

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

In the Matter of	)	
	)	
Petition for Arbitration of XO MISSOURI, INC.	)	
Of an Amendment to an Interconnection	)	Case No. LO-2004-0575
Agreement with SOUTHWESTERN BELL	)	
TELEPHONE, L.P., d/b/a SBC MISSOURI	)	
Pursuant to Section 252(b) of the Communications	)	
Act of 1934 as Amended.	)	

**SBC MISSOURI’S ANSWER  
TO XO MISSOURI’S PETITION FOR ARBITRATION**

COMES NOW Southwestern Bell Telephone, L.P. d/b/a SBC Missouri (“SBC Missouri”) and for its Answer to the Petition for Arbitration (“Petition”) filed by XO Missouri, Inc. (“XO Missouri”) states as follows:

1. XO filed the Petition on May 3, 2004. SBC Missouri denies all of the factual assertions of the Petition except as specifically admitted herein.
2. The Petition purports to be pursuant to section 252(b)(2) of the Telecommunications Act of 1996. SBC Missouri, however, filed on May 12, 2004, a Motion To Dismiss the Petition ( “Motion to Dismiss”) on the grounds that (a) neither SBC Missouri nor XO Missouri initiated any request to amend the terms of their interconnection agreement to incorporate changes resulting from the Federal Communications Commission’s (“FCC’s”) Triennial Review Order (“TRO”) and (b) even if notification had been given, it is the procedures provided in the interconnection agreement (which XO Missouri has not followed) and not in Sections 251-252 that govern the dispute. Further, even if notice had properly been given and a Section 251-252 arbitration were the appropriate procedural vehicle, the petition for arbitration

was not filed within the 135-160 day window provided in Section 252(b)(1) of the Act.

Accordingly, the Commission lacks jurisdiction over this matter.

3. Section 252(b)(3) of the 1996 Act provides that any response to a section 252(b)(2) petition by the non-petitioning party must be provided within 25 days after the State commission receives the petition. If this matter were properly brought under section 252(b), SBC Missouri would be required to file a response by May 28, 2004. Under both the Missouri and Federal Rules of Civil Procedure, the filing of a motion to dismiss stays any obligation to file an answer until after the motion to dismiss is resolved. Nevertheless, out of abundance of caution, SBC Missouri files this answer without prejudice to its Motion to Dismiss and specifically reserves the right to amend and supplement its answer to further clarify its position and raise additional issues in the event the Commission does not grant the Motion to Dismiss.

4. The filing of a response to a petition for arbitration under section 252(b)(3) is optional (the “non-petitioning party . . . may respond to the other party’s petition and provide such additional information as it wishes”), and the only required content of such a response is to set forth any additional issue that the respondent requests the State commission to arbitrate.<sup>1</sup> Under the circumstances described above, SBC Missouri limits this answer to the identification of issues to be arbitrated in addition to those set forth in the Petition in the event the Petition is not dismissed.

5. Attached hereto as Exhibit 1 is an Unresolved Issues Matrix. This matrix sets forth twenty-one issues to be arbitrated in this proceeding, including the five issues set forth in the Petition and sixteen additional issues that SBC Missouri sets forth in Exhibit 1. The additional

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<sup>1</sup> This is because Section 252(b)(4)(A) provides that the “State commission shall limit its consideration of any petition . . . to the issues set forth in the petition and in the response, if any.”

issues raised by SBC Missouri relate to matters determined in the TRO which XO Missouri did not address or addressed incorrectly. While, as set forth in the Motion to Dismiss, neither SBC Missouri nor XO Missouri initiated any notifications to revise their interconnection agreement, XO Missouri was well aware that these additional issues had been raised in the four states (Ohio, Michigan, Illinois and California) where an SBC affiliated ILEC had provided notice to negotiate changes in the applicable interconnection agreement.

6. The Unresolved Issues Matrix shows, for each issue: an issue number<sup>2</sup>; the parties' competing statements of the issue<sup>3</sup>; XO's proposed contract language, with the portions to which SBC Missouri objects in **bold and underscored**; and SBC Missouri's proposed contract language, with the portions to which XO objects in **bold**.

7. Attached hereto as Exhibit 2 is a redlined version of the amendment to the parties' interconnection agreement that is the subject of this proceeding. This redline displays the entire amendment, including sections that are not in dispute. Like the Unresolved Issues Matrix, it shows agreed language in normal font, language proposed by XO and opposed by SBC Missouri in **bold and underscored**, and language proposed by SBC Missouri and opposed by XO in **bold**.

8. In the event that the pending Motion to Dismiss the Petition is granted, SBC Missouri reserves the right to amend this pleading as appropriate.

WHEREFORE, in the event that the Commission does not grant the pending Motion to Dismiss the Petition, SBC Missouri urges the Commission to resolve the issues set forth in Exhibit 1 hereto in favor of SBC Missouri, for reasons that SBC Missouri will set forth in subsequent submissions, and to direct the parties to incorporate in the amendment to their interconnection


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<sup>3</sup> Competing statements of the issue appear in instances where the parties disagree about how to characterize the issue(s) presented by their competing contract language.

agreement that is the subject of this proceeding the language proposed by SBC Missouri and not the language proposed by XO.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.  
D/B/A SBC MISSOURI

BY 

PAUL G. LANE	#27011
LEO J. BUB	#34326
ROBERT J. GRYZMALA	#32454
MIMI B. MACDONALD	#37606

Attorneys for SBC Missouri  
One SBC Center, Room 3520  
St. Louis, Missouri 63101  
314-235-4300 (Telephone)/314-247-0014 (Facsimile)  
[paul.lane@sbc.com](mailto:paul.lane@sbc.com)

## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this document was served on all counsel of record by electronic mail on May 28, 2004.



Paul G. Lane

GENERAL COUNSEL  
DANA K. JOYCE  
MISSOURI PUBLIC SERVICE COMMISSION  
PO BOX 360  
JEFFERSON CITY, MO 65102

PUBLIC COUNSEL  
MICHAEL F. DANDINO  
OFFICE OF THE PUBLIC COUNSEL  
PO BOX 7800  
JEFFERSON CITY, MO 65102

CARL LUMLEY  
LELAND B. CURTIS  
CURTIS, OETTING, HEINZ, GARRETT &  
SOULE, P.C.  
130 SOUTH BEMISTON, SUITE 200  
CLAYTON, MO 63105