

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of SBC)
Ohio for Approval of an Agreement)
Amendment Between SBC Ohio and Sage) Case No. 04-663-TP-AEC
Telecom, Inc. Pursuant to Section 252 of the)
Telecommunications Act of 1996.)

ENTRY

The Commission finds:

- (1) SBC Ohio and Sage Telecom, Inc. (Sage) previously entered into an interconnection agreement approved in Case No. 03-1432-TP-NAG. On April 3, 2004, SBC Communications, Inc. (parent company of SBC Ohio; hereafter SBC) issued a press release indicating that SBC had entered into a seven-year agreement with Sage to provide network access for voice and data services.
- (2) On May 4, 2004, SBC Ohio initiated this case by filing an interconnection agreement amendment between SBC Ohio and Sage. As part of the interconnection agreement amendment (Amendment), the parties reference a "Private Commercial Agreement for Local Wholesale Complete," known as the LWC Agreement. See Amendment, ¶ 6.6. Given the limited scope of the Amendment as compared to the April 3, 2004, press release and based on positions made known publicly, SBC and Sage apparently believe that the LWC Agreement need not be filed with this Commission, regardless of any confidentiality that could potentially be afforded to certain provisions of the LWC Agreement.
- (3) Under Sections 252(a) and 252(e) of the Telecommunications Act of 1996 (1996 Act), voluntarily negotiated agreements involving interconnection, services or network elements are to be filed with the State commission. The Federal Communications Commission (FCC) has recently reinforced the requirements of this section and the critical relationship between the filing requirements and the non-discrimination safeguards. *Qwest Communications Corp. Petition for Declaratory Ruling*, 17 FCC Rcd. 19337 (2002). Further, there are Ohio

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statutes that arguably would require Commission review of such an agreement. *See e.g.*, Sections 4905.04, 4905.06, 4905.48, Revised Code. Moreover, as a practical matter, it appears that the LWC Agreement is integrally related to the Amendment and it is not clear how the Commission could effectively evaluate the Amendment for approval or otherwise enforce the non-discrimination provisions of the 1996 Act without reviewing both agreements. The Commission believes that this is an important set of issues that should be addressed after an opportunity for comment. The Commission is also aware that SBC has filed a request for declaratory ruling with the FCC relating to these issues, but the Commission believes that it has a responsibility to review these issues in a timely manner without necessarily awaiting the outcome of the FCC proceeding, particularly in light of the potential expiration of the D.C. Circuit's stay order in *United States Telecom Association v. FCC*, No. 00-1012 (D.C. Cir. March 2, 2004).

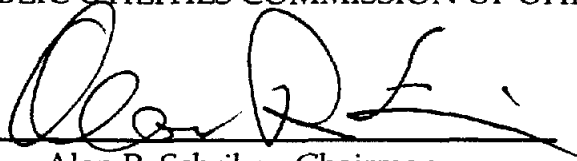
- (4) SBC Ohio and Sage shall file comments and detailed legal support and analysis supporting their positions in this docket by May 17, 2004. Any interested party may file reply comments and supporting positions by May 24, 2004.

It is, therefore,

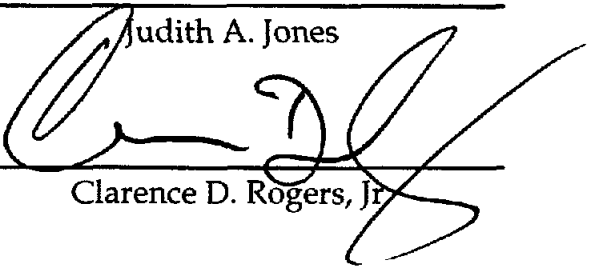
ORDERED, That SBC Ohio and Sage make a filing in this docket by May 17, 2004, in accordance with finding 4 above. It is, further,

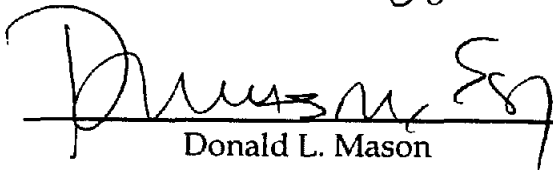
ORDERED, That a copy of this entry be served upon all local exchange companies and all other interested persons of record.

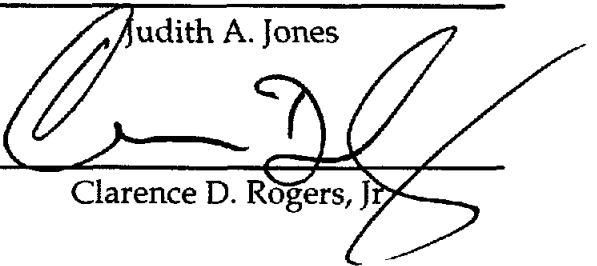
THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Ronda Hartman Fergus


Judith A. Jones


Donald L. Mason


Clarence D. Rogers, Jr.

SN/JRJ/vrm

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MAY 5 2004



Renee J. Jenkins
Secretary