt SBC Missouri’s 13-State Generic Interconnection Agreement. (A copy of the September 20, 2004 AL No. CLEC04-324 is attached as Exhibit 7.)

13. SBC Missouri on October 7, 2004, posted a redlined version of the now expiring M2A, indicating SBC Missouri’s proposed language for appropriate interconnection provisions for a Successor Agreement to the parties’ existing M2A agreements.

14. On December 17, 2004, SBC Missouri distributed another accessible letter (“AL No. CLEC04-457”) to Missouri CLECs (a copy of which is attached as Exhibit 8). The letter reminded CLECs that the M2A expiration date of March 6, 2005 “continues to draw near.” This letter was sent to all Missouri CLECs whose interconnection agreements based in whole or in part on the M2A were to expire on March 6, 2005, and it was also posted on SBC Missouri’s website for CLECs. The letter requested that all CLECs who had not responded to SBC Missouri’s earlier notices to do so no later than January 7, 2005. SBC Missouri again explained the four options available for consideration in the negotiation process and further requested that all CLECs who desired to negotiate a successor agreement under either option 1 or 2 to provide their initial redlines no later than January 14, 2005, so that negotiations could be finalized within the time allowed. In addition, SBC Missouri specifically asked each CLEC to advise whether it intended to renegotiate, and, if so, to provide SBC Missouri a list of issues and the types of negotiations preferred (collective session, bilateral negotiations, etc.).

15. SBC Missouri provided a specific mailbox that was continually monitored for all redlines and correspondence relating to CLEC negotiations, and SBC Missouri also designated employees responsible for the creation and scheduling of negotiation sessions and calendars for the subject matter experts (“SMEs”) and negotiators. SBC Missouri provided CLECs with

access to these calendars, complete with SME/Negotiator names and conference bridge information.

16. SBC Missouri received various responses to its accessible letters. These responses included requests to begin negotiations, requests to adopt other available agreements, and requests to terminate negotiations, which came from CLECs that planned to exit the business. However, numerous CLECs did not respond to any of the accessible letters. SBC Missouri's Account Managers attempted to individually contact the nonresponding CLECs to determine their intent. Unfortunately, many of those CLECs remained silent in response to SBC Missouri's attempts to engage in meaningful negotiations.

17. SBC Missouri has remained continuously available to negotiate with the CLECs for many months up until just before this Petition was filed. Several CLECs worked hard along with SBC Missouri to identify and resolve issues, and many other CLECs executed MOUs with SBC Missouri to adopt one of the successor agreements resulting from this proceeding. As is readily apparent from the number of large and small CLECs executing the MOU, this option has been favorably received as a resource and expense saving mechanism. But approximately 19 CLECs have done neither.⁶ These circumstances necessitated SBC Missouri's naming them as Respondents, and the incorporation into this Petition of a Motion for Issuance of Order of Notification directed to each of them. In the event any of these CLECs execute the MOU and file it with the Commission, SBC Missouri will dismiss them from this proceeding.

⁶ The 19 consists of approximately 7 CLECs who indicated they planned to discontinue service and terminate their interconnection agreements with SBC Missouri (see, Exhibit 4), and the approximately 12 CLECs who did not respond to SBC Missouri's request to negotiate (see, Exhibit 5).

STATEMENT OF UNRESOLVED ISSUES AND
EACH PARTY'S POSITION

18. The unresolved issues that remain between SBC Missouri and each CLEC (or group of CLECs) with whom SBC has been negotiating successor interconnection agreements are set out, with specificity, in matrices of disputed issues, which the parties call a Decision Point List (“DPL”). With respect to each unresolved issue, these DPLs provide a statement of the issue; the issue number; references to the proposed successor interconnection agreement (by attachment and section number); the CLEC’s proposed contract language; the CLEC’s position on that issue (where such position was available as of the date of this filing, or as understood by SBC Missouri); SBC Missouri’s proposed contract language; and SBC Missouri’s position on that issue.

19. Each unresolved issue and a description of each party’s position on that issue as understood by SBC Missouri are set out in the following DPLs, which are attached as odd numbered exhibits to this Petition and incorporated here by reference:⁷

- | | |
|------------|---|
| Exhibit 9 | DPLs for AT&T Group (AT&T Communications of the Southwest, Inc., TCG Kansas City, TCG St. Louis); |
| Exhibit 11 | DPLs for CLEC Coalition (Big River Telephone Company, LLC, Birch Telecom of Missouri, Inc., Ionex Communications, Inc., NuVox Communications of Missouri, Inc., Socket Telecom, LLC, Allegiance Telecom of Missouri, XO Communications Services, Inc., XO Missouri, Inc., Xspedius Management Co. of Kansas City, LLC, and Xspedius Management Co. Switched Services, LLC); |
| Exhibit 13 | DPLs for MCI WorldCom Communications, Inc., MCIMetro Access Transmission Services, Inc.; |
| Exhibit 15 | DPLs for Metro Teleconnect; |

⁷ Odd numbers have been assigned to the DPL exhibits and even numbers have been assigned to the draft interconnection agreements exhibits. In this manner, the DPLs and draft interconnection agreements for each negotiating CLEC or group of CLECs will have consecutive exhibit numbers and can be associated more easily with one another.

- Exhibit 17 DPLs for Navigator Telecommunications, LLC;
- Exhibit 19 DPLs for The Pager Company;
- Exhibit 21 DPLs for Charter FiberLink-Missouri, LLC;
- Exhibit 23 DPLs for Sprint Communications Company, LP; and,
- Exhibit 25 DPLs for WiTel Local Network, LLC (Williams Local Network, LLC).

It is SBC Missouri's expectation that the Respondent CLECs will have an opportunity to review and make any revisions they deem appropriate to the DPLs' statements of their position when they file their responses to this Petition.

STATEMENT OF RESOLVED ISSUES AND PROPOSED AGREEMENTS

20. Through negotiations, the parties have resolved a number of issues and reached substantial agreement respecting most provisions of successor interconnection agreements. These resolved issues and the terms of resolution between SBC Missouri and each CLEC (or group of CLECs) with whom it has been negotiating successor interconnection agreements are set out, with specificity, in working drafts of proposed interconnection agreements. These agreements, like the M2A, are divided into subject matter attachments. Some attachments are completely agreed upon, while others contain disputed language that reflects the unresolved issues. Language in bold font reflects SBC Missouri's proposed language on a disputed issue. Language that has been underscored reflects the CLEC's proposed language on a disputed issue. Language that is neither bolded nor underscored reflects agreed upon language. (The outstanding disputes are also identified by the competing contract language in the parties' respective columns in the DPLs.)

21. The resolved issues and the terms of resolution between SBC Missouri and each CLEC (or group of CLECs) with whom it has been negotiating a successor agreement are set out in the following draft proposed interconnection agreements (“ICAs”), which are attached as even-numbered exhibits to this Petition and incorporated here by reference:

- Exhibit 10 Draft Proposed ICA for AT&T Group (AT&T Communications of the Southwest, Inc., TCG Kansas City, TCG St. Louis);
- Exhibit 12 Draft Proposed ICA for CLEC Coalition (Big River Telephone Company, LLC, Birch Telecom of Missouri, Inc., Ionex Communications, Inc., NuVox Communications of Missouri, Inc., Socket Telecom, LLC, Allegiance Telecom of Missouri, XO Communications Services, Inc., XO Missouri, Inc., Xspedius Management Co. of Kansas City, LLC, and Xspedius Management Co. Switched Services, LLC);
- Exhibit 14 Draft Proposed ICA for MCI WorldCom Communications, Inc., MCIMetro Access Transmission Services, Inc.;
- Exhibit 16 Draft Proposed ICA for Metro Teleconnect;
- Exhibit 18 Draft Proposed ICA for Navigator Telecommunications, LLC;
- Exhibit 20 Draft Proposed ICA for The Pager Company;
- Exhibit 22 Draft Proposed ICA for Charter FiberLink-Missouri, LLC;
- Exhibit 24 Draft Proposed ICA for Sprint Communications Company, LP; and,
- Exhibit 26 Draft Proposed ICA for WiTel Local Network, LLC (Williams Local Network, LLC).

MOTION FOR ISSUANCE OF ORDER
OF NOTIFICATION

22. SBC Missouri has filed this Petition to determine its rights and obligations with respect to those CLECs identified as Respondents. With respect to the approximately 19 CLECs identified in Exhibits 4 and 5 that have failed to respond to SBC Missouri’s requests to negotiate a successor interconnection agreement (or have indicated intentions to cease doing business), SBC Missouri respectfully asks the Commission to issue an order notifying them that SBC

Missouri will have no 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.

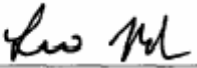
23. Finally, and only in the alternative, if the Commission determines that it will not order that notice be issued as requested above, SBC Missouri requests that the Commission treat this as a Petition for Arbitration and order that SBC Missouri's originally proposed successor ICA (Exhibit 27) be adopted as the arbitrated interconnection agreement between SBC Missouri and each of the nonresponsive 19 CLECs identified in Exhibits 4 and 5.

WHEREFORE, SBC Missouri respectfully requests the Commission to: (1) arbitrate the unresolved issues between SBC Missouri and the CLECs identified in Exhibit 1 with whom SBC Missouri has been actively negotiating a successor interconnection agreement to the M2A; and (2) issue an order notifying the CLECs identified in Exhibits 4 and 5 that have not responded to SBC Missouri's requests to negotiate a successor interconnection agreement (or who have expressed an intent to cease providing service in Missouri) that SBC Missouri will have no obligation to provide wholesale telecommunications to them beginning July 19, 2005, unless they have an executed successor interconnection agreement in place; or in the alternative,

adopting the interconnection agreement attached as Exhibit 27 as the arbitrated agreement between SBC Missouri and each of the CLECs identified in Exhibits 4 and 5.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.


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VERIFICATION

STATE OF MISSOURI)
) ss
CITY OF ST. LOUIS

I Craig A. Unruh, Executive Director-Regulatory for SBC Missouri, being duly sworn upon my oath, do hereby state that I have read the foregoing Petition for Arbitration and Motion for Issuance of an Order of Notification and that the facts stated therein are true and correct to the best of my knowledge, information and belief.


Craig A. Unruh

Subscribed and sworn to before me this 29th day of March, 2005.


Notary Public

My Commission Expires: January 5, 2008

MARYANN PURCELL
Notary Public - Notary Seal
STATE OF MISSOURI
City of St. Louis
My Commission Expires: Jan. 5, 2008

INDEX TO EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
Exhibit 1	List of M2A CLECs that have Actively Negotiated and With Whom SBC Missouri Seeks to Arbitrate Unresolved Issues in this Proceeding.
Exhibit 2	List of M2A CLECs that have Signed MOUs Agreeing to be Bound by this Proceeding and Adopt One of the Resulting ICAs.
Exhibit 3	MOUs signed by SBC Missouri and the CLECs that have agreed to be bound by this proceeding and adopt one of the resulting ICAs.
Exhibit 4	List of M2A CLECs that have informed SBC Missouri that they plan to discontinue service.
Exhibit 5	List of M2A CLECs that have not responded to SBC Missouri's request to negotiate a successor ICA to the M2A.
Exhibit 6	SBC Missouri's September 3, 2004 Notice to Negotiate.
Exhibit 7	Copy of Accessible Letter No. CLEC04-324.
Exhibit 8	Copy of Accessible Letter No. CLEC04-457.
Exhibit 9	DPLs from Negotiations with AT&T Group (AT&T Communications of the Southwest, Inc., TCG Kansas City, TCG St. Louis).
Exhibit 10	Draft ICA reflecting agreed and disputed issues with AT&T Group (AT&T Communications of the Southwest, Inc., TCG Kansas City, TCG St. Louis).
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LLC, and Xspedius Management Co. Switched Services, LLC).

- Exhibit 12 Draft Proposed ICA for CLEC Coalition (Big River Telephone Company, LLC, Birch Telecom of Missouri, Inc., Ionex Communications, Inc., NuVox Communications of Missouri, Inc., Socket Telecom, LLC, Allegiance Telecom of Missouri, XO Communications Services, Inc., XO Missouri, Inc., Xspedius Management Co. of Kansas City, LLC, and Xspedius Management Co. Switched Services, LLC).
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- Exhibit 24 Draft Proposed ICA for Sprint Communications Company, L.P.
- Exhibit 25 DPLs for WilTel Local Network, LLC (Williams Local Network, LLC).
- Exhibit 26 Draft Proposed ICA for WilTel Local Network, LLC (Williams Local Network, LLC).
- Exhibit 27 SBC Missouri's Originally Proposed Successor M2A.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on or about March 31, 2005.

BY  _____

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