

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554**

In the Matter of)
)
SBC Communications Inc.)
)
Emergency Petition for Declaratory Ruling,)
Preemption, and For Standstill Order To)
Preserve the Viability of Commercial)
Negotiations)

WC Docket No. **04-172**

**MICHIGAN PUBLIC SERVICE COMMISSION’S RESPONSE IN OPPOSITION TO
SBC’S EMERGENCY PETITION FOR DECLARATORY RULING,
PREEMPTION AND FOR STANDSTILL ORDER**

Introduction

On May 3, 2004, SBC Communications, Inc. (SBC) filed an Emergency Petition for Declaratory Ruling, Preemption and for Standstill Order, requesting that the Federal Communications Commission grant SBC the following relief:

In order to remove disincentives to such negotiations, the Commission should immediately clarify that the terms of non-251 arrangements are not subject to section 252. In addition, to ensure that the commercial negotiation process has a chance to succeed, the Commission should preempt any contrary or conflicting state requirement. Finally, the Commission should address this petition on an emergency basis and should immediately issue a stand-still order enjoining the enforcement of any filing requirement while this petition is pending. [SBC Emergency Petition for Declaratory Ruling, Preemption and for Standstill Order to Preserve the Viability of Commercial Negotiations, May 3, 2004, p 20.]

For the reasons addressed below, the Michigan Public Service Commission (MPSC or Michigan Commission) submits that the relief requested by SBC is contrary to both federal and state law and inappropriately and precipitously intrudes upon state commission authority concerning the review and approval of interconnection agreements under both state and federal law.

I. The Michigan Public Service Commission's April 28, 2004 Order in MPSC Case No. U-14121 is authorized under state law.

On April 28, 2004, the MPSC issued an order in Case No. U-14121¹ that required SBC Communications, Inc. and Sage Telecom, Inc. to file their recently-negotiated "private commercial agreement" (SBC/Sage Agreement) for the provision of telecommunication services with the Michigan Commission by 5:00 p.m. on May 5, 2004. The Michigan Commission's Order noted the state law basis for compelling the filing of the SBC/Sage Agreement:

The Commission's authority to exercise its jurisdiction over the SBC/Sage agreement at issue is not limited to the FTA. Section 355 of the Michigan Telecommunication Act, 1991 PA 179, as amended, MCL 484.2101 et seq. (MTA), clearly obligates a provider of basic local exchange service such as SBC to unbundle and separately price each basic local exchange service offered by the provider into loop and port components. Section 355 also obligates the provider to "allow other providers to purchase such services on a nondiscriminatory basis." MCL 484.2355. Section 357 of the MTA, MCL 484.2357, governs regulation of resale and wholesale rates, terms, and conditions of basic local exchange services. Further, the Commission is empowered to enforce Section 359 of the MTA, MCL 484.2359, which requires that a compensation agreement for the termination of local traffic agreed to by providers must be available to other providers "with the same terms and conditions on a nondiscriminatory basis." MCL 484.2359. [Order, April 28, 2004, MPSC Case No. U-14121, p 2.]

Review of the SBC/Sage Agreement by the Michigan Commission is a necessary corollary to enforcement by the MPSC of the nondiscrimination provisions of the MTA. Moreover, for the reasons set forth below, the order of the Michigan Commission is fully consistent with the federal Telecommunications Act of 1996, 47 USC §§ 151 *et seq* (FTA or the Act.)

¹ In the Matter, on the Commission's Own Motion, to Require SBC Communications, Inc., and Sage Telecom, Inc. to Submit Their Recently Negotiated Agreement for the Provision of Telecommunications Services in Michigan for Review and Approval, Case No. U-14121, Order (April 28, 2004) (Attachment A).

II. The Michigan Public Service Commission's April 28, 2004 order is consistent with federal law and reflects a consistent state regulation not preempted by the FTA.

The provisions of the MTA noted in Argument I., *supra*, reflect state regulation consistent with and specifically authorized by the FTA. The Michigan Commission is statutorily empowered by the MTA to administer the MTA and all federal telecommunications laws, rules, orders, and regulations that are delegated to the state. MCL 484.2201(1). The federal Telecommunications Act provides at § 251(d)(3):

(3) PRESERVATION OF STATE ACCESS REGULATIONS.—In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that—

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

Section 251(c)(2)(D) and 251(c)(3) of the FTA provide:

(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.—In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

* * *

(2) INTERCONNECTION.—The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

* * *

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

(3) UNBUNDLED ACCESS.—The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements

in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

While not specifically referenced by the Michigan Commission in its April 28, 2004 Order, Section 271(c)(2)(B) provides in part:

(2) Specific interconnection requirements.

* * *

(B) Competitive checklist. Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

(i) Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) [47 USCS §§ 251(c)(2) and 252(d)(1)].

(ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) [47 USCS §§ 251(c)(3) and 252(d)(1)].

* * *

(iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

(v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

(vi) Local switching unbundled from transport, local loop transmission, or other services.

The nondiscrimination provisions of the FTA reflected above are similar to, and consistent with, the nondiscrimination provisions reflected in the MTA. The Michigan Commission must necessarily have access to the SBC/Sage Agreement to determine whether that agreement discriminates against other competitors in violation of both state and federal telecommunications law.

III. SBC and Sage should not be permitted to bypass the interconnection process of the FTA through the negotiation of a “private commercial agreement” which they argue represents a “non-251 arrangement,” not subject to the filing requirements of the FTA.

In *Verizon v Strand*, 309 F3d 935, 941 (CA 6, 2002), the United States Court of Appeals for the Sixth Circuit held:

In the present case, the MPSC order completely bypasses and ignores the detailed process for interconnection set out by Congress in the FTA, under which competing telecommunications providers can gain access to incumbents’ services and network elements by entering into private negotiation and arbitration aimed at creating interconnection agreements **that are then subject to state commission approval, FCC oversight, and federal judicial review.** This is “inconsistent with the provisions of [the FTA],” and therefore preempted. [Emphasis added.]

Similarly, in *Verizon v Strand*, 2004 US App LEXIS 8331 (Docket No. 02-2322) decided April 28, 2004, the Sixth Circuit observed:

One of the primary purposes of the Act is to increase competition in the telephony marketplace. The Act is labeled as “An Act To *promote competition and reduce regulation* in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” Pub. L. No. 104-104, 110 Stat. 56, 56 (1996) (emphasis added). **Part of this statutory imperative is manifested in the § 252 process, which encourages private and voluntary negotiation, backed by the threat of state-commission intervention, to achieve interconnection.** See H.R. Conf. Rep. No. 104-458, at 124, 1996 U.S.C.C.A.N. at 135. The MPSC’s order frustrates Congress’s intent by eviscerating its chosen mechanism for increasing competition in the local telephony market and by upsetting the intricate balance between competitors and incumbents. [Emphasis added.]

The SBC/Sage Agreement is clearly an interconnection agreement within the meaning of the FTA, Section 252(a)(1). Moreover, SBC and Sage have a negotiated interconnection agreement on file with the Michigan Commission that has undergone seven amendments. This agreement, and the amendments to it, have been reviewed and approved by the Michigan Commission.²

² SBC/Sage interconnection agreements on file with the Michigan Public Service Commission: MPSC Case No. U-13513, Michigan Commission orders entered on October 3,

What SBC characterizes as a “commercially negotiated agreement” is intended by SBC and Sage to govern the provision by SBC of wholesale local phone services to Sage over a seven-year period.³ Clearly, the “private commercially negotiated agreement” between SBC and Sage governs interconnection between those two entities, and is required to be filed with the Michigan Commission pursuant to Section 252(a)(1) of the FTA.⁴

The SBC/Sage Agreement, by whatever nomenclature SBC attempts to attach to it, is an agreement that must be filed with state commissions. In *Qwest Corp Apparent Liability for Forfeiture*, File No. EB-03-0IH-0263, ¶¶ 21-22 (rel. March 12, 2004) (FCC 04-57), the Commission observed:

21. We have historically given a broad construction to section 252(a)(1). As noted above, in the *Local Competition Order*, we found that

requiring filing of all interconnection agreements best promotes Congress’s stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms. State commissions should have the opportunity to review *all* agreements ... to ensure that such agreements do not discriminate against third parties, and are not contrary to the public interest.

In that same order, we applied this broad construction in adopting the “pick and choose” construction of section 252(i), under which CLECs may adopt parts of interconnection agreements with incumbent LECs, rather than adopting those agreements in their entirety.

22. Although section 252(a)(1) is explicit in its filing requirements, the *Declaratory Ruling* provided certainty to those requirements by stating that any “agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation,

2002 (interconnection agreement and first amendment); December 20, 2002 (second and third amendment); March 26, 2003 (fourth amendment); April 17, 2003 (fifth amendment); May 2, 2003 (sixth amendment); and February 12, 2004 (seventh amendment). On May 6, 2004, SBC filed an application with the Michigan Commission for approval of an eighth amendment to its interconnection agreement with Sage, omitting what it terms non-252 provisions from that agreement.

³ SBC press release, April 3, 2004 (Attachment B).

⁴ SBC and Sage filed, under protest, the Agreement with the Michigan Public Service Commission on May 5, 2004. See cover letter, Attachment C.

interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1).” We further stated:

This interpretation, which directly flows from the language of the Act, is consistent with the pro-competitive, deregulatory framework set forth in the Act. This standard recognizes the statutory balance between the rights of competitive LECs to obtain interconnection terms pursuant to section 252(i) and removing unnecessary regulatory impairments to commercial relations between incumbent and competitive LECs Indeed, on its face, section 252(a)(1) does not further limit the types of agreements that carriers must submit to state commissions. [Footnotes omitted.]

SBC and Sage should not be permitted to bypass and ignore the “detailed process for interconnection” set out by Congress in the FTA through the use of a “private commercial agreement” that they now argue is outside the purview of the federal Act. SBC and Sage should not be permitted to conceal the terms of this “agreement” from state commission review and approval, should not be permitted to insulate this “agreement” from FCC oversight, and should not be permitted to escape federal judicial review in contravention of the detailed process for interconnection mandated by the FTA.

IV. SBC has failed to establish that this Commission is authorized to provide the relief SBC requests.

SBC has failed to establish that this Commission may enjoin the Michigan Commission from requiring that SBC file its SBC/Sage Agreement with the Michigan Commission, or enjoin the Michigan Commission from reviewing that Agreement (particularly where that agreement is already filed with the Michigan Commission.) SBC cites to no authority from the FTA for such extraordinary relief.

Additionally, SBC has failed to establish that its request for preemption is appropriately addressed in an “Emergency Petition” rather than through a notice and comment proceeding.

This Commission should deny the relief requested by SBC.

Relief

Michigan Commission respectfully requests that this Commission deny SBC's petition for a declaratory judgment, deny SBC's petition for preemption, and deny SBC's petition for a standstill order.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

By its counsel:

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DATED: May 12, 2004

FCC/No # SBC/Response

ATTACHMENT A

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
to require **SBC COMMUNICATIONS, INC.**, and)
SAGE TELECOM, INC., to submit their recently)
negotiated agreement for the provision of)
telecommunications services in Michigan for)
review and approval.)
_____)

Case No. U-14121

At the April 28, 2004 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

ORDER

On April 3, 2004, SBC Communications, Inc. (SBC), the corporate parent of SBC Michigan, issued a press release indicating that SBC had entered into a seven-year agreement with Sage Telecom, Inc. (Sage), concerning SBC's provision of telecommunications services to Sage in Michigan and several other states.

Pursuant to Section USC 252(a) and (e) of the federal Telecommunications Act of 1996 (FTA), 47 USC 252(a) and (e), interconnection agreements arrived at through negotiations must be filed with and approved by this Commission. Section 252(a) provides that an interconnection agreement "shall be submitted to the State commission under subsection (e) of this section." Moreover, Section 252(e)(1) provides that an interconnection agreement "adopted by negotiation...shall be submitted for approval to the State commission." More specifically,

Section 252 of the FTA requires that any interconnection agreement that is adopted by negotiation be submitted to this Commission for review as follows:

- (2) 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;
- (3) Notwithstanding paragraph (2), but subject to section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

47 USC 252(e)(2) and (3).

The Commission's authority to exercise its jurisdiction over the SBC/Sage agreement at issue is not limited to the FTA. Section 355 of the Michigan Telecommunication Act, 1991 PA 179, as amended, MCL 484.2101 et seq. (MTA), clearly obligates a provider of basic local exchange service such as SBC to unbundle and separately price each basic local exchange service offered by the provider into loop and port components. Section 355 also obligates the provider to "allow other providers to purchase such services on a nondiscriminatory basis." MCL 484.2355. Section 357 of the MTA, MCL 484.2357, governs regulation of resale and wholesale rates, terms, and conditions of basic local exchange services. Further, the Commission is empowered to enforce Section 359 of the MTA, MCL 484.2359, which requires that a compensation agreement for the termination of local traffic agreed to by providers must be available to other providers "with the same terms and conditions on a nondiscriminatory basis." MCL 484.2359.

In order for the Commission to perform these statutory duties, the SBC/Sage agreement must be formally filed with the Commission for its consideration.¹ Accordingly, SBC and Sage are ordered to file their recently negotiated agreement in its entirety with the Commission for review.² A review of the agreement by the Commission will enable it to determine whether the agreement discriminates against other competitors and is in the public interest. Because of the short timeframe in which carriers are negotiating new arrangements with SBC in light of the recent order issued by the United States Circuit Court of Appeals for the District of Columbia Circuit,³ the full agreement should be filed no later than 5:00 p.m. on May 5, 2004.

To the extent that SBC and Sage believe that a provision of the interconnection agreement contains commercially sensitive information that should remain confidential, they should identify each such specific provision and shall initially file them pursuant to Section 210 of the MTA, MCL 484.2210, under seal.

The Commission has selected this case for participation in its Electronic Filings Program. The Commission recognizes that some residential customers may not have the computer equipment or access to the Internet necessary to submit documents electronically. Therefore, residential customers may submit documents in the traditional paper format and mail them to the: Executive

¹ The Federal Communication Commission recently noted in a declaratory ruling involving QWEST Communications Corporation's failure to seek state review of interconnection agreements that without such review, the non-discriminatory pro-competitive purpose of Section 252 of the FTA would be defeated. *See*, Quest Communications Corporations Petition for Declaratory Ruling, 17 FCC Rcd 19337 (2002).

² The Commission intends this order to require disclosure of any and all agreements between SBC and Sage (including their affiliates) that have not been publicly filed with this Commission and that address, in whole or in part, terms, conditions, or pricing in Michigan for resale, interconnection, unbundled network elements, or port or loop components of SBC's network.

³ *See*, United States Telecom Ass'n v FCC, Nos. 00-1012 (consol.), 2004 WL 374262 (CADC March 2, 2004).

Secretary, Michigan Public Service Commission, 6545 Mercantile Way, P.O. Box 30221, Lansing, Michigan 48909. Otherwise, all documents filed in this case must be submitted in both paper and electronic versions. An original and four paper copies and an electronic copy in the portable document format (PDF) should be filed with the Commission. Requirements and instructions for filing electronic documents can be found in the Electronic Filings Users Manual at: <http://efile.mpsc.cis.state.mi.us/efile/usersmanual.pdf>. The application for account and letter of assurance are located at <http://efile.mpsc.cis.state.mi.us/efile/help>. You may contact Commission staff at 517.241.6170 or by e-mail at mpscfilecases@michigan.gov with questions and to obtain access privileges prior to filing.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. SBC and Sage should be ordered to file their recently negotiated agreement regarding the provisions of telecommunications services in Michigan with the Commission by 5:00 p.m. on May 5, 2004. SBC and Sage should also be ordered to file and disclose the full content of any understandings, oral agreements, or side agreements that may have a bearing on the agreement.
- c. SBC and Sage should identify and file under seal any specific provisions of their agreement for the provision of telecommunications services in Michigan that might contain commercially sensitive information that should remain confidential.

THEREFORE, IT IS ORDERED that:

A. SBC Communications, Inc., and Sage Telecom, Inc., shall file their recently negotiated agreement for the provision of telecommunications services in Michigan by 5:00 p.m. on May 5, 2004. The filing shall also disclose the full content of any understandings, oral agreements, or side agreements that have a bearing on the agreement.

B. SBC Communications, Inc., and Sage Telecom, Inc., shall identify and file under seal any and all specific provisions of the agreement for the provision of telecommunications services in Michigan that may contain commercially sensitive information that they believe should remain confidential.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chair

(S E A L)

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of April 28, 2004.

/s/ Mary Jo Kunkle

Its Executive Secretary

THEREFORE, IT IS ORDERED that:

A. SBC Communications, Inc., and Sage Telecom, Inc., shall file their recently negotiated agreement for the provision of telecommunications services in Michigan by 5:00 p.m. on May 5, 2004. The filing shall also disclose the full content of any understandings, oral agreements, or side agreements that have a bearing on the agreement.

B. SBC Communications, Inc., and Sage Telecom, Inc., shall identify and file under seal any and all specific provisions of the agreement for the provision of telecommunications services in Michigan that may contain commercially sensitive information that they believe should remain confidential.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Chair

Commissioner

Commissioner

By its action of April 28, 2004.

Its Executive Secretary

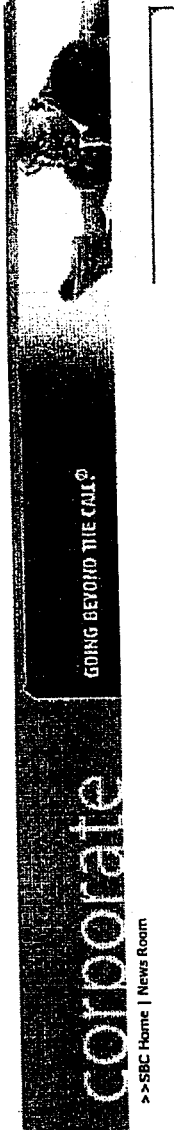
In the matter, on the Commission's own motion,)
to require **SBC COMMUNICATIONS, INC.**, and)
SAGE TELECOM, INC., to submit their recently)
negotiated agreement for the provision of)
telecommunications services in Michigan for)
review and approval.)
_____)

Case No. U-14121

Suggested Minute:

“Adopt and issue order dated April 28, 2004 requiring SBC Communications, Inc., and Sage Telecom, Inc., to submit their recently negotiated agreement for the provision of telecommunications services in Michigan for review and approval by 5:00 p.m. on May 5, 2004, as set forth in the order.”

ATTACHMENT B



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SBC, Sage Telecom Reach Wholesale Telecom Services Agreement

Nation's First Commercially Negotiated Agreement Ensures Healthy Phone Competition

San Antonio, Texas, April 3, 2004

SBC Communications and Sage Telecom today announced they have reached an historic seven-year commercial agreement for SBC to provide wholesale local phone services to Sage covering all 13 states comprising SBC's local phone territory. The agreement also contains provisions relating to data and internet services.

Sage Telecom is the third-largest competitive local exchange carrier in SBC's territory, serving more than one-half million local service customers.

This is the first such agreement between a Bell operating company and a local competitor in the four weeks since a federal court overturned wholesale rules imposed by the FCC late last year.

"This proves that when two companies are sincere about negotiating terms that are mutually acceptable, it can be done quickly and smoothly," said Edward E. Whitacre Jr., Chairman and CEO of SBC.

"The real winners here are the customers of both companies, who will continue to benefit from choice in local service provider," said Whitacre. "This demonstrates that the telecom marketplace can work."

Dennis M. Houlihan, Sage Telecom CEO, said, "Taking care of customers is our number one priority at Sage. We are proud to have achieved a commercially reasonable agreement that enables us to expand on that priority."

The seven-year pact will replace the regulatory mandated UNE-P with a private commercial agreement. Given the proprietary nature of the agreement, most terms were not released, but the average monthly price over the life of the contract is expected to be below \$25.00 per line.

SBC has offered to negotiate comparable terms and conditions with any similarly-situated competitor.

This historic agreement comes on the heels of a move by the Federal Communications Commission to encourage telecom companies to negotiate commercially reasonable wholesale agreements among themselves.

"There is no reason in the world why we can't reach agreement with any other company that is equally willing to negotiate commercially reasonable terms," said Whitacre, who added that the company is in discussions now with numerous other wholesale carriers.

"We hope to achieve similar wholesale agreements with other local phone companies as we expand our business," added Houlihan. "Such an approach provides the certainty that our customers, employees and shareholders deserve."

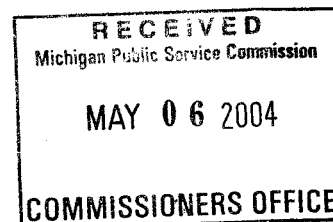
SBC Communications Inc. (NYSE: SBC) is a Fortune 50 company whose subsidiaries, operating under the SBC brand, provide a full range of

voice, data, networking, e-business, directory publishing and advertising, and related services to businesses, consumers and other telecommunications providers. SBC holds a 60 percent ownership interest in Cingular Wireless, which serves more than 24 million wireless customers. SBC companies provide high-speed DSL Internet access lines to more American consumers than any other provider and are among the nation's leading providers of Internet services. SBC companies also now offer satellite TV service. Additional information about SBC and SBC products and services is available at www.sbc.com.

Founded in 1997, Sage Telecom provides local phone service to residential and small business customers primarily in rural and suburban communities outside major metropolitan areas. The company, which has experienced explosive growth in recent years, is certified to provide local telephone service in eleven traditional Southwestern Bell, PacBell and Ameritech states. Providing innovative, lower cost alternatives to consumers and responsive customer service have been key to the company's success.

ATTACHMENT C

May 5, 2004



Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Re: MPSC Case No. U-14121.

Dear Ms. Kunkle:

SBC Michigan and Sage Telecom, Inc. jointly submit under protest, subject to all of the arguments raised in SBC Michigan's Emergency Motion for Stay of Order and Petition for Rehearing and Reconsideration, filed yesterday in this docket, one copy of the private commercial agreement between Sage Telecom, Inc., and SBC Michigan (the "Agreement"). The Agreement contains trade secrets and commercial or financial information exempt from disclosure under the Freedom of Information Act pursuant to Section 210 of the Michigan Telecommunications Act ("MTA"). The Agreement is not submitted under section 252 of the Federal Telecommunications Act and neither Sage nor SBC is requesting the Commission review or approve the Agreement. Rather, the Agreement is submitted under compulsion of the Commission's April 28, 2004 order (the "Order"), which was issued without notice or an opportunity to be heard and currently is subject to rehearing. The parties request that the Motion be ruled upon before the Commission takes any action concerning the Agreement and the parties reserve all rights concerning the Commission's Order, including all appeal rights. The Motion specifically filed yesterday requests that the Commission not take any action until the FCC has had the opportunity to rule upon SBC's emergency motion.

In accordance with the Commission's assurance of confidentiality contained in the Order, this agreement is submitted under seal and should not be disclosed publicly, in whole or in part. Section 210 of the MTA places the burden of persuasion on the party attempting to disclose any part of the Agreement. At a minimum, this requires that the Commission give the parties reasonable notice and an opportunity to show cause why the agreement should not be disclosed *before* it is disclosed.

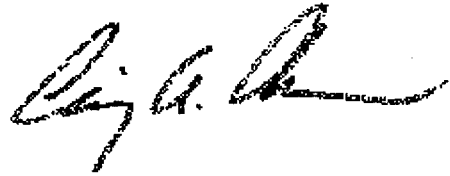
SBC Michigan and Sage note that they have already made available the Agreement to the Commission and Staff during the meeting with SBC Michigan and Sage on April 21, 2004. Since that meeting, the parties have offered to allow the Commission and Staff to review the private commercial agreement between SBC Michigan and Sage *in camera*, at SBC's office, under appropriate confidentiality protections. On May 4, 2004, SBC and Sage submitted a Joint Application for approval of an amendment to their interconnection agreement that incorporates those aspects of the private commercial agreement subject to Section 252.

As SBC Michigan indicated in its Emergency Motion for Stay of Order and Petition for Rehearing and Reconsideration filed with the Commission yesterday in this docket, it is Sage's and SBC's position that this agreement is not an interconnection agreement subject to Section 252 of the Federal Telecommunications Act of 1996, does not require MPSC approval, review, or consideration before becoming effective, is not subject to the "pick and choose" requirements

of Section 252(i) of the federal Act, and is confidential and proprietary information of Sage and SBC. Accordingly, SBC is not submitting this agreement to the Commission for approval under Section 252, rather it is submitting it under the compulsion of the Commission's April 28, 2004 order.

If you have any questions, please contact me immediately.

Very truly yours,

A handwritten signature in black ink, appearing to read "C. A. Anderson", written in a cursive style.

Craig A. Anderson

Enclosure

cc: Hon. J. Peter Lark
Hon. Laura Chappelle
Hon. Robert Nelson
Mr. Orjiakor Isiogu