

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").)

ORDER ADOPTING PROCEDURAL SCHEDULE

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 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 interconnection agreement approved by the Commission on March 15, 2001, in conjunction with its recommendation to the FCC that SBC Missouri be approved to provide in-region long distance service in Missouri pursuant to Section 271 of the Act.¹

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

¹ 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).

Functions as designated in the Attachments to the M2A. 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 M2A remain in effect for 135 days after its expiration for completion of negotiations and any necessary arbitration of a successor interconnection agreement. Thus, on July 19, 2005, the M2A will no longer be in effect.

Notice of Arbitration:

The Commission issued its Notice of Arbitration on April 6, 2005. Therein, the Commission joined 39 CLECs as parties, set a response deadline, announced the appointment of an Arbitrator and Arbitration Staff, set an Initial Arbitration Meeting, adopted a protective order, directed SBC to supplement its petition, and directed the filing of a legal memorandum. The Initial Arbitration Meeting was held on April 14 as scheduled and, on April 15, SBC supplemented its petition and SBC and the Commission's Staff filed legal memoranda. SBC later filed a response to Staff's memorandum on April 20.

Authority of the Arbitrator to Vary Timelines and Procedures:

Commission Rule 4 CSR 240-36.040(15) concerns the authority of the Arbitrator and provides:

In addition to authority granted elsewhere in this rule, the arbitrator shall have the same authority in conducting the arbitration as a presiding officer, as defined in 4 CSR 240-2.120, has in conducting hearings under the commission's rules of practice and procedure. 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 from the schedule in this rule as long as the arbitrator complies with the deadlines contained in the Act.

Pursuant to this delegated authority, the Arbitrator will vary the schedule set out in Rule 4 CSR 240-36.040 and modify various procedures, as set out in detail below, in order to ensure that this arbitration is completed by the required date.

The Initial Arbitration Meeting:

The Initial Arbitration Meeting was convened as scheduled on April 14. Appearing by Counsel were SBC, the CLEC Coalition,² MCI World Com, Navigator Telecommunications, the Pager Company, Sprint, Charter Fiberlink-Missouri, and Charter Communications.³ Commission Rule 4 CSR 240-36.040(9), pertaining to arbitration under the Telecommunications Act of 1996, provides:

The arbitrator may call a mandatory initial meeting for purposes such as setting a procedural schedule, establishing a time limit for submission of final offers, allowing the filing of testimony, setting times by which testimony may be filed, simplifying issues, or resolving the scope and timing of discovery.

All of these topics, except the simplification of the issues, were discussed at the Initial Arbitration Meeting.

The Procedural Schedule:

SBC Missouri offered a proposed procedural schedule at the Initial Arbitration Meeting, as follows:

² Consisting of Big River Telephone Company, LLC; Birch Telecom of Missouri, Inc.; ionex Communications, Inc.; NuVox Communications of Missouri, Inc.; Socket Telecom, LLC; XO Communications Services; Xspedius Management Company of Kansas City, LLC and Xspedius Management Company Services, LLC; MCI metro Access Transmission Services, LLC and MCI WorldCom Communications, Inc.; and Missouri Network Alliance, LLC.

³ Appearances are listed because many parties failed to appear at the mandatory Initial Arbitration Meeting.

SBC's Proposed Procedural Schedule	
CLECs' Responses to Petition for Arbitration filed	Monday, 4/25
Joint Decision Points Lists ("DPLs") filed	Monday, 5/02
Simultaneous Direct Testimony filed	Monday, 5/09
Simultaneous Rebuttal and Final Joint DPLs with cites to the record	Thursday, 5/19
Evidentiary Hearing	M-F, 5/23 – 5/27
Post-hearing Briefs	Friday, 6/03
Final Arbitrator's Report	Friday, 6-17
Comments on Final Arbitrator's Report	Friday, 6-24
Oral Argument before Commission	Wednesday, 6-29
Final Commission Arbitration Decision	Wednesday, 7-06
Submission of Successor Interconnection Agreement(s) to Commission	Wednesday, 7-13
Deadline for Final Commission Approval of Successor Interconnection Agreements	Tuesday, 7-19

During the course of the Initial Arbitration Meeting, certain amendments were made to SBC's proposed procedural schedule, as set out below.⁴ The Arbitrator allowed the parties 24 hours to review the proposed procedural schedule and to circulate and submit alternative proposals by e-mail. On Friday, April 15, Charter Fiberlink by e-mail submitted an alternative proposed procedural schedule, as set out below. No other alternative proposal was received.

Proposed Procedural Schedules	SBC As amended	Charter Fiberlink
CLECs' Responses to Petition for Arbitration filed	Monday, 4/25	Monday, 4/25
Joint Decision Points Lists ("DPLs") filed	Monday, 5/02	Monday, 5/02
Simultaneous Direct Testimony filed	Monday, 5/09	Friday, 5/13
Prehearing Conference (telephonic)	Wednesday, 5/18	Wednesday, 6-01
Simultaneous Rebuttal	Thursday, 5/19	Friday, 5/27
DEADLINE FOR FINAL OFFERS:	Thursday, 5/19	
Final Joint DPLs with cites to the record	Friday, 5/20	Friday, 6/03
Evidentiary Hearing	M-F, 5/23 – 5/27	M-F, 6/06 – 6/10
Post-hearing Briefs	Tuesday, 6/07	Friday, 6-24
Final Arbitrator's Report	Friday, 6/17	Friday, 7/08
Comments on Final Arbitrator's Report	Friday, 6/24	Friday, 7/15
Oral Argument before Commission	Wednesday, 6/29	Wednesday, 7/20

⁴ Changed items are noted in bold.

Proposed Procedural Schedules	SBC As amended	Charter Fiberlink
Final Commission Arbitration Decision	Wednesday, 7/06	Friday, 7/29
Submission of Successor Interconnection Agreement(s) ("ICAs") to Commission	Wednesday, 7/13	Friday, 8/12
Deadline for Final Commission Approval of Successor Interconnection Agreements	Tuesday, 7/19	Friday, 8/19

Charter Fiberlink's alternative proposal is based upon an extension of the M2A for 31 days after July 19, 2005. The M2A does not provide for such an extension and SBC has expressed unwillingness to further extend the M2A. It is not clear that the Commission has authority to extend the M2A over SBC's objection. For these reasons, Charter Fiberlink's alternative proposed procedural schedule must be rejected. The Arbitrator will adopt SBC's proposed procedural schedule as modified and amended at the Initial Arbitration Meeting.

Late Prehearing Conference:

The procedural schedule adopted here provides for a Late Prehearing Conference on Wednesday, May 18, prior to the start of the evidentiary hearing on Monday, May 23. At that prehearing conference, the Arbitrator expects the parties to work cooperatively to simplify the issues remaining for determination and to develop useful procedural modifications that will expedite the hearing. These modification will include, but are not limited to: time limits on cross-examination; waiver of cross-examination of certain witnesses; particular issues to be scheduled for hearing on particular days; examination of witnesses in panels, and telephonic examination of witnesses.

Another purpose of the Prehearing Conference is to develop a schedule of topics and witnesses for the hearing so that the available time can be used most efficiently. It is expected that parties will be categorized into interest groups according to their position on

each disputed issue and that the time available for cross-examination will be allotted by interest group rather than by party. The parties should ensure that their witnesses are available throughout the week set aside for the hearing so that the efficient presentation of topics and examination of witnesses will not be impeded by schedule conflicts.

Discovery:

Commission Rule 4 CSR 240-36.040(6) controls discovery during arbitration and provides:

Discovery may begin after the filing of a petition for arbitration and may continue up until hearings begin, unless the arbitrator sets a later date. The parties may enter into nondisclosure agreements or request the commission issue a protective order. Unless otherwise provided, the commission's rules for discovery, 4 CSR 240-2.090, apply to discovery in the arbitration and the arbitrator may permit further discovery procedures at the initial arbitration meeting, section 4 CSR 240-36.040(9). For good cause, the arbitrator may compel responses to data requests; in such cases, the response normally will be required in five (5) working days or less. Advisory staff, as provided in section (12) of this rule, may assist the arbitrator in resolving discovery disputes.

At the Initial Arbitration Meeting, the Arbitrator noted that the provisions of Rule 4 CSR 240-2.090 will be modified as follows for the purposes of this arbitration: (1) Parties will have five business days, not ten, within which to object to a data request ("DR"), and ten business days, not 20, within which to respond to a DR. (2) Parties must serve DRs and objections and responses to DRs upon all other parties and upon the Arbitration Staff. This may be done electronically so far as is possible. (3) The Arbitrator will resolve any discovery disputes as follows: A party may file a Motion to Compel without first complying with Rule 4 CSR 240-2.090(8). Upon receipt of the motion, the Arbitrator will set a discovery dispute resolution conference which interested parties may attend physically or by conference call. The discovery dispute resolution conference will be recorded. The

Arbitrator will hear the dispute and rule immediately. The Arbitrator's ruling will be final.

(4) Members of the Arbitration Staff may serve DRs on any party in the same manner as a party.

One date not included in the procedural schedule, but specified by Rule 4 CSR 240-36.040(6), is the discovery cut-off date. That date is Sunday, May 22. No discovery by the parties will be permitted after that date except as the Arbitrator may upon motion permit. Note that discovery by the Arbitrator and his Staff is not subject to the cutoff date.

Conditions:

It is customary for the Commission to adopt certain procedural conditions in its Order Adopting Procedural Schedule. Set out below are the conditions that the Arbitrator will adopt for the purposes of this arbitration. The parties are urged to read these carefully as they differ in significant respects from both the Commission's usual procedural conditions and from the provisions of Rule 4 CSR 240-36.040.

(A) All testimony, pleadings and other formal case papers must be filed with the Commission's Data Center using the EFIS system, with service on all other parties, just as in any contested case before the Commission. Additionally, the filing party must also provide one (1) paper copy of each filed item to the Arbitrator for his use, as well as an editable electronic copy in Word or Word Perfect format. The electronic copy should be e-mailed directly to the Arbitrator at kevin.thompson@psc.mo.gov. Every item filed that is longer than one page in length must be prefaced with a succinct executive summary that fairly summarizes its contents. All pleadings, briefs and amendments shall be filed in accordance with Rule 4 CSR 240-2.080.

(B) The parties shall prefile testimony for each witness on the dates set out in the procedural schedule. All prefiled testimony shall comply with Rule 4 CSR 240-2.130, including the requirement that testimony be filed on line-numbered pages. Prefiled testimony shall be concise and shall not include legal argument.

(C) The parties shall cooperatively prepare and file a Final Joint Decision Point List ("DPLs") by the date specified in the procedural schedule for each of the successor interconnection agreements included in this arbitration that (1) clearly sets out each item that requires a decision by the Arbitrator; (2) clearly sets out the position or final offer of each party or interest group on each such item requiring decision; and (3) includes citations to legal authority or to the prefiled testimony that supports each position or final offer such that the Arbitrator may easily and quickly find and review the evidence or authority on each point. Any issue not included in the Final Joint DPLs shall be presumed to not require determination by the Arbitrator. The Final Joint DPLs shall include at the far right-hand side a column for the use of the Arbitrator.

(D) As provided by Rule 4 CSR 240-36.040(14), an expedited stenographic record of each meeting, conference and hearing shall be made and the parties shall equally bear the costs thereof.

(E) The parties shall file post-hearing briefs in accordance with the procedural schedule. The briefs must cite the Final Joint DPLs, controlling legal authority and the portions of the record that support the filing party's position on each point requiring decision by the Arbitrator so that the Arbitrator may quickly and easily find and review the evidence and authority on each disputed point. Except as the Arbitrator may otherwise permit upon motion, each brief shall contain no more than 3 pages for each DPL it considers.

(F) All parties are required to bring an adequate number of copies of exhibits which they intend to offer into evidence at the hearing. If an exhibit has been prefiled, only one copy of the exhibit is necessary for the court reporter. If an exhibit has not been prefiled, the party offering it should bring, in addition to the copy for the court reporter, copies for the Arbitrator and all counsel.

IT IS THEREFORE ORDERED:

1. That the following procedural schedule is adopted:

Response to Petition for Arbitration CLECs	April 25, 2005 4:00 p.m.
Joint DPLs All Parties	May 2, 2005 4:00 p.m.
Direct Testimony All Parties	May 9, 2005 4:00 p.m.
Late Prehearing Conference All Parties (<i>call in: 573-522-8028</i>)	May 18, 2005 10:00 a.m.
Rebuttal Testimony All Parties	May 19, 2005 4:00 p.m.
FINAL OFFER DEADLINE All Parties	May 19, 2005 4:00 p.m.
Final Joint DPLs with Record Cites All Parties	May 20, 2005 4:00 p.m.
DISCOVERY CUTOFF DATE All Parties	May 22, 2005 5:00 p.m.
Evidentiary Hearing All Parties	May 23 – May 27, 2005 8:00 a.m.
Post-hearing Briefs All Parties	June 7, 2005 4:00 p.m.
Final Arbitrator's Report	June 17, 2005 4:00 p.m.

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.

The evidentiary hearing and late prehearing conference will be held at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, Room 310, a facility which meets the accessibility standards of the Americans with Disabilities Act (ADA). If any person needs additional accommodations to participate in these hearings, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or dial 711 for Relay Missouri prior to the hearing or prehearing conference. All parties have the option of attending the late prehearing conference telephonically by dialing 573-522-8028 at 10:00 a.m. Central Daylight Time on May 18, 2005. Similar arrangements for the evidentiary hearing, if any, will be discussed at the late prehearing conference.

2. That Commission Rule 4 CSR 240-2.090, pertaining to discovery, is modified for the purposes of this proceeding as set out above.

3. That the parties are directed to comply with the conditions set out in this order.

4. That this order shall become effective on April 21, 2005.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 21st day of April, 2005.