

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Sage Telecom, Inc.)
)
Petition for Arbitration of an)
Interconnection Agreement with) ICC Docket No. 03- _____
Illinois Bell Telephone Company d/b/a)
SBC Illinois under Section 252(b) of the)
Telecommunications Act of 1996)

PETITION FOR ARBITRATION

Negotiation Request: April 17, 2003
135th day: August 30, 2003
160th day: September 24, 2003
9 months after request: June 24, 2004

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Attorney's for Sage Telecom, Inc.

Dated: September 12, 2003

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ILLINOIS COMMERCE COMMISSION**

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PETITION FOR ARBITRATION

Sage Telecom, Inc. (“Sage”) files this Petition for Arbitration of an Interconnection Agreement (“Petition”) with Illinois Bell Telephone Company d/b/a SBC Illinois (“SBC”) under Section 252(b) of the Telecommunications Act of 1996, 47 U.S.C.A. § 252(b), and 83 Ill. Admin. Code Part 761.10 *et seq.*¹ In this Petition, Sage respectfully shows as follows:

1. Sage respectfully requests that the Commission approve the negotiated terms of interconnection between SBC and Sage, and that the Commission adopt the parties agreed Interconnection Agreement. Through negotiations over the course of several months, the parties were able to come to agreement on all terms of the interconnection agreement.² Notwithstanding that the parties have agreed to the terms of an Interconnection Agreement pursuant to Sections 251 and 252, SBC refuses to execute the Interconnection Agreement, holding the signing of the Interconnection Agreement as hostage to compel Sage to enter into a separate billing and collection agreement for third-party billed calls placed by SBC customers to a Sage customer.

¹ Pursuant to 83 Ill. Admin. Code Part 761.210(a), Sage has attached hereto Exhibit 9, its First Discovery Request for SBC.

² See, Exhibit 2, the terms of the undisputed interconnection agreement. Sage respectfully requests this Commission order SBC to sign and submit the interconnection agreement for approval within ten (10) days of entering an order in this proceeding.

2. There are two issues subject to this Petition, both interrelated to “Incollect Charges,” charges from collect, calling card, and third party calls that SBC (or its affiliates) want to assess on Sage’s local customers. The two issues are:

Issue 1: Can SBC impose on Sage, as a precondition to providing Interconnection, an obligation that Sage act as the billing and collection agent for third-party billed calls originated by SBC’s customers?

Issue 2: If the answer to Issue 1 is yes, can SBC impose on Sage an obligation to act as a guarantor to ensure payment to SBC for Incollect charges, which are associated with certain SBC/Third-Party-provided calls, such as collect calls, calling card calls, and third party calls, that are not originated by a Sage customer.?

If the Commission requires a billing and collection agreement between Sage and SBC, Sage requests that the Commission approve its proposed language to Article VI, Section 6.3.4.1 (see ¶¶ 26, 31 below). Sage’s proposed contract language places Sage in the role of a billing and collection agent only. Sage will make a good faith effort to bill and collect SBC’s incollect charges for a per message fee, but should not be financially responsible for SBC’s uncollectible incollect charges. SBC, on the other hand, wants to make Sage financially responsible for all incollect charges when the end user fails to pay the charges where SBC or another CLEC (i.e. MCI) is the carrier providing the service to the end user.

If the Commission requires a contract for these charges as a precondition to interconnection, Sage respectfully urges the Commission to approve its proposed contract language, which relies on language approved by the Michigan, Wisconsin and Texas commissions and a recent arbitration award from the Texas commission. *See*, Exhibit 3, a redlined version of the SBC-proposed ABS Appendix.

PARTIES

3. Sage is a corporation duly authorized to conduct business in the State of Illinois. Sage has its principal offices at 805 Central Expressway South, Suite 100, Allen, Texas 75013-2789, telephone number (214) 495-4700, and facsimile number (214) 495-4795.

4. Sage is a telecommunications carrier authorized to provide competitive local exchange and interexchange services within Illinois. *See, Application for a Certificate of Local and Interexchange Authority to Operate as a Facilities based Carrier and/or Reseller of*

Telecommunications Services in the State of Illinois, Docket No. 01-0508, Order (dated October 26, 2001) (granting Certificate of Service Authority).

5. Once an interconnection agreement is in place between the parties, Sage plans to offer telecommunications services to residential and business customers in SBC's service territory in Illinois, with a particular focus on rural and suburban residential customers. Sage relies on SBC's unbundled network element platform ("UNE-P") to provide many of these services.

Sage hereby designates the following persons to receive service on its behalf:

Robert McCausland
Vice President, Regulatory Affairs
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Mr. Kelly and Mr. Donovan can be reached at the same address through a single filing.

6. SBC is a corporation duly authorized to conduct business in the State of Illinois. SBC has offices at 225 West Randolph Street, Chicago, Illinois 60606. SBC's designated agent for contract issues is as follows:

Jennifer Bracken
Lead Negotiator – Industry Markets
SBC
4 SBC Plaza, Room 2030.01
Dallas, Texas 75202

(214) 858-0702
(214) 858-1245 facsimile
jb2560@sbccom

7. SBC is an incumbent local exchange carrier (“ILEC”), as defined by Sections 251 and 252 of the Telecommunications Act of 1996 (Act”).

8. Sage agrees to accept service of documents by electronic means as provided for in 83 Ill. Admin. Code part 200.1050.

JURISDICTION

9. The Commission has jurisdiction to arbitrate this Petition pursuant to Section 252(b) of the Act. Furthermore, the Commission has additional state law authority under the Illinois Public Utilities Act (“IPUA”). *See, i.e.,* 220 ILCS 5/13-801, 83 Ill. Admin. Part 761.10 *et seq.*

10. Sage submitted its request for negotiations under Sections 251 and 252 of the Act on April 17, 2003 *See*, Exhibit 1. Therefore, the 135th day is August 30, 2003, the 160th day is September 24, 2003, and June 24, 2004 is nine months after the close of the window for filing this Petition for Arbitration.

UNRESOLVED ISSUES

11. The parties resolved a number of issues prior to the submission of this Petition. As such, there is just one issue that remains unresolved. The single unresolved issue is as follows:

Issue 1: Can SBC impose on Sage, as a precondition to providing interconnection, an obligation that Sage act as the billing and collection agent for third-party billed calls originated by SBC’s customers?

Issue 2: If the answer to Issue 1 is yes, can SBC impose on Sage an obligation to act as a guarantor to ensure payment to SBC for Incollect charges, which are associated with certain SBC-provided calls, such as collect calls, calling card calls, and third party calls, that are not originated by a Sage customer, but rather are accepted by a Sage customer?

Sage's Position:

12. Before discussing the rationale and contract language, Sage will outline a common fact scenario to illustrate the issue in dispute. A Sage end-user receives a collect call from a relative in prison. She accepts the toll call and incurs \$30 in charges for a one hour call.³ The collect call is an incoming collect call that is not originated by Sage's end user, thus use of the term "Incollects." At the time the call is made and accepted, Sage has no knowledge of the call or that its end use customer is incurring any Incollect charges. In order to collect the charges associated with the Incollect call so that Sage can bill its end-user for the call, SBC sends Sage a Daily Usage Feed ("DUF") record which includes relevant details of the call such as the number of minutes and the SBC charges associated with the call. In exchange for a nominal billing fee assessed to SBC to bill its end-user, Sage prepares a separate invoice for SBC's Incollects. The end-user either pays the invoice to Sage and Sage remits the funds directly to SBC, or the end-user does not pay the charge.

13. The parties have agreed to terms of interconnection pursuant to negotiations completed under Sections 251 and 252 of the Federal Communications Act. These terms of interconnection are set forth in the Interconnection Agreement between SBC and Sage.

14. Notwithstanding the fact that SBC and Sage have agreed to an Interconnection Agreement, SBC is withholding signature on that Interconnection Agreement unless Sage executes a billing and collection contract for Incollect calls. It is Sage's position that SBC cannot compel Sage, as a precondition to an Interconnection Agreement, to execute a billing and collection agreement for Incollect calls.

³ This number is not based on SBC's existing tariffed rates, and is for example purposes only.

15. In 1986, the FCC found that billing and collection services do not employ wire or radio facilities and do not allow customers of the service to "communicate or transmit intelligence of their own design and choosing. ... In short, billing and collection is a financial and administrative service." *In the Matter of Detariffing of Billing and Collection Services*, FCC Docket No. 85-88, Report and Order, 102 FCC.2nd 1150, ¶ 32 (rel. January 29, 1986). As such, the FCC concluded "billing and collection services provided by local exchange carriers are not subject to regulation under Title II of the [Federal Communications] Act." *Id.*, at ¶ 34. The FCC went on to hold that it will not assert any ancillary jurisdiction over billing and collection services under Title I of the Federal Communications Act, as well. *Id.*, at ¶ 37.

16. Thus, for nearly two decades, the FCC has not asserted any jurisdiction under the Federal Communications Act for billing and collection services. Notwithstanding the clear lack of jurisdiction under the Federal Communications Act over billing and collection, SBC seeks to bog down the interconnection process for those services that are regulated under the Federal Communications Act by demanding Sage insert language in its Interconnection Agreement related to nonregulated services.

17. Because billing and collection is an unregulated service that isn't even subject to the scope of the Federal Communications Act, nor the jurisdiction of the Federal Communications Commission, there is no sustainable reason why an interconnection agreement negotiated pursuant to the Act and detailing the interconnection of regulated telecommunications services between SBC and Sage should be bogged down with SBC's unreasonable demands. This is precisely the finding of the Michigan Public Services Commission in its recent Order in *In the Matter of the Application of AT&T Communications of Michigan, Inc. and TCG Detroit for Arbitration of Interconnection, Rates, Terms and Conditions and Related Arrangements with*

Ameritech Michigan, Case No. U-13578, Opinion and Order (August 18, 2003) (“*Michigan AT&T Arbitration Order*”) (relevant portions of which are attached hereto as Exhibit 4). In that Order, the Michigan Commission held that “ABS is an unregulated billing and collection service, the terms of which may be worked out by the parties without the need for Arbitration as part of the Interconnection Agreement.” *Michigan AT&T Arbitration Order*, at p. 47. There is no reason why this Commission should come to any other conclusion than the Michigan Commission on this issue.

18. Further, SBC’s ABS Appendix is premised on a notion that Sage is somehow or in some part financially responsible for SBC’s Incollect charge. Sage rejects this premise because Sage’s actual role in this scenario is one of a carrier that has a customer who has accepted on their own volition a collect call provided by SBC. Sage is unwilling to accept any financial responsibility for SBC’s Incollect charges that are uncollectible.

19. The terms and conditions of the billing and collection agreement requested by SBC are unreasonable and must be rejected by this Commission. In the alternative, Sage should have the option to be a billing and collection agent only, which should include an obligation to make good faith efforts to bill and collect the Incollect charges, but should not bear the responsibility to the other company for uncollectible Incollect charges. Sage is willing to implement (outside the terms of an Interconnection Agreement), and indeed has already, business practices and procedures for billing and collection that would govern the relationship between SBC and Sage associated with Incollect charges. These obligations would include billing and collection of SBC-provided Incollect charges set at the rates provided by SBC; remitting collected monies to SBC; tracking amounts billed and collected; attempting to collect unpaid charges; at SBC’s request, initiating orders to block Incollect calls for Incollect amounts

in arrears; and, using electronic settlement processes instituted by SBC for disputed and unbillable Incollect charges.

20. SBC's ABS Appendix contains three options, each of which would place various degrees (65 to 100 percent) of financial responsibility on Sage for all Incollect charges, including uncollectible charges. Going back to the example above, depending on which option Sage agreed to (which it cannot), SBC's ABS Appendix would require Sage to pay SBC somewhere between 65 and 100 percent of the \$30 Incollect charge between the Sage end-user and her relative, irrespective of when or whether Sage was able to collect the Incollect charges, on top of the costs that Sage incurred for billing and attempting to collect the charges. SBC's proposed agreement would compel Sage to assume this liability, even on calls where MCI, AT&T or some other carrier is the carrier originating the call.

21. Assuming that the Commission compels Sage to enter into a billing and collection agreement as a precondition to Interconnection, the issue in dispute is whether Sage's obligations are limited to making a good faith effort to bill and collect SBC's Incollect charges as a billing and collection agent, or whether Sage must guarantee SBC for all Incollect charges terminated at a Sage end user line, including those that are uncollectible (and, thus, become financially responsible for an SBC-provided collect call service).

22. Sage respectfully urges the Commission to conclude that, for Incollect calls, Sage's obligations are limited to that of a billing and collection agent – i.e., making a good faith effort to bill and collect SBC's charges. While SBC will likely raise many arcane issues associated with Incollects in its response and testimony, the policy underpinnings of Sage's proposed approach are simple. As a local carrier, Sage:

- (1) does not provide the collect call service at issue;
- (2) does not have any authority over the rates SBC charges for the collect call service;

- (3) only learns that a call was placed or accepted via the SBC-provided DUF record and associated rate schedule;
- (4) invoices its customers based upon the SBC-provided DUF record;
- (5) has no way of validating the SBC-provided DUF record; and,
- (6) receives no revenues from the Incollect calls beyond the nominal billing and collection fee.

23. The originating party, which is generally SBC or its affiliates:

- (1) provides the collect call service;
- (2) tariffs and sets the rates for the collect call services; and,
- (3) receives the Incollect revenues.

Therefore, the originating party, SBC, should take responsibility for uncollectible Incollect charges. Sage should, at most, only be responsible for billing regulated local exchange services originated by SBC.

24. SBC's proposed remedy for uncollectible Incollect charges is to instruct Sage to place a block on the Sage end-use customer's account to be able to accept any collect calls. Once Sage is instructed to place a block, Sage places an order back to SBC to implement the block (as Sage is a UNE-P provider and SBC, as the underlying carrier, technically implements the block). This arrangement is consistent with the business practice that Sage and SBC have developed and is in place today and that was specifically authorized by the Texas commission.

25. The business practice between Sage and SBC also indicates Sage's willingness to act as a billing and collection agent for SBC, so long as Sage is not held to be a guarantor of the uncollectible charges. The two parties have already developed a standard business practice in Texas in which Sage bills, collects, remits, and, if necessary, pursues Incollect charges related to SBC's Incollect calls. In fact, Sage has already implemented the same business practice in all ten states in which it currently operates. Rather than proceed with this already-approved and

functional process, SBC seeks to change the business practice and force Sage to act as a “guarantor” for the Incollect charges that SBC imposes for services provided by SBC.

26. If the Commission compels Sage to enter into a billing and collection agreement as a precondition to obtaining interconnection, Sage requests that the Commission adopt Sage’s billing and collection role, Sage proposed the following contract language for Article VI, Section 6.3.4.1:

Incollects: For messages that originate from a number other than the billing number and that are billable to CLEC customers (Incollects), SBC will provide the rated messages it receives from the CMDSI network or which SBC records (non-ICS) to CLEC for billing to CLEC’s end users. SBC will transmit such data on a daily basis. SBC will credit CLEC the Billing & Collection (B&C) fee for billing the Incollects. The B&C credit will be provided in accordance with the procedures set forth in the pricing schedule for billing the Incollects. CLEC and SBC have stipulated that a per message charge for SBC’s transmission of Incollect messages to CLEC is applicable, and SBC will bill CLEC for the transmission charge.

Uncollectible charges are defined as Incollect charges billed to CLEC by SBC which are not able to be collected by CLEC from the CLEC’s end users despite collection efforts by CLEC. This term does not include rejects, unbillables, or adjustments. The Definition of uncollectibles should include fraudulent charges to the extent that the fraudulent charges otherwise also meet the criteria of uncollectible.

27. The first paragraph of Sage’s proposed language is identical to the language that the state commissions in Michigan and Wisconsin have already reviewed and approved for the interconnection agreements between AT&T and SBC. *See, In the Matter of the Application of AT&T Communications of Michigan, Inc. and TCG Detroit for Arbitration of Interconnection, Rates, Terms and Conditions and Related Arrangements with Ameritech Michigan*, Case No. U-12465, Opinion and Order (March 21, 2002), § 27.16.3 of approved agreement;⁴ *Application for Approval of Interconnection Agreement Between AT&T Communications of Wisconsin, LP and*

⁴ In Docket No. U-13513, the Michigan Commission approved Sage’s opt-in to the AT&T Interconnection Agreement in Michigan. The relevant pages of the Sage agreement in Michigan are attached hereto as Exhibit 5, and is the same language as the Michigan Commission approved in the AT&T agreement.

Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), Docket No. 5-TI-656, Order Approving Interconnection Agreement (July 9, 2002), § 27.16.3 of approved agreement.^{5, 6} The first paragraph is also identical to the language that SBC and Sage have in their interconnection agreement that the Texas Commission has already reviewed and approved. *See, Joint Application of Southwestern Bell Telephone Company and Sage Telecom, Inc. for Approval of Interconnection Agreement*, PUCT Docket No. 23527, Corrected Amended Interconnection Agreement, Att. 10 (Provision of Customer Usage Data), § 8.3 (February 2001) (relevant portions of which are attached hereto as Exhibit 7).

28. The second paragraph of Sage's proposed language is a definition of uncollectible charges associated with Incollects that the Texas Commission approved in the context of determining Sage's obligations as a billing and collection agent for Incollects. *See, Petition of MCIMetro Access Transmission Services, LLC, Sage Telecom, Inc., Texas UNE-P Coalition, McLeod USA Telecommunications Services, Inc. and AT&T Communications of Texas, L.P. for Arbitration with Southwestern Bell Telephone Company Under the Telecommunications Act of 1996*, PUCT Docket No. 24542, Revised Arbitration Award at 212 (Oct. 3, 2002) ("*Texas Arbitration Award*") (relevant portions of which are attached hereto as Exhibit 8).

29. In contrast to the straightforward language approved (verbatim or in principle) by the Michigan, Wisconsin and Texas Commissions, SBC is proposing its 13-state Alternative Billed Service ("ABS") Appendix. Sage has rejected SBC's ABS Appendix for a number of reasons which Sage has explained to SBC and will enunciate in detail in its testimony on this

⁵ The only exceptions are the references to the appropriate billing attachments.

⁶ In Docket No. 3005-NC-100, the Wisconsin Commission approved Sage's opt-in to the AT&T Interconnection Agreement in Wisconsin. The relevant pages of the Sage agreement in Wisconsin are attached hereto as Exhibit 6, and is the same language as the Wisconsin Commission approved in the AT&T agreement

issue. Notably, the Texas commission specifically rejected SBC's ABS Appendix in the Texas Arbitration Order. *See, Texas Arbitration Award, Revised Arbitration Award, Joint Contract Matrix, Issue No. 40 at 93-96.*

30. As explained in the example above, SBC's ABS Appendix contains three options, each of which would place 65 to 100 percent of financial responsibility on Sage for all of SBC's Incollect charges, including uncollectible charges, irrespective of when or whether Sage was able to collect the Incollect charges, and on top of the costs that Sage incurred for billing and attempting to collect the charges. All of this in exchange for the minimal billing and collection fee. SBC's proposal is unreasonable, which is why not a single state commission, to Sage's knowledge, has adopted the requirement in an arbitrated proceeding.

31. Finally, there are two additional disputes on contract language that are directly related to the Incollect dispute. In Article VI, Section 6.3.4.1, SBC proposed including a reference to ABS, arguably to make Sage responsible for Incollects in the case of end user fraud. In response, Sage proposed the following sentence to clarify that Sage was not financially responsible for SBC's ABS traffic: "CLEC will not be liable for Alternatively Billed Service (ABS)." Sage respectfully requests the Commission to approve Sage's language because, as Sage explains above, it is inequitable to require Sage to make SBC whole when the end user fails to pay SBC for SBC's Incollect services (whether through fraud or otherwise).

32. **SBC's Position:** SBC is proposing its 13-state ABS Appendix. In other jurisdictions, SBC has taken the position that the ABS Appendix is appropriate because, in SBC's view, it requires the CLEC to take responsibility for the charges of the CLEC's local customers. For the Article VI, Section 6.3.4.1 language discussed in Paragraph 31 above, SBC did not articulate a specific rationale to Sage.

WHEREFORE, in light of the foregoing, Sage respectfully requests this Commission to enter an order finding that SBC cannot force, as a precondition to interconnection, Sage to act as the Billing and Collection agent for, or a guarantor of, third party billed calls originated by SBC's customers. If the Commission determines otherwise, Sage requests that the Commission adopt Sage's proposed language placing Sage in only the role of Billing and Collection agent for SBC, and not be forced to be financially responsible for all of SBC's Incollect charges when the end user fails to pay the charge. If the Commission determines that it is appropriate to add an appendix to the interconnection agreement, Sage respectfully urges the Commission to reject SBC's proposed ABS Appendix and adopt Sage's proposed contract language which relies on language approved by the Michigan, Wisconsin and Texas Commissions.

Respectfully submitted,
SAGE TELECOM, INC.

By: One of Its Attorneys

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**SAGE TELECOM, INC.'S
VERIFICATION**

I, Joseph E. Donovan, being first duly sworn, depose and state that I am an attorney for Sage Telecom, Inc., that I have reviewed the foregoing Petition for Arbitration of Sage Telecom, Inc. and know that the contents thereof and that the statements contained therein are true, to the best of my knowledge and belief.

Joseph E. Donovan

SUBSCRIBED AND SWORN
To me on this ____ day of September, 2003

Notary Public for the State of Illinois

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NOTICE OF FILING

Please take notice that on September 17, 2003, the undersigned filed **Sage Telecom, Inc.’s Petition for Arbitration** and **First Discovery Request** with the Clerk of the Illinois Commerce Commission.

Joseph E. Donovan, an attorney
For Sage Telecom, Inc.

CERTIFICATE OF SERVICE

I, Henry T. Kelly, an attorney, on oath state that I served this Notice of Filing and **Sage Telecom, Inc.’s Petition for Arbitration** and **First Discovery Request** to each person on the attached service List, via electronic mail and by deposit in the U.S. Mail with proper postage prepaid, first class on this 17th day of September, 2003.

Joseph E. Donovan

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