

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

In the Matter of the Post-TRO Remand)
Amendment to Interconnection Agreement)
between Southwestern Bell Telephone, L.P.,) Case No. TO-2005-_____
d/b/a SBC Missouri and Nexus Communications,)
Inc. d/b/a TSI)

**APPLICATION TO OPEN CASE TO REVIEW AND APPROVE
AN AMENDMENT TO AN INTERCONNECTION AGREEMENT**

COMES NOW the Staff of the Missouri Public Service Commission and for its Application states:

1. Southwestern Bell Telephone, L.P., d/b/a SBC Missouri is an incumbent local exchange telecommunications company providing telecommunications services in Missouri.
2. Nexus Communications, Inc., d/b/a TSI is an alternative local exchange telecommunications company authorized to provide telecommunications service in Missouri.
3. On January 8, 2004, TSI submitted to the Commission its Notice of the Adoption of the Missouri 271 Interconnection Agreement (M2A) of Southwestern Bell Telephone Company, now Southwestern Bell Telephone, L.P., d/b/a SBC Missouri.
4. On March 3, 2005, SBC Missouri submitted to the Commission, a document titled "Post-TRO Remand (Loop-Transport Rate Increase and Embedded Base Transition) Amendment to Interconnection Agreement between Southwestern Bell Telephone, L.P. d/b/a SBC Missouri and Nexus Communications, Inc. d/b/a TSI ("CLEC")". That document is referred to herein as the Post-TRO Amendment. The Commission assigned File No. VT-2005-0067 to the Post-TRO Amendment. A copy of the Post-TRO Amendment, including the cover page that accompanied it, is attached as Appendix A.

5. On February 5, 2005, the Federal Communications Commission released its TRO Remand Order which becomes effective on March 11, 2005.¹ In the TRO Remand Order, the FCC holds that an incumbent LEC is not required to provide competitive LECs with access to certain high-capacity loops and to certain dedicated transport. The TRO Remand Order establishes the following Transition Plan:

142. Because we remove significant dedicated transport unbundling obligations, as described above, we find it prudent to establish a plan to facilitate the transition from UNEs to alternative transport options, including special access services offered by the incumbent LECs. Specifically, for DS1 and DS3 dedicated transport we adopt a twelve-month plan for competing carriers to transition to alternative facilities or arrangements, including self-provided facilities, alternative facilities offered by other carriers, or special access services offered by the incumbent LEC. As discussed below, we find it is appropriate to adopt a longer, eighteen-month transition plan for dark fiber transport. These transition plans shall apply only to the embedded customer base, and do not permit competitive LECs to add new dedicated transport UNEs pursuant to section 251(c)(3) where the Commission determines that no section 251(c) unbundling requirement exists.

143. We believe it is appropriate to adopt a longer transition period for DS1 and DS3 dedicated transport than was proposed in the *Interim Order and NPRM*, because we find that the twelve-month period provides adequate time for both competitive LECs and incumbent LECs to perform the tasks necessary to an orderly transition, including decisions concerning where to deploy, purchase, or lease facilities. Consequently, carriers have twelve months from the effective date of this Order to modify their interconnection agreements, including completing any change of law processes. At the end of the twelve-month period, requesting carriers must transition the affected DS1 or DS3 dedicated transport UNEs to alternative facilities or arrangements.

144. Because incumbent LECs generally do not offer dark fiber as a tariffed service regulated under sections 201 and 202 of the Act, and because it may take time for competitive LECs to negotiate IRUs or other arrangements with incumbent or competitive carriers, we find that a more lengthy transition plan is warranted for transitioning carriers from the use of UNE dark fiber to alternative facilities. Moreover, we find that “lit” DS3 or OCn services are sufficiently different from dark fiber not to qualify as a ready substitute. Because incumbent LECs offer no tariffed service comparable to dark fiber, we find that, if no impairment is found for a particular route on which a competitive LEC utilizes unbundled dark fiber, the risk of service disruption is significantly higher than for DS3 and DS1 unbundled transport, for which comparable service offerings are available under tariff. The record reveals that, even under ideal situations, deploying fiber transport facilities can take up to several years. For these reasons, we adopt an eighteen-month transition period for dark fiber transport facilities similar to the twelve-month transition period that we adopt for DS1 and DS3 transport.

¹ Order on Remand, Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-388.

We expect that the extra time will be sufficient to allow carriers the time necessary to migrate to alternative fiber arrangements, including self-deployed fiber.

145. We do, however, adopt the *Interim Order and NPRM's* proposal regarding transition pricing of unbundled dedicated transport facilities for which the Commission determines that no section 251(c) unbundling requirement exists. Thus, during the relevant transition period, any dedicated transport UNEs that a competitive LEC leases as of the effective date of this Order, but for which the Commission determines that no section 251(c) unbundling requirement exists, shall be available for lease from the incumbent LEC at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004 and the effective date of this Order, for that transport element. We believe that the moderate price increases help ensure an orderly transition by mitigating the rate shock that could be suffered by competitive LECs if TELRIC pricing were immediately eliminated for these network elements, while at the same time, these price increases, and the limited duration of the transition, provide some protection of the interests of incumbent LECs in those situations where unbundling is not required. Of course, the transition mechanism adopted here is simply a default process, and pursuant to section 252(a)(1), carriers remain free to negotiate alternative arrangements superseding this transition period. The transition mechanism also does not replace or supersede any commercial arrangements carriers have reached for the continued provision of transport facilities or services. (footnotes omitted)²

6. Revised FCC rules at 47 CFR 51.319(a)(4) DSI Loops, (5) DS3 Loops, (6) Dark Fiber Loops and 51.319(e) Dedicated Transport implement the Transition Plan.

7. The Post-TRO Amendment provides that SBC Missouri shall continue to provide embedded base of Affected Elements (Dark Fiber Loops, certain DSI/DS3 Loops, certain DSI/DS3 Transport, and Dark Fiber Transport) at the existing rates plus fifteen percent (15%). The Post-TRO Amendment provides that it shall become effective ten (10) days following the date upon which the Commission approves it under Section 252(e) of the Telecommunications Act of 1996, or, absent Commission approval, the date it is deemed approved by operation of law.

8. The M2A expired March 6, 2005. However, the M2A provides for a period not to

² Id. at 76-78.

exceed 135 days after its expiration for completion of negotiations and any arbitration for a successor agreement.

9. Pursuant to 47 U.S.C. §252(e), the Commission may only reject a negotiated interconnection agreement or any portion thereof if the agreement or any portion thereof discriminates against a telecommunications carrier not a party to the agreement, or if implementation of the agreement or portion thereof is not consistent with the public interest, convenience, or necessity.

10. In the attached Memorandum, which is labeled Appendix B, the Staff states that the Post-TRO Amendment does not discriminate against telecommunications carriers, not a party to the agreement and is not against the public interest, convenience or necessity.

11. The Staff anticipates receiving similar amendments for other carriers. Since this is the first of such amendments, the Staff wanted to bring the amendment to the Commission's attention as opposed to processing the submission through the normal "Review Only" process.

WHEREFORE, the Staff requests the Commission to open a case to review the Post-TRO Amendment, to make SBC Missouri and TSI parties to the case, to approve the Post-TRO Amendment, and to direct SBC Missouri and TSI to file or submit, as appropriate, any amendments to the Post-TRO Amendment.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 18th day of March 2005.

/s/ William K. Haas

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