

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

Joint Application of	)	
	)	
<b>Sage Telecom, Inc.</b>	)	Case No. <u>TM-2007-0288</u>
	)	
and	)	
	)	
<b>SP Sage LLC</b>	)	
	)	
for Approval of Transfer of Control of	)	
Sage Telecom, Inc.	)	
	)	

**JOINT APPLICATION AND MOTION FOR EXPEDITED TREATMENT**

Sage Telecom, Inc. (“Sage”) and SP Sage LLC (“Transferee”) (together, “Applicants”), by their undersigned counsel and pursuant to Section 392.300 RSMo and the Rules of the Missouri Public Service Commission (“Commission”) including 4 CSR 240-2.060 and 4 CSR 240-3.520 through 3.535, and contingent on the Commission accepting jurisdiction over this matter,<sup>1</sup> request Commission approval or such authority as may be necessary or required to transfer control of Sage to Transferee. Applicants also move for expedited treatment of this application pursuant to 4 CSR 240-3.080(16). Sage is a non-dominant carrier that holds authority to provide inter and intrastate telecommunications services in Missouri.

Although the proposed transaction will result in a change in the ownership of Sage, no transfer of certificates, assets or customers will occur as a consequence. Specifically, Sage intends to maintain its certificates and tariffs as filed upon completion of this transaction. Sage

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<sup>1</sup> As described more fully below, Applicants believe that the proposed transaction may not be within the jurisdiction of the Commission. Nevertheless, Applicants file this Application out of abundance of caution should the Commission determine otherwise.

will continue to provide service to its existing customers in Missouri pursuant to those authorizations under the same rates, terms and conditions. Accordingly, this transaction will be transparent to the customers of Sage.

Applicants request that the Commission act expeditiously to grant the relief requested so that Applicants can consummate the proposed transaction as soon as possible, and no later than March 30, 2007, to meet important business objectives. In requesting expedited treatment of this Joint Application, Applicants state that this Joint Application was filed as soon as it could have been after the transaction document being signed. All necessary regulatory approvals are now being sought as expeditiously as possible by the Applicants.

In support of their Application, the Applicants state as follows:

**I. Description of the Applicants**

**A. Sage Telecom, Inc.**

Sage Telecom, Inc. is a corporation organized under the laws of the State of Texas.<sup>2</sup> Sage has principal offices at 805 Central Expressway South, Suite 100, Allen, Texas 75013-2789. Sage, together with its subsidiary Sage Telecom of Texas, LP (“Sage-TX”) (Sage and Sage-TX together, the “Company”), is a competitive provider of local and long distance phone services and Internet access in twelve states. The Company provides approximately 450,000 local telephone service lines in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Ohio, Oklahoma, Texas and Wisconsin.

In Missouri, Sage is authorized to provide (1) resold and facilities-based basic local telecommunications services pursuant to a Certificate of Service Authority granted by the Commission in Case No. TA-2002-29 on September 23, 2001 and (2) interexchange

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<sup>2</sup> A Certificate of Good Standing from the Missouri Secretary of State for Sage is attached as Exhibit A.

telecommunications service pursuant tot a Certificate of Service Authority granted by the Commission in Case No. TA-2002-30 on September 8, 2001. The Company also holds domestic and international Section 214 authorizations from the Federal Communications Commission (“FCC”), which allow the Company to offer interstate and international telecommunications services.

**B. SP Sage LLC**

SP Sage LLC is a limited liability company organized under the laws of the State of Delaware. Transferee is part of a family of entities that engage in credit-related investment activity and that have a principal place of business at Two Greenwich Plaza, Greenwich, Connecticut 06830. Transferee's sole manager is SP Sage Investments, LLC, which in turn is managed by Edward Mulé, Robert O’Shea, and Michael Gatto.

**II. DESIGNATED CONTACTS**

Correspondence or communications pertaining to this Application should be directed to:

For the Company:

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For Transferee

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with a copy to:

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### **III. REQUEST FOR APPROVAL OF TRANSFER OF CONTROL OR DISMISSAL FOR LACK OF JURISDICTION**

#### **A. Description of the Transaction**

Sage, Silver Point Capital Fund, L.P. (“SPCF”) and Christopher Williams (as the representative of the shareholders of Sage) entered into an Agreement and Plan of Merger (the “Agreement”) dated as of December 31, 2006.<sup>3</sup> SPCF intends to assign its rights and interest in the Agreement to its affiliate, Transferee, at or prior to closing. Pursuant to the Agreement, a subsidiary of Transferee formed specifically for this transaction (“Merger Sub”) will be merged with and into Sage with Sage surviving the merger. As a result, control of the Company will be transferred to Transferee and Sage will be a wholly-owned subsidiary of Transferee. For the

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<sup>3</sup> A copy of the Agreement will be provided under seal upon request of the Commission.

Commission's convenience, pre- and post-transaction corporate organizational charts are provided as Exhibit B.

Applicants emphasize that the transfer of control will not involve a change in the name under which the Company currently operates nor a change in the manner in which the Company currently offers service. Immediately following the transfer of control, the Company will continue to offer the services it currently offers with no change in the rates or terms and conditions of service. The transfer of control of the Company, therefore, will be seamless and transparent to consumers.

Applicants therefore request Commission approval of the transaction described above which will ultimately result in the transfer of control of Sage to Transferee if the Commission finds it has jurisdiction over this transaction. In the alternative, Applicants seek dismissal for lack of jurisdiction, as discussed further below.

#### **B. Sage's Qualifications Post-Transaction and Public Interest Statement**

Applicants believe that the transaction will serve the public interest. The transaction will provide the Company with access to working capital needed to execute its business plan.<sup>4</sup> In addition, the Company's management team may be supplemented with management selected by Transferee for their telecommunications expertise. These benefits are expected to strengthen the Company's ability to provide high quality, advanced services to its customer base. Therefore, Applicants expect that the transaction will enable the Company to strengthen its competitive position to the benefit of consumers.

Further, as stated above, the transaction will be conducted in a manner that will be transparent to the Company's customers. The transfer of control of the Company will not result

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<sup>4</sup> Financial information regarding Sage will be made available on a confidential basis upon request.

in a change of carrier for customers or any transfer of authorizations. Following consummation of the transaction, the Company will continue to provide high-quality communications services to its customers without interruption and without immediate change in rates, terms or conditions. The transfer of control of the Company therefore will be seamless and transparent to consumers in terms of the services they receive.

#### **IV. MOTION FOR EXPEDITED TREATMENT**

The public interest will be served by expeditious consideration and approval of the transaction. For various important business and financial reasons, Applicants require that the transaction be closed as quickly as possible, and request Commission action, either approving the transaction or dismissing for lack of jurisdiction, no later than March 30, 2007. Applicants emphasize that the proposed indirect transfer of control will be seamless and completely transparent to Sage's customers, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers. Accordingly, Applicants request that the Commission commence and complete its examination of the proposed transaction as soon as possible. Expedited approval or dismissal will result in the ability of Applicants to promptly and efficiently complete their transaction without incurring unnecessary costs or delay (4 CSR 240-2.080(16)B).

#### **V. ADDITIONAL INFORMATION REQUIRED BY RULES**

Pursuant to the requirements of 4 CSR 240-2.060(K), Sage states that it does not have any pending action or final unsatisfied judgments or decisions against it in any state or federal agency or court which involve customer service or rates, which action, judgment or decision occurred within the last three (3) years, other than one pending matter in Ohio.<sup>5</sup>

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<sup>5</sup> In re Brumley v. SBC Ohio and Sage Telecom, Inc., Case No. 05-834-TP-CSS, Ohio Pub. Util. Comm'n (filed June 29, 2005).

Pursuant to the requirements of 4 CSR 240-2.060(L), Sage states that, to the best of its knowledge, Sage has no annual report or assessment fees that are overdue.

Pursuant to the requirements of 4 CSR 240-3.520(F), Applicants state that they do not anticipate that the proposed transaction will have any impact on tax revenues of any political subdivision in which structures, facilities or equipment of the Applicants are located.

## **VI. JURISDICTION OF COMMISSION OVER PROPOSED TRANSACTION**

As previously stated and further discussed below, Applicants believe that the Commission does not have jurisdiction over the proposed transaction, which conclusion is consistent with prior Commission decisions. However, Applicants file their application for approval under Section 392.300.1 RSMo. out of an abundance of caution in case the Commission determines that the statute applies to their proposed transaction. Whether or not the Commission ultimately determines that it has jurisdiction over this transaction, Applicants request that such a decision be made promptly and if approval is necessary, that it be granted in an expedited fashion so that Applicants can complete their transaction in a timely fashion.

### **A. Applicability of Section 392.300 RSMo**

Under Section 392.300.1 RSMo, the Commission must approve the sale of “any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public” or any, direct or indirect, merger of such line or system, or franchise, or any part thereof, with any corporation, person or public utility. This section would appear to apply to the transfer of assets of a telecommunications company or the merger of a telecommunications company with another telecommunications company. On its face, however, Section 392.300.1 does not appear to apply to the mere transfer of an ownership interest in a certificated company that does

not otherwise affect the certificated entity or its assets. An acquisition of the stock in a telecommunications company, therefore, falls outside the scope of Section 392.300.1.

The Commission has, under Section 392.300.2, jurisdiction over transactions in which a stock corporation intends to buy more than 10% of the capital stock issued by a telecommunications company organized or existing under or by virtue of the laws of Missouri. Sage is not organized or existing under or by virtue of the laws of Missouri, but under the laws of Texas. Further, the Commission specifically granted Sage a waiver from the requirements of Section 392.300.2 in its certificates of service authority.

**B. The Commission has Found a Lack of Jurisdiction Over Similar Transactions**

The Commission has frequently found that the Commission does not have jurisdiction over transactions similar to the Applicants' proposed transaction.<sup>6</sup> Specifically, "the Commission has consistently interpreted the Union Pacific case [*Public Service Commission v. Union Pacific RR Co.*, 197 S.W. 39 (Mo. banc 1917)] as stating that the Commission lacks jurisdiction where the transfer of control does not affect the operations of the certificated entity."<sup>7</sup> Commission precedent,<sup>8</sup> therefore, dictates that the Commission should dismiss this Application for lack of jurisdiction.

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<sup>6</sup> See e.g., *In re the Joint Application of Feist Long Distance Services, Inc., Telecom Resources, Inc. d/b/a TRINetwork, Inc., and Advanced Communications Group, Inc. for Approval of Transfers of Control*, Case No. TM-2000-146, Order Dismissing Application for Lack of Jurisdiction (Oct. 19, 1999) (determining that the Commission does not have jurisdiction over stock transfers); *In re Joint Application of Matrix Telecom, Inc., AvTel Communications, Inc. and Matrix Acquisition Holdings Corp. for Approval of a Stock Purchase Agreement and Related Transaction*, Case No. TM-2000-247, Order Granting Motion to Dismiss for Lack of Jurisdiction (May 30, 2000) (determining that the Commission does not have jurisdiction over the transfer of stock from one foreign corporation to another).

<sup>7</sup> *In re the Joint Application of Integra Telecom Holdings, Inc., and Electric Lightwave, LLC for Approval of a Transfer of Control of Electric Lightwave, LLC*, Order Dismissing Joint Application, Case NO. TM-2006-0362 (May 12, 2006) (citing *Public Service Commission v. Union Pacific RR Co.*, 197 S.W. 39 (Mo. banc 1917)).



## VII. CONCLUSION

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by an expedited grant of this Application or dismissal of the Application for lack of jurisdiction.

Respectfully submitted,

By: /s/Mary Ann Young  
Mary Ann (Garr) Young (MObar #27951)  
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COUNSEL FOR APPLICANTS

Dated: January 30, 2007

## CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing has been served electronically on the General Counsel's Office and the Office of the Public Counsel this 30<sup>th</sup> day of January 2007.

*/s/ Mary Ann Young*

Mary Ann (Garr) Young

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<sup>8</sup> See Joint Application of Hypercube, LLC and KMC Data LLC for Grant of the Authority to Complete a Service of Transactions Resulting in the Transfer of Control of an Authorized Carrier, Case No. TM-2006-0289, Order Dismissing Joint Application (Feb. 23, 2006); In the Matter of the Application of D2R2, Inc., for Authority to Acquire all of the Outstanding Stock of ExOp of Missouri, Inc., or in the Alternative a Request for Finding that the Requirement for Approval has been Waived, Case No. LM-2004-0063, Order Granting Motion to Dismiss for Lack of Jurisdiction (Case NO. LM-2004-0063)

## **LIST OF EXHIBITS**

Exhibit A	Certificate of Good Standing for Sage Telecom, Inc.
Exhibit B	Pre- and Post-Transaction Corporate Organizational Chart
Verifications	

**EXHIBIT A**

Certificate of Good Standing for Sage Telecom, Inc.

# STATE OF MISSOURI



Robin Carnahan  
Secretary of State

**CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING**

I, ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

**SAGE TELECOM, INC.**

using in Missouri the name

**SAGE TELECOM, INC.  
F00494216**

a TEXAS entity was created under the laws of this State on the 9th day of March, 2001, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 3rd day of January, 2007

A handwritten signature in cursive script that reads "Robin Carnahan".

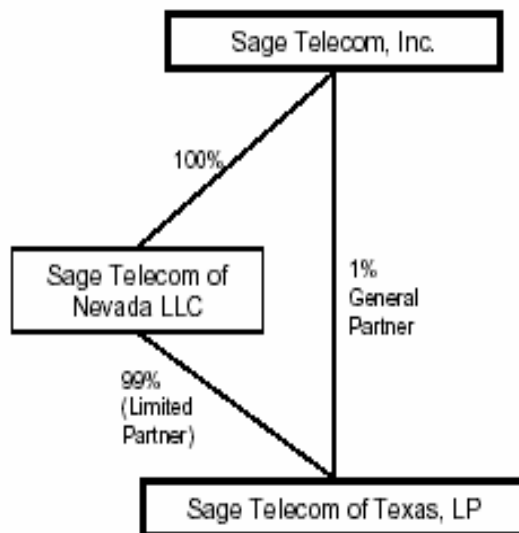
Secretary of State



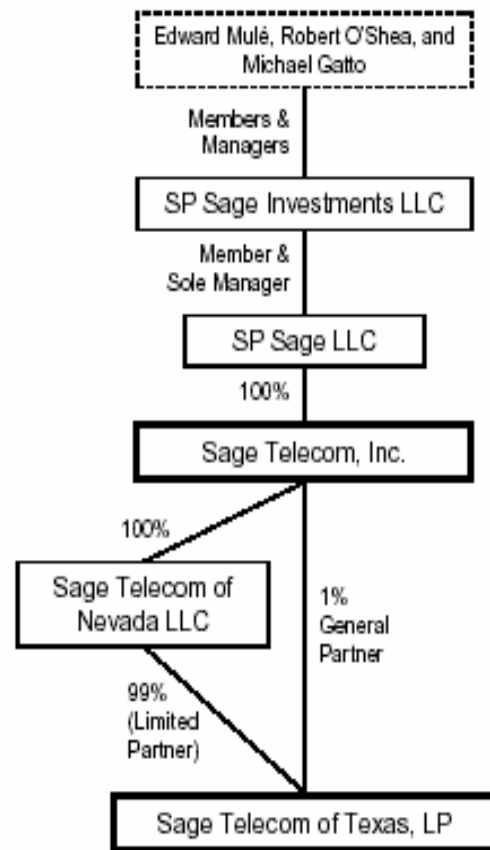
**EXHIBIT B**

Pre- and Post-Transaction Corporate Organizational Chart

### Pre-Transaction Structure of the Company



### Post-Transaction Structure of the Company



## **VERIFICATIONS**

STATE OF TEXAS

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COUNTY OF COLLIN

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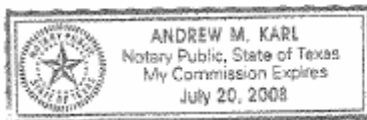
**VERIFICATION**

I, Robert W. McCausland, state that I am Vice President of Regulatory Affairs of Sage Telecom, Inc. a Party to the foregoing filing; that I am authorized to make this Verification on behalf of Sage Telecom, Inc.; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.



Robert W. McCausland  
Vice President of Regulatory Affairs  
Sage Telecom, Inc.

Sworn and subscribed before me this 8th day of January, 2007.

  
Notary Public

My commission expires

July 20, 2008



STATE OF CONNECTICUT  
COUNTY OF FAIRFIELD

§  
§  
§

*Greenwich*

**VERIFICATION**

I, Edward Mulé, state that I am authorized to make this Verification on behalf of the Transferee in the foregoing filing; that Transferee is an affiliate of Silver Point Capital, L.P.; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

*Edward A. Mule*

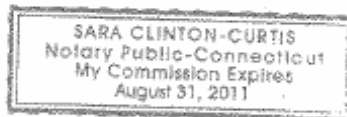
Edward Mulé  
Silver Point Capital, L.P.

Sworn and subscribed before me this 24<sup>th</sup> day of January, 2007.

*Sara Clinton-Curtis*  
Notary Public

My commission expires

8/31/11



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