

Smith/Tebeau Reply Affidavit – Attachment A

Navigator Conversions for Arkansas July 2001

ATTACHMENT A

D Service Order Number	OLD MCN	Old Service Provider Name	D Order Completion Date	Class of Service Type	NEW MCN	End User Telephone Number	End User Name	End User Address
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Totals
 CLEC to Navigator UNE-P Conversions
 SWBT Retail to Navigator UNE-P Conversions
 Navigator Resale to Navigator UNE-P
 Combined Total

Confidential/Proprietary Information
 Not for Public Inspection
 Draft 9-27-01

Navigator
 Conversions for Arkansas August 2001

ATTACHMENT A

D Service Order number	OLD MCN	Old Service Provider Name	D Order Completion Date	Class of Service type	NEW MCN	End User Telephone number	End User Name	End User Address
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Totals

CLEC to Navigator UNE-P Conversions

SWBT Retail to Navigator UNE-P Conversions

Navigator Resale to Navigator UNE-P

Combined Total

SWBT has not provided name/address/number information of end users due to confidentiality concerns. However, SWBT is willing to make this information available for review at Staff's request.
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B



Smith/Tebeau Reply Affidavit – Attachment B

Sage Finally, the choice is yours.™

SAGE TELECOM RECEIVES CERTIFICATION IN STATE OF ARKANSAS

Company to offer choice in local telephone service.

DALLAS, TEXAS, September 25, 2001-- Sage Telecom announced today that the Company has received Certification from the Arkansas Public Service Commission (APSC) to provide local telephone service in Arkansas. The Company plans to compete in Southwestern Bell markets by offering a choice of local service provider to consumers and small businesses. Sage Telecom currently serves more than 200,000 residential and small business customers in Texas.

Certification by the APSC is required under regulations governing the opening of local telephone markets to competition. The Certification process, which began in June of this year, included a review of Sage Telecom's financial and technical capabilities by the APSC staff.

Sage plans to rollout services for residential and small business subscribers in the Little Rock, Fort Smith and Pine Bluff areas beginning in October. The company will offer a Home Choice Plan to residential customers which includes local telephone service, 60 free minutes of long distance and free Caller ID for only \$24.90 a month.

"By combining local and long distance services, our customers will find that their monthly savings are considerable," says Dennis M. Houlihan, President and CEO of Sage Telecom. Business plans, available with free multi-line hunting, start at only \$29.90 per month.

Sage Telecom is a privately held company that provides local telephone service combined with long distance and other enhanced communications services. Consumers may contact Sage during normal business hours, Monday through Saturday, at 1-888-972-SAGE (7243).

#####

For immediate release, *Sage Telecom*
For further information, please contact:
Nancy Kennedy, 972-529-1559

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

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

In the Matter of)
)
Joint Application by SBC Communications)
Inc., Southwestern Bell Telephone Company,)
and Southwestern Bell Communications)
Services, Inc. d/b/a Southwestern Bell Long)
Distance for Provision of In-Region,)
InterLATA Services in Arkansas and Missouri)

CC Docket No. 01-194

REPLY AFFIDAVIT OF REBECCA L. SPARKS

I, Rebecca L. Sparks, of lawful age, being duly sworn, depose and state:

1. My name is Rebecca L. Sparks. I am the same Rebecca L. Sparks that previously filed an affidavit in this docket in support of SBC's application on August 20, 2001.¹ This affidavit replies to comments on obtaining an interconnection agreement with SWBT.
2. The comments of e.spire² contend that SWBT "refuses to allow e.spire to opt into state commission-approved interconnection agreements in Missouri and Arkansas."³ e.spire is currently operating in Missouri under an agreement approved July 31, 1997 and in Arkansas under an agreement approved December 10, 1996. SWBT and e.spire networks have been, and continue to be, interconnected and trading traffic under these agreements for several years. The absence of a replacement agreement has no impact on e.spire's continuing ability to provide service to their customers. e.spire has not raised the issues concerning entering into interconnection agreements with either the Missouri or Arkansas state commissions.
3. SWBT has been attempting to negotiate replacement agreements with e.spire

¹ Affidavit of Rebecca L. Sparks attached to Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194 (FCC filed Aug. 20, 2001).

² Comments of e.spire Communications, Inc., In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194 (FCC filed Aug. 20, 2001).

³ e.spire at p. 3.

since at least February 16, 2001.⁴ After repeated attempts to assist e.spire in selecting a replacement agreement, e.spire notified SWBT on May 2, 2001, of its decision to MFN into existing agreements in both Arkansas and Missouri.

4. In Arkansas, e.spire sought to MFN into an agreement that expired on July 8, 2001 and had already been noticed for re-negotiation. Thus, this agreement, which originally became effective July 8, 1998, had already been available for a “reasonable period of time,” as required by the FCC rule 47 C.F.R. § 51.809(c) and was no longer available under 252(i). To date, e.spire has not selected an existing Arkansas agreement, available under 252(i), for adoption in Arkansas.
5. In Missouri, e.spire sought to MFN into WorkNet Communications, Inc.’s (“WorkNet”) existing agreement after the FCC announced and adopted the ISP Remand Order⁵ but before that order became effective. Due to the confusion surrounding the request, SWBT has offered to allow e-spire to adopt the Missouri WorkNet agreement in Missouri as long as e-spire accepts SWBT's standard reservation of rights which reserves, among other rights, SWBT's rights under the ISP Remand Order.
6. In summary, e.spire currently has operational interconnection agreements with SWBT that allows e.spire to provide service to its customers in Arkansas and

⁴ See e.spire comments, Exhibit 1, footnote 1, although SWBT sent notices of renegotiations long before that date.

⁵ Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Federal Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, FCC 01-131 (rel, April 27, 2001) (“ISP Remand Order”).

Missouri. SWBT has been working with e.spire to implement replacement agreements for months, and it stands ready to implement such agreements in Missouri and Arkansas.

7. Navigator at pages 7 – 8⁶ expresses concern regarding the billing dispute provisions of its Arkansas agreement. Under those provisions, if Navigator disputes charges and SWBT is found to be in error, Navigator receives all appropriate credits and any applicable interest. The Navigator interconnection agreement in Arkansas at paragraph 9.4.2 of General Terms and Conditions,⁷ states:

The Parties further agree that if any billing dispute is resolved in favor of the disputing Party the disputing Party will receive, by crediting or otherwise, interest applied to the disputed amount...

8. Navigator also makes it appear that the billing dispute process can stretch “out beyond endurance.” This is simply a misrepresentation of the agreement. In Navigator’s agreement in Arkansas, General Terms and Conditions, paragraph 9.4.4 it states:

The parties will endeavor to *resolve the dispute Within sixty (60) calendar days of the Bill Date* on which such disputed charges appear, or, if the charges have been subject to the bill closure process described in Section 9.4.3, above, within sixty (60) calendar days of the closure of the billing period covered by such bill closure process.⁸ (emphasis added)

⁶ Comments of Navigator Telecommunications, LLC., In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194 (FCC filed Aug. 20, 2001).

⁷ See paragraph 9.4.1 in the Navigator Missouri agreement.

⁸ Paragraph 9.4.3 of the General Terms and Conditions of the Missouri Navigator interconnection agreement states that the “parties will endeavor to resolve the dispute within thirty (30) calendar days.”

9. Navigator's Arkansas agreement has been effective since December 1999. The Missouri agreement for Navigator just became effective March 2001. It is unlikely that a company would enter into a negotiated agreement that did not fulfill its business needs, keep that agreement for nearly two years, and then enter into a similar agreement in another state.
10. As discussed in my initial affidavit, CLECs have many options for obtaining an interconnection agreement to meet their business plans. Contrary to Navigator's protestations, no CLEC is "forced to accept whatever SWBT deems to offer." One of the options discussed in my initial affidavit is opting into another CLECs agreement under Section 252(i). Many of these agreements have been extensively litigated. Of course, if a CLEC's business plan is so diametrically different from any other CLEC operating in the market (which does not appear to be the case here), a CLEC may always choose to negotiate and arbitrate, if necessary, an interconnection agreement tailored to its business plan.
11. The comments of Sage⁹ at page 4 claim that SWBT "refuses access to line class codes associate with one-way optional EAS." One-way optional EAS is a retail service that is offered in Texas and is not available in Missouri. However, there are two expanded calling plans available in Missouri. The first is Metropolitan Calling Area plan ("MCA") and the other is Local Plus®. The Missouri PSC has

⁹ Sage Telecom, Inc.'s Comments Opposing Southwestern Bell Telephone Company's Application for Authorization to Provide In-Region InterLATA Service in Missouri, In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194 (FCC filed Aug. 20, 2001).

issued orders¹⁰ on each of these plans.

12. With regard to Local Plus, the Missouri PSC has not addressed this issue either as part of its section 271 review or as part of an arbitration under Section 251-252 of the Act. The Missouri PSC has, however, addressed the issue in the context of reviewing SWBT's retail offering and has issued orders with a general policy statement requiring the service to be made available to CLECs who provide service either through UNEs or via resale. Pursuant to those orders, CLECs may acquire the capability to offer a Local Plus-type service through UNEs, or may resell Local Plus, at the retail rate less the wholesale discount. SWBT has committed to complying with the Missouri PSC orders and policy statements, although it has a pending appeal concerning these orders before the Circuit Court of Cole County. If a CLEC wishes to incorporate the terms of the Missouri PSC's orders into an interconnection agreement, SWBT will do so. If a CLEC wishes to negotiate and, if necessary, arbitrate pursuant to Sections 251 and 252 of the Act, terms and conditions different than those ordered by the Missouri PSC, a CLEC may do so.
13. Sage, at page 6, claims that "the line class codes must duplicate those of SWBT's." As a practical matter, this is precisely the effect of what the Missouri PSC ordered in Case No. TO-2000-667. A CLEC negotiating an interconnection

¹⁰ Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provision of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996, Public Service Commission of Missouri, Case No. TO-99-483 (Sept. 7, 2000) and Investigation into the Effective Availability for Resale of Southwestern Bell Telephone Company's Local Plus Service by Interexchange Companies and Facilities-Based Competitive Local Exchange Companies, Public Service Commission of Missouri, Case No. TO-2000-667 (May 1, 2001).

agreement and purchasing unbundled local switching can provide the same Local Plus-type service to its customers as SWBT offers its customers. However, Sage also contends, at page 10, that “providing telecommunications serves though [sic] UNEs enable Sage to package services in its own way to meet customer demand and expectations.” A different line class codes would need to be designed and implemented to give different instructions to the switch than the instructions provided by SWBT’s “duplicate” codes. Sage has not requested the ability to develop these “unique” codes. SWBT will allow a CLEC, including Sage, to develop its own unique service offerings via lines class codes.

14. With regard to MCA service, the Missouri PSC has issued an order which establishes the terms and conditions by which a CLEC may participate in the MCA plan. SWBT has committed to fully comply with the Missouri PSC’s order. Under the order, CLECs may provide MCA service on a bill and keep basis.
15. Terms and conditions for MCA are contained in the M2A, Attachment 12, Reciprocal Compensation, paragraph 1.1. However, the Missouri PSC’s order regarding Local Plus was issued on May 1, 2001, after the M2A was approved.¹¹
16. Since it does not address the services or applicable Missouri PSC decisions, it appears that Sage may be unfamiliar with the products, services, and/or Missouri PSC orders in regard to expanded calling scopes. In addition, no in-depth substantive negotiations regarding a Missouri interconnection agreement have

¹¹ On March 6, 2001, the Missouri PSC issued its Order Finding Compliance With The Requirements of Section 271 of The Telecommunications Act of 1996. (App. C – MO, Tab 96, to SWBT’s initial AR/MO Application).

taken place between Sage and SWBT. Sage, at page 3, claims that this issue “will likely lead to arbitration in Missouri.” The arbitration window between Sage and SWBT closed approximately August 7, 2001.¹² SWBT has yet to receive a new request from Sage for negotiations in Missouri, but stands ready to meet its obligations under the Act.

¹² See section 252(b)(1), which allows the parties to arbitrate open issues during a period from the 135th to the 160th day after the date the ILEC receives a request for negotiation. Sage requested to open negotiations of an interconnection agreement for the state of Missouri on February 27, 2001.

I state under penalty of perjury that the foregoing is true and correct.

Executed on October 1, 2001.



Rebecca L. Sparks
Executive Director – Federal Regulatory

DISTRICT OF)

COLUMBIA)

Subscribed and sworn to before me this 1st day of October, 2001.



Notary Public

My Commission Expires April 30, 2003

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**BEFORE THE
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In the Matter of)
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InterLATA Services in Arkansas and Missouri)

REPLY AFFIDAVIT OF BILL E. VANDEBERGHE

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NETWORK DEPARTMENT REPLY**

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I. INTRODUCTION AND QUALIFICATIONS

I, Bill E. VanDeBerghe, of lawful age, being duly sworn, depose and state:

1. My name is Bill E. VanDeBerghe. I am Area Manager – Analysis (Special Services) for Southwestern Bell Telephone Company ("SWBT"). I previously filed an affidavit in this proceeding on August 20, 2001.
2. The purpose of my reply affidavit, filed on behalf of SWBT's network department, is to reply to the very brief discussion in the comments of Navigator Telecommunications, LLC ("Navigator") regarding "UNE T1" provisioning for

Navigator, and comments of El Paso Networks, LLC and PacWest Telecom, Inc. (“El Paso/PacWest”) regarding DSL Line Share provisioning.

“UNE T1” Provisioning

3. I have read paragraphs 30-39 of the William R. Dysart reply affidavit and can confirm that SWBT’s network records are not inconsistent with the performance data reported for Navigator for PM 58-06 (% SWBT Missed Due Dates – DS1 Loop with Test Access), PM 58-08 (% SWBT Missed Due Dates – ISDN-PRI), PM 59-07 (Percent Trouble Reports Within 30 Days – N, T, & C Orders – ISDN-PRI), PM 65-07 (Trouble Report Rate – ISDN-PRI), PM 67-07 (Mean Time to Restore (Hours) – Dispatch – ISDN-PRI), PM 69-07 (Repeat Trouble Report Rate – ISDN-PRI) in those paragraphs.
4. Additionally, the SWBT Account Team manager responsible for the interfacing with Navigator on account activities has confirmed that Navigator has not complained to the Account Team about any SWBT “UNE T1” provisioning for Navigator in any of SWBT’s five states.
5. SWBT respectfully urges the Commission to disregard Navigator’s vague and unsupported allegations relating to “UNE T1” service provisioning performance. Should Navigator disagree with SWBT’s findings, or wish to further discuss a “UNE T1” matter, SWBT invites it to provide more detailed information, including the date, time and location of specific installation jobs to which its brief comments are directed.

DSL Line Share Provisioning

6. El Paso/PacWest states that “Likewise in Missouri, there are few orders for conditioned loops and line share loops; SBC was failing to provide line shared loops in a timely manner.”¹
7. The key word in El Paso/PacWest’s comments is “was.” SWBT’s relative on-time performance, captured by PM 58-10 (% SWBT Missed Due Dates – DSL Line Sharing), shows a significant improvement in Missouri (even apart from whether that performance “was” at one time deficient given the considerations mentioned in my August 20, 2001 affidavit). A comparison of 1st Qtr 2001 results to 3rd Qtr 2001 supports this. During the period from January through March 2001, SWBT missed 32 of 411 due dates (i.e., 7.78%), compared to the period from July through September (preliminary) 2001, in which SWBT has missed only 13 of 456 due dates (or just 2.85%).²
8. Although SWBT is now providing CLECs with line sharing completions exceeding 97%, SWBT remains statically out of parity for PM 58-10. As detailed in my August 20, 2001 affidavit, the Yellow Zone Proposal process significantly reduces missed due dates, by allowing the CLEC to accept loops under 17.5kft on an ‘as is’ basis. ASI’s commitment to the YZP process has produced a missed due date rate for ASI for the period of July through September (preliminary) 2001 of 0.6%, with only 65 misses on

¹ El Paso/PacWest Comments, at p. 11

² Preliminary September data reflect that, through September 30, 2001, SWBT missed 3 of Missouri CLECs’ 116 due dates.

10,834 orders.³ Given this and the other considerations noted in my earlier affidavit, the missed due dates rates for Missouri CLECs in the low single digits affords them a meaningful opportunity to compete.

9. This concludes my affidavit.

³ Preliminary September data reflect that, through September 30, 2001, SWBT missed 13 of ASI's 2,961 due dates.

I state under penalty of perjury that the foregoing is true and correct.
Executed on (09/26/01).

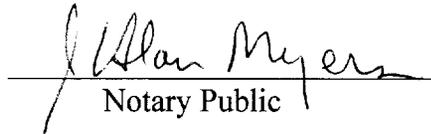


Bill E. VanDeBerghe

STATE OF MISSOURI
COUNTY OF JACKSON

Subscribed and sworn to before me on this 26 day of September 2001.

JALAN MYERS
NOTARY PUBLIC STATE OF MISSOURI
JACKSON COUNTY
MY COMMISSION EXP. MAR. 1, 2006



Notary Public

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