

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

In the Matter of the Interconnection Agreement )  
between Southwestern Bell Telephone, L.P., )  
d/b/a SBC Missouri, and the CLEC Coalition, )  
including Big River 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., XO Missouri, Inc., and Xspedius )  
Management Company Switched Services, L.L.C., )  
doing business as Xspedius Communications, L.L.C., )  
Arbitrated as a Successor Interconnection Agreement )  
to the Missouri 271 Agreement ("M2A"). )

**Case No. TK-2006-0049**

**ORDER APPROVING ARBITRATED**  
**INTERCONNECTION AGREEMENT**

Issue Date: August 8, 2005

Effective Date: August 10, 2005

***Procedural History:***

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 Missouri 271 Agreement ("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 petitioned 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.<sup>1</sup> The Commission docketed SBC's Petition as Case No. TO-2005-0336.

The Commission appointed an Arbitrator and proceedings were held pursuant to Commission Rule 4 CSR 240-36.040, concerning Arbitrations under the Telecommunications Act of 1996. The Arbitrator issued his Final Arbitrator's Report on June 21, 2005. After receiving comments from the parties on June 24 and hearing oral argument on June 29 and 30, the Commission issued its Arbitration Order on July 11, 2005. Pursuant to the timeline established by the M2A and the procedural schedule adopted by the Arbitrator, the Commission directed the parties to file their conformed interconnection agreements by July 13. By order of July 14 and with the agreement of all of the parties, this deadline was extended to August 3. The order also amended by interlineation the existing interconnection agreements based on the M2A to extend their expiration from July 19 to August 10.

On August 2, in order to facilitate the adoption by other carriers of the several interconnection agreements resulting from the arbitration in Case No. TO-2005-0336, the Commission established nine spin-off dockets, numbered from TK-2006-0042 through TK-2006-0050. Each of these dockets will serve as the vehicle for further proceedings regarding one of the interconnection agreements arbitrated in Case No. TO-2005-0336.

The present case concerns the arbitrated interconnection agreement between SBC and the CLEC Coalition, including Big River Company, L.L.C., Birch Telecom of

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<sup>1</sup> *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).*

Missouri, Inc., ionex communications, Inc., NuVox Communications of Missouri, Inc., Socket Telecom, L.L.C., XO Communications Services, Inc., formerly known as and successor by merger to XO Missouri, Inc., and Allegiance Telecom of Missouri, Inc., and Xspedius Management Company Switched Services, L.L.C., doing business as Xspedius Communications, L.L.C. ("the Coalition"). The parties filed their conformed interconnection agreement on August 3. However, SBC and the Coalition were unable to agree on the requirements of the Commission's Arbitration Order of July 11 with respect to two areas of the interconnection agreement. The parties request that the Commission specify the correct language and approve their interconnection agreement. In support of their positions on the disputed language, the parties filed memoranda on August 4.

The Staff of the Commission filed its Memorandum and Recommendation stating that the parties' interconnection agreement meets the requirements of § 251 of the Act, including the implementing regulations prescribed by the F.C.C., as well as the pricing standards in § 252(d), and recommending that the arbitrated interconnection agreement be approved. In addition, Staff reviewed the disputed language proposals and finds that either proposal conforms to the provisions of the Act. Staff also recommends that the Commission direct the parties to submit a serially- numbered copy of the agreement and to submit any future amendments to the Commission for approval.

***Discussion:***

**The Disputed Language**

**1. CLEC Coalition Intercarrier Compensation Issues 15(a) and 15(b):**

**CC/SBC MO IC Issue 15(a): *Should reciprocal compensation arrangements apply to information services traffic, including IP-enabled services traffic?***

**CC/SBC MO IC Issue 15(b): What is the proper routing, treatment and compensation for switched access traffic, including without limitation, any PSTN-IP-PSTN traffic and IP-PSTN traffic?**

The Commission addressed this point directly on page 36 of its Arbitration Order of July 11, stating:

As asserted by the Coalition, the Arbitrator held with respect to MCI RC Issue 15 that “[t]he IP-PSTN traffic, on the other hand falls squarely within the ‘net-protocol change’ portion of the FCC’s multi-part enhanced service definition and is therefore appropriately charged at reciprocal compensation rates instead of switched access rates.” The Commission agrees that this traffic should be treated consistently and the Final Arbitrator’s Report is thus modified to provide that the Coalition’s ICA will also provide that IP-PSTN traffic be charged under the reciprocal compensation regime rather than be subject to access charges.

Pursuant to the clear and unmistakable decision of this Commission, the Coalition embodied the requisite language from MCI’s ICA as its proposed Section 13.3 of Attachment 12, Intercarrier Compensation. SBC does not deny that this is the Commission’s decision on the issue, but instead argues that the Commission’s decision was wrong. This is not the place for that contention; SBC may pursue its appeal in another forum.

The parties shall adopt the version of Section 13.3 proposed by the Coalition.

**2. CLEC Coalition UNE Issue 4: Access to UNEs.**

**CC UNE Issue 4: Is SBC obligated to provide access to UNEs in its entire certificated local exchange area without any other geographic restriction?**

**SBC’s Statement of the Issue: Must CLEC meet certain conditions in order to access and use any UNEs?**

The Coalition contends that Attachment IIIA Part 1, Detailed Language Decision Matrix, at page 72 is inconsistent with the Arbitrator’s decision at Section XV, pages 5-6. SBC, in turn, states “In the Detailed Language Decision Matrix, the Arbitrator made clear

that, with respect to Section 2.1 'SBC's language is most consistent with the Arbitrator's Report.' As SBC Missouri's proposed language was expressly approved by the Arbitrator, there is no justification for the CLEC Coalition's refusal to include that language in the party's [sic] Interconnection Agreement."

The Commission agrees with SBC. The parties shall incorporate SBC's language as specifically approved by the Arbitrator.

### **Approval of the Arbitrated Interconnection Agreement**

Section 252(e) of the Telecommunications Act provides:

(e) Approval by State commission

(1) Approval required

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for rejection

The State commission may only reject -

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that –

(I) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant

to section 251 of this title, or the standards set forth in subsection (d) of this section.<sup>2</sup>

Under § 252(e)(1) of the Act, every interconnection agreement must be submitted to the Commission for approval. The Commission may reject a negotiated agreement if it finds that the agreement is discriminatory or that it is not consistent with the public interest, convenience and necessity. The Commission may reject an arbitrated agreement if it finds that the agreement does not meet the requirements of § 251 of the Act, including the F.C.C.'s implementing regulations, or the pricing standards in § 252(d) of the Act. In the present case, it is the latter standard that applies.

***Findings of Fact:***

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Commission has considered the conformed interconnection agreement, as modified herein by the Commission, and Staff's recommendation. Based upon that review, the Commission concludes that the parties' agreement conforms to the Commission's Arbitration Order of July 11. The Commission finds that approval of the agreement should be conditioned upon the parties submitting a serially-numbered copy of the agreement and submitting any amendments to the Commission for approval pursuant to the procedure set out below.

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<sup>2</sup> Subsection (d) contains pricing standards.

***Amendment Procedure:***

The Commission has a duty to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act.<sup>3</sup> In order for the Commission's role of review and approval to be effective, the Commission must also review and approve or recognize amendments to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection.<sup>4</sup> This duty is in keeping with the Commission's practice under its own rules of requiring telecommunications companies to keep their rate schedules on file with the Commission.<sup>5</sup>

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all amendments, in the Commission's offices. Any proposed amendment must be submitted pursuant to Commission Rule 4 CSR 240-3.513(6).

***Conclusions of Law:***

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission, under the provisions of § 252(e) of the Telecommunications Act of 1996,<sup>6</sup> is required to review interconnection agreements. It may only reject an arbitrated agreement if it finds that the agreement does not meet the requirements of § 251

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<sup>3</sup> 47 U.S.C. § 252.

<sup>4</sup> 47 U.S.C. § 252(h).

<sup>5</sup> 4 CSR 240-3.545.

<sup>6</sup> 47 U.S.C. § 252(e)(1).

of the Act, including the F.C.C.'s implementing regulations, or the pricing standards in § 252(d) of the Act. Based upon its review of the agreement between SBC and the Coalition and Staff's Memorandum and Recommendation, the Commission concludes that the agreement meets the requirements of § 251 of the Act, including the F.C.C.'s implementing regulations and the pricing standards at § 252(d) of the Act, and should therefore be approved.

**IT IS THEREFORE ORDERED:**

1. That the parties shall adopt the modifications to their interconnection agreement described above.

2. That the Interconnection Agreement of Southwestern Bell Telephone, L.P., doing business as SBC Missouri, and the CLEC Coalition, including Big River 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., formerly known as and successor by merger to XO Missouri, Inc., and Allegiance Telecom of Missouri, Inc., and Xspedius Management Company Switched Services, L.L.C., doing business as Xspedius Communications, L.L.C., filed on August 3, 2005, is approved as modified above.

3. That any changes or amendments to this Interconnection Agreement shall be submitted to the Commission for approval in compliance with Commission Rule 4 CSR 240-3.513(6).

4. That no later than noon, August 9, 2005, the parties shall submit a copy of the modified Interconnection Agreement to the Staff of the Missouri Public Service Commission, with the pages sequentially numbered. On the same date, the parties shall

file a notice in the official case file advising the Commission that they have complied with this order.

5. That this order shall become effective on August 10, 2005.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Kevin A. Thompson, Deputy Chief  
Regulatory Law Judge, by delegation  
of authority pursuant to Section 386.240,  
RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 8th day of August, 2005.