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December 3, 1999

FILED

DEC 6 1999

Missouri Public
Service Commission

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, MO 65101

Dear Judge Roberts:

Re: Case No. TO-2000-322

Enclosed for filing with the Commission in the above-referenced case are an original and fourteen (14) copies of Southwestern Bell Telephone Company's Answer to Petition.

Also enclosed is an additional copy to be file stamped and returned to us in the enclosed self-addressed, stamped envelope.

Thank you for bringing this matter to the attention of the Commission.

Sincerely,

A handwritten signature in cursive script, appearing to read "K. Swaller".

Enclosures

cc: Parties of Record

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

FILED

DEC 6 1999

Missouri Public
Service Commission

In the Matter of the Petition of DIECA)
Communications, Inc. d/b/a Covad)
Communications Company for Arbitration)
of Interconnection Rates, Terms, Conditions)
and Related Arrangements with Southwestern)
Bell Telephone Company.)

Case No. TO-2000-322

**SOUTHWESTERN BELL TELEPHONE COMPANY'S ANSWER TO THE PETITION
OF COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF RATES,
TERMS, CONDITIONS AND RELATED xDSL LOOPS**

COMES NOW Southwestern Bell Telephone Company ("SWBT"), pursuant to Section 252(c) of the Telecommunications Act of 1996 (hereinafter the "FTA" or "Act")¹, and submits its Answer to the petition of Dieca Communications, Inc. d/b/a Covad Communications Company ("Covad") for arbitration of interconnection rates, terms, conditions and related arrangements pursuant to Section 252(b) of the FTA. For its Answer, SWBT states as follows:

INTRODUCTION AND IDENTITY OF THE PARTIES

1. SWBT admits the allegations in paragraphs 1. - 4., but further states that service should be made upon Paul G. Lane at the address identified in paragraph 4.

HISTORY OF NEGOTIATIONS WITH SWBT

2. SWBT admits the allegations contained in paragraph 5.

3. SWBT admits that the Parties have used SWBT's generic agreement as a base document for their negotiations. A copy of the agreed upon language is attached hereto as Exhibit A. SWBT further admits that certain issues, as more fully identified below remain unresolved and have been presented to this Commission for resolution. SWBT cannot agree with

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Covad's argumentative characterization of the issues and therefore denies all other allegations contained in paragraph 6.

4. SWBT admits the allegations contained in paragraph 7.

JURISDICTION

5. SWBT admits the allegations contained in paragraphs 8 and 9.

INTRODUCTION TO COVAD AND ITS SERVICES

6. SWBT admits that SWBT and Covad have an arbitration pending before the Texas Commission. SWBT affirmatively states that a preliminary order has been issued, but that a final order has not yet issued by the Texas Commission. SWBT has insufficient information to admit the remaining allegations contained in paragraphs 10 and so denies same.

7. SWBT has insufficient information to admit the allegations contained in paragraph 11 and so denies same.

8. SWBT admits the allegations contained in paragraph 12.

9. SWBT admits that the "x" in xDSL denotes different types of DSL technology, but has insufficient information to form a belief as to the truthfulness of the remaining allegations in paragraph 13 and so denies same.

10. SWBT has insufficient information to admit the allegations contained in paragraph 14 and so denies same.

11. SWBT neither admits nor denies that Covad's entry into business in Missouri depends upon its collocation in SWBT's central offices to facilitate its access to SWBT's loops on an unbundled basis. SWBT denies Covad's allegation that it is "impossible" for it to provide its services to Missouri consumers absent an effective interconnection agreement, as many other

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§151 *et seq.*

CLECs are in business in Missouri without collocation. SWBT further states, that by letter dated July 26, 1999 SWBT offered Covad an interim arrangement incorporating provisions previously approved by state regulatory agencies which would have facilitated Covad's immediate entrance into the DSL market in Missouri, as well as Kansas, Oklahoma and Arkansas (hereinafter the "MOKA states"). (A copy of the July 26, 1999 letter is attached hereto as Exhibit B and made a part hereof and incorporated herein by this reference.) SWBT renewed its offer of an interim agreement for Covad in a letter dated September 29, 1999 addressed to Covad's counsel. (A copy of the September 29, 1999 letter is attached hereto as Exhibit C and made a part hereof and incorporated herein by this reference.) To date, Covad has not pursued SWBT's offer of an interim agreement, although SWBT remains willing to extend such an agreement to Covad and any other provider to facilitate their immediate entrance to the market pending the negotiation and/or arbitration of a final, effective interconnection agreement. Additionally, Covad recently requested an interim arrangement with the rates proposed by the arbitrator's award in Texas, but SWBT countered with the rates previously approved by this Commission in the BroadSpan arbitration (Case No. TO-99-370). To date, Covad has not responded to this offer.

12. SWBT has also offered to begin processing collocation requests in advance of a final, effective interconnection agreement being reached in Missouri. Covad has accepted SWBT's offer.

ISSUES FOR ARBITRATION

13. SWBT does not believe that each and every issue identified by Covad in paragraph 16 requires arbitration, but will address each issue individually herein. In addition, SWBT believes any order granting Covad's request for arbitration should limit the scope of the arbitration to those issues specifically identified in Covad's petition and not allow for the

expansion of this proceeding at some later date without appropriate notice, discovery or compliance with the terms of the FTA.

A. Terms and Conditions for Provisioning xDSL Loops

Issue (A)(1)-SWBT's xDSL Capable Loop Offering: Should SWBT be required to provide (1) unbundled clean copper loops and (2) ISDN/xDSL capable loops that Covad may use to offer all of its DSL services?

14. Contrary to the assertions contained in paragraphs 17 through 20 of the petition for arbitration, Covad's request that the Commission require SWBT to provide "unbundled clean copper loops" is a non-issue.² SWBT fully understands that interferors do just that, interfere with DSL services, therefore "clean copper" or "xDSL capable" loops are necessary. Covad, however, is seeking more than that and is in essence asking the Commission to order SWBT to provide "clean copper" loops with no charge for conditioning. Upon receipt of an order from Covad, to the extent SWBT has a loop which does not have any load coils, repeaters or bridge tap on it, SWBT will provide that loop to Covad without a charge for conditioning. SWBT, however, is only obligated to unbundle its existing network and the extent that the requested loop has load coils, repeaters or bridge tap, Covad must compensate SWBT for removal of the interferors.³ In its recent *UNE Remand Order*, the Federal Communications Commission

² See *UNE Remand Order*, CC Docket No. 96-98, FCC 99-238, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (1999) at para. 172. "The terms 'conditioned,' 'clean copper,' 'xDSL-capable' and 'basic' loops all describe copper loops from which bridge taps, low-pass filters, range extenders, and similar devices have been removed. Incumbent LECs add these devices to the basic copper loop to gain architectural flexibility and improve voice transmission capability. Such devices, however, diminish the loop's capacity to deliver advanced services, and thus preclude the requesting carrier from gaining full use of the loop's capabilities. Loop conditioning requires the incumbent LEC to remove these devices, paring down the loop to its basic form." *Id.*

³ See *Id.* at para. 193. "[N]etworks built today normally should not require voice transmission enhancing devices on loops of 18,000 feet or shorter. Nevertheless, the devices are sometimes present on such loops, and the incumbent LEC may incur costs in removing them. Thus, under our rules, the incumbent should be able to charge for conditioning such loops." *Id.*

("FCC") rejected Covad's argument that incumbent LECs must provision loops less than 18,000 feet in length with no charge for conditioning.⁴ SWBT's proposed DSL appendix language states that SWBT will condition loops under 12,000 feet at no charge to Covad, except where Covad requests conditioning beyond that required for SWBT technology. The only time conditioning charges apply is on loops where Covad requests conditioning, and then it will only be charged for work actually performed at Covad's request. This is the same issue the Commission resolved in the BroadSpan (TO-99-370) and Sprint (TO-99-461) arbitrations wherein the Commission determined that the CLEC must pay for conditioning when it orders a DSL capable loop where conditioning is required.

15. In paragraphs 20 and 21 of the petition, Covad inaccurately states that SWBT is seeking to limit the kind of DSL service Covad may deploy by limiting the kind of loop it will provide and by modeling its loop offerings after a failed draft standard for spectrum management. Covad's assertions are wholly without merit. SWBT's proposed DSL language does not in any way restrict Covad from providing any of its DSL-based services and fully complies with FCC orders on this issue.⁵ SWBT's language clearly provides that Covad may deploy any loop technology that complies with existing industry standards, or which has been successfully deployed without significantly degrading the performance of other services, or that has been approved by the FCC, any state commission or an industry standards body, unless

⁴ See *Id.* at paras. 192-94.

⁵ See *Advanced Services First Report and Order and FNPRM*, CC Docket 98-147, FCC 99-48 (March 31, 1999) (hereinafter "FCC 99-48" and *Advanced Services Memorandum Opinion and Order and NPRM*, CC Docket 98-147, FCC 98-188 (Aug. 7, 1998) (hereinafter "FCC 98-188").

SWBT can demonstrate to the state commission that deployment of the particular technology within SWBT's network will significantly degrade the performance of other services.⁶

16. In paragraph 21 of its petition, Covad agrees that it will provide SWBT with the particular digital technology that it places on SWBT's unbundled loops for inventory and assignment of spectrum management purposes. Thus, it appears the Parties are in agreement on this portion of the issue.

17. Finally, in paragraph 21 of its petition, Covad states that it is unclear as to SWBT's position regarding or justification for the distinction between standard DSL-capable loops and non-standard DSL-capable loops. The distinctions are not nearly as complex as Covad portrays, in fact they are actually quite simple to understand and apply. In the context used, "Standard" means a DSL technology for which industry standards exist. "Non-standard" means those DSL technologies for which no industry standards yet exist. The term "non-standard" as used by SWBT is not intended to have any negative connotations, it simply refers to those technologies for which no standard has yet be approved.

18. SWBT's unbundled loop offerings in Section 2.1 of the proposed Appendix DSL reflect loops which comply with existing industry standards in full compliance with and consistent with FCC 99-48. Section 2.8 of the proposed Appendix DSL states that if a standards body adopts other national standards for which SWBT does not already have an existing supporting loop, SWBT will create a loop capable of supporting the new technology. Section 2.9 addresses loops needed for technologies which have either been approved by another regulatory agency or successfully deployed elsewhere as those terms are defined in FCC 99-48. Section 2.9 addresses the issue of where there are no industry standards. In that case SWBT will provide

⁶ See FCC 99-48 at paras. 67-68.

Covad with an existing loop for such non-standard technologies if the technology can be placed on an existing loop type – if not, SWBT will create a loop with the requisite characteristics in accordance with the language of Section 2.9.1 of the proposed Appendix DSL. Finally, Section 2.9.2 deals with non-standard technologies which do not conform to industry standards, have not previously been approved by a commission and which have not been successfully deployed by a carrier elsewhere. SWBT's proposed language is consistent with that of FCC 99-48 which states that a CLEC may deploy such technology if it will not significantly degrade the performance of other services.

19. Nothing about SWBT's proposed loop offerings is difficult to understand, nor is it intended to impede Covad's entry into the market. SWBT's proposed Appendix DSL language is consistent with the direction given in FCC 99-48.

Issue A (2)-Spectrum Management: What type of Spectrum Management should SWBT be allowed to employ?

20. SWBT agrees that Covad can deploy any DSL technology permitted under any FCC order or any technology that SWBT deploys. Likewise, SWBT and Covad are in agreement concerning Covad's obligation to inform SWBT of the types of technology it intends to deploy on a given loop for spectrum management purposes.

21. Covad's opposition to SWBT's use of binder group management, or selective feeder separation as part of its spectrum management proposal, is inconsistent with FCC 98-48. Covad bases its opposition on the premise that binder group integrity via binder/cable administration is not essential to the success of advanced services deployment. The FCC, in FCC 99-48, established certain spectrum management rules "[I]n order to encourage deployment of innovative technology and allow competitors the same opportunity as incumbent LECs to

deploy advanced services, while simultaneously ensuring the integrity of the network.”⁷ In addition, the FCC defined spectrum management to include binder/cable administration and deployment practices.⁸ In recognizing the need for spectrum management, the FCC found that incumbent LECs must provide CLECs, like Covad, with nondiscriminatory access to the incumbent LECs’ spectrum management procedures and policies.⁹ Further, the FCC recognized that “early attention to binder group management issues will guard against problems arising as advanced services reach higher penetration.”¹⁰ In fact, the FCC stated that it “expect[s] incumbents to manage binder groups in such a manner so as to maximize the number and types of advanced services that can be deployed.”¹¹ Further, the FCC recognized that “early attention to binder group management issues will guard against problems arising as advanced services reach higher penetration.”¹² SWBT’s proposed use of binder group management/selective feeder separation processes are appropriate and consistent with FCC objectives and orders concerning spectrum management.

22. Covad, in its petition, states that it should be allowed to request a listing of all DSL technologies being deployed on SWBT’s outside plant, not only by SWBT but by other CLEC’s as well. SWBT is not agreeable to providing Covad with that information, as Covad, during negotiations, failed to articulate any legitimate need to know such information about other competitors. SWBT’s loop qualification process will provide Covad with all of the information necessary with respect to disturbers that are in the same and adjacent binder groups that may affect Covad’s service. Under SWBT’s Loop Qualification proposed language, SWBT would

⁷ FCC 99-48 at para. 70.

⁸ *Id.* at para. 71.

⁹ *Id.* at paras. 72-73.

¹⁰ *Id.* at fn. 185.

provide Covad with information on loop make-up including loop length and the existence of load coils, repeaters, and bridge tap. Spectrum management analysis is performed and spectrum inventory data is also provided. In addition, Covad has access to tariffs which delineate SWBT's service offerings and the SBC web site to obtain information regarding SWBT's offerings.

23. Covad's petition also notes its opposition to SWBT's proposed indemnification language. What the petition fails to note is that the indemnity language is reciprocal and at parity. The language generally provides that in the event that either party elects to deploy non-standard technologies, that party will be held accountable for such deployment. Likewise, Covad does not want to hold SWBT harmless for claims arising from the deployment of technology that has already been approved and or successfully deployed elsewhere. Covad believes that because such technologies have been proven acceptable for deployment, the risk to SWBT is diminished. It is SWBT's position, however, that in the event Covad elects to deploy non-standard technologies over SWBT unbundled loops, Covad should bear the risk of such deployment, irrespective of whether Covad's proposed technology has been approved or successfully deployed elsewhere. Covad's petition offers no rationale as to why SWBT should bear the burden when Covad elects to deploy non-standard technology. Covad should be agreeable to the indemnity language if it believes the risk of its deployment of the non-standard technologies is diminished by virtue of its approval or deployment elsewhere.

Issue A (3)-Loop Qualification: What type of loop qualification and charges are appropriate?

¹¹ *Id.* at para. 76.

¹² *Id.* at fn. 185.

24. Covad is no longer opposed to SWBT's optional loop pre-qualification procedure. However, it is apparent from the petition, that Covad has confused SWBT's optional and free loop pre-qualification and its required qualification processes. The pre-qualification process is a marketing tool which gives an indicator, based primarily on loop length, whether a loop is likely to be DSL-capable without conditioning. The individual loop is not examined. Loop qualification, on the other hand, involves review of actual outside plant records for the particular loop at issue. The qualification process specifically determines the exact conditioning which may be required. SWBT's loop pre-qualification process is optional, entirely voluntary and is provided at no charge to CLECs. It is a tool Covad may use in advance of deployment to get an idea before loops are ordered as to whether such loops will require conditioning. If Covad does not believe this tool would be helpful, then it is not required to use it. Instead, Covad will get the loop-specific data it apparently seeks when it uses the required loop qualification process.

25. Unlike pre-qualification where loop length is the only indicator examined, the required loop qualification process will provide Covad with precise loop make-up data, such as loop length and existence of load coils, repeaters and bridge tap. Spectrum management analysis will also be performed, and spectrum inventory data (i.e., disturber occurrence) will also be provided. In addition, through the qualification process, SWBT will provide loop qualification data and conditioning recommendations for the requested technology. SWBT's proposed DSL Appendix language provides that Covad will be given the precise information that it is requesting in the Loop Qualification Process. Therefore, there does not appear to be an outstanding issue between the Parties with respect to the information provided in the loop qualification process.

26. In Paragraph 27 of the petition, Covad argues that loop qualification should be provided at no charge and, along with the Firm Order Commitment ("FOC"), should be provided

within 24 hours of the Order. Covad claims that real time electronic access to loop qualification is more consistent with a forward looking environment and that until such time as SWBT deploys fully automated electronic access to loop qualification, Covad should not be charged for utilizing SWBT's antiquated manual process. Covad's statement in this regard is fatally flawed given the fact that SWBT is required to unbundle only the existing network, including OSSs. Further, SWBT has offered Covad a rate for loop qualification that assumes an electronic interface is in place even though it is not because some manual processes will always be required for proper loop qualification. It does not reflect a fully manual process. SWBT's proposed rate sheet includes language with respect to the rate for loop qualification which provides: "Effective August 1, 1999, the rates for Loop Qualification reflect SWBT's planned implementation of partial mechanization. SWBT agrees to notify CLEC of any additional changes in the Loop Qualification Process and any associated rate modifications. Upon CLEC's receipt of such notification by SWBT, the Parties will meet for the sole purpose (unless otherwise agreed to by both Parties) of negotiating rates, terms and conditions for CLEC's use of the modified Loop Qualification Process." SWBT's proposed loop qualification charge is consistent with TELRIC principles and forward-looking costing methodologies.

27. Paragraph 28 of the petition does not accurately or completely set forth SWBT's position with respect to loop qualification intervals. It is SWBT's position that a standard loop qualification interval of three to five business days is available in all cases and all SWBT markets, not 15 days as alleged by Covad.

Issue A (4)-Maintenance: What type of maintenance should SWBT provide?

28. While it appears the Parties are in agreement regarding Maintenance, it is apparent that Covad still does not understand SWBT's position on this issue. Contrary to Covad's

statement, SWBT will assure loop continuity and line balance on all loops as set forth in SWBT's proposed DSL language. The only time SWBT will charge for maintenance is on loops which are unconditioned or partially conditioned and in excess of 12,000 feet. SWBT will not, however, charge to assure loop continuity and balance on these loops. Therefore, on all loops, regardless of length, where Covad has requested that conditioning not be performed, SWBT will verify line continuity and line balance and will verify suitability for POTs on those loops. In addition, as noted by Covad, for loops having had partial or extensive conditioning performed at Covad's request, SWBT will, at no charge, verify continuity, the completion of all requested conditioning, and also perform repair of gross defects which would be unacceptable for POTS and which do not result from the loop's modified design. The language contained in Paragraph 30 of the petition is almost verbatim from Section 6.1 of SWBT's proposed generic DSL language. Therefore, it does not appear that there is any outstanding issue between the Parties with respect to Maintenance.

Issue A (5)-Provisioning Intervals: What is the appropriate interval for provisioning an xDSL Loop?

29. SWBT agrees with Covad's statement that SWBT's interval for provisioning an xDSL loop should be no greater than the provisioning interval for SWBT's retail ADSL offering. SWBT does not, however, agree with the intervals proposed by Covad, as they fail to acknowledge the time necessary for loop qualification and conditioning. SWBT's position with respect to the appropriate Provisioning and Installation Intervals is set forth in Section 7 of its proposed DSL language. For existing loops, where no conditioning is requested by Covad, the interval is five (5) to seven (7) business days *after* the loop qualification process is complete or the interval applicable to our tariffed DSL-based services, whichever is less. Where conditioning

is requested, the intervals are fifteen business days for loops up to 17,500 feet or the interval applicable to our tariffed DSL-based services, whichever is less. The Parties will agree on the interval for a loop in excess of 17,500 feet where conditioning is requested. The VLS loop using the ISDN standard will be ordered and provisioned under the terms of the 2-wire digital loop as described in the agreement. In all cases, SWBT will provide parity.

30. Covad claims in Paragraph 34 that SBC subsidiary Pacific Bell, is able to verify facilities for its retail xDSL customers almost instantaneously while the customer is on the line requesting the service. This statement is not accurate – there is no instantaneous information available on the retail or wholesale side today in Pacific Bell's service territory. Pacific Bell, like SWBT, is working on an online OSS application, but that has not yet been completed. Pacific Bell does have a mechanized WebQualification system in place for loop qualification, but Pacific Bell's retail organization has to go to a separate center (the EPC) to obtain such information. Pacific Bell provides parity to both the retail and wholesale side.

Issue A (6)-Conditioning Charges: Should SWBT be permitted to impose non-recurring charges (NRC) for xDSL loop conditioning?

31. Under the Act, SWBT is permitted to recover nonrecurring costs ("NRCs") through charges for conditioning loops to make them DSL capable.¹³ Covad, despite the clear and succinct FCC opinions on this issue, inaccurately claims that SWBT should not be permitted

¹³ See FCC 99-238 at paras. 193-94. "[U]nder our rules, the incumbent should be able to charge for conditioning such loops. ... We defer to the states to ensure that the costs incumbents impose on competitors for line conditioning are in compliance with our pricing rules for **nonrecurring costs**." *Id.* (Emphasis added); see also, *Local Competition First Report and Order*, FCC 96-325, CC Docket 96-98, at para. 385 (Aug. 8, 1996). "[I]f a competitor seeks to provide a digital loop functionality, such as ADSL, and the loop is not currently conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals. ... The requesting carrier would, however, bear the cost of compensating the incumbent LEC for such conditioning." *Id.*

to levy additional charges for xDSL loop conditioning. It is SWBT's position that it is only obligated to unbundle its existing network and to the extent that there are load coils, repeaters or bridge tap present that the CLEC desires to be removed, SWBT should be compensated for such work.¹⁴ This Commission agreed with SWBT's and the FCC's position twice before in the BroadSpan (TO-99-370) and Sprint (TO-99-461) arbitrations.

Issue A (7)-DSL Loop Charges: What are the appropriate recurring and nonrecurring charges for ISDN loop rates?

32. The appropriate recurring and nonrecurring charges for ISDN loop rates in this proceeding are those determined by the Commission in the AT&T arbitration, Case No. TO-97-40.¹⁵ A copy of SWBT's rate proposal is included in Exhibit A.

Issue A (8)-Cross Connect Charges: What are appropriate cross-connect charges?

33. The cross-connect rates are those established in the AT&T arbitrated rates determined in Case No. TO-97-40 and T0-98-115.¹⁶ The ADSL Shielded Cross-Connect to Collocation (recurring and NRC) and the 2-wire digital cross-connect to collocation (recurring only) are the same as those rates agreed upon with BroadSpan and Sprint. None of these rates differentiate cross-connects without testing. SWBT's proposed cross connect charges are

¹⁴ See FCC 99-48 at fn. 10. "Conditioning' loops to remove those impediments, . . . can be expensive."

¹⁵ As the Commission is aware, SWBT has appealed the UNE prices established by the Commission in the AT&T arbitration. SWBT is willing to provide the UNE loops to Covad at the rate established in the AT&T arbitration, subject to modification based on the results of that appeal.

¹⁶ As the Commission is aware, SWBT has appealed the UNE prices established by the Commission in the AT&T arbitration. SWBT is willing to provide the UNE loops to Covad at the rate established in the AT&T arbitration, subject to modification based on the results of that appeal.

reasonable, nondiscriminatory and meet the cost-based standard required by the FCC.¹⁷ A copy of SWBT rate proposal is included in Exhibit A.

34. In negotiations, Covad asserted that it should not be required to pay a cross-connect charge since it is already included in the non-recurring charges for the loop. Covad's assertion is inaccurate and ignores the fact that costing, component pricing, and network design differs between Pacific Bell and SWBT and between California, Texas and Missouri. In Pacific Bell, for example, the cross-connect for which SWBT costs and prices separately, is included in the loop costs. In SWBT's region, the activity is included in a separate cross-connect charge. Therefore, SWBT's charges for that activity are based upon SWBT's costs and are not recovered in both the NRC for the loop and the separate cross-connect charge. The FCC's recent UNE Remand Order, wherein the FCC refused to include cross-connect facilities within the definition of the loop network element, further undercuts Covad's argument.¹⁸ Accordingly, Covad's proposed cross-connect charges do not comply with the FCC's cost-based requirements for cross-connect facilities and, therefore, should be rejected.

B. Unilateral, Substantive Modifications to SWBT's Technical Publications

Issue: Should SWBT be allowed to impose unilateral, substantive modifications to its technical publications that affect the terms and conditions of the Interconnection Agreement between the Parties?

¹⁷ See FCC 99-238 at para. 178. "[W]e continue our policy that incumbent LECs may recover the cost of providing [cross connect] facilities in accordance with our rules governing the costs of interconnection and unbundling. Charges for cross connect facilities must meet the cost-based standard provided in section 252(d)(1), and the terms and conditions of providing cross connect facilities must be reasonable and nondiscriminatory under section 251(c)(3)." *Id.*

¹⁸ *Id.* at para. 179. "[W]e decline to include cross connect facilities within the definition of the loop network element. We continue to view the cross connect as a means of interconnection with a network element, rather than as part of the network element." *Id.*

35. SWBT must have the ability to substantively modify its Technical Publications ("TechPubs") and have them apply consistently to all CLECs under the terms of their Interconnection Agreements in order to efficiently manage SWBT's network and ensure network reliability. This cannot be accomplished if SWBT has to negotiate with each and every CLEC to include the changes in their respective Interconnection Agreements.

36. On or about September 27, 1999 the Parties had reached a tentative agreement with respect to this issue. That agreement was memorialized in a letter dated September 29, 1999 addressed to Covad's counsel. The Parties had tentatively agreed that SWBT would notify Covad if SWBT made substantive modifications to its TechPubs under the terms set forth in SWBT's proposed interconnection language. However, it was SWBT's position that the term "substantive modifications" needed to be defined in the contract language so that the Parties had a clear understanding as to its meaning in the September 29, 1999 letter SWBT proposed language in this regard that was, verbatim, the language proposed by Covad in an earlier September 23, 1999 letter to SWBT. Subsequently, by letter dated October 5, 1999 Covad withdrew from its September 23, 1999 position and indicated that it was opposed to defining the term substantive" due to unforeseen issues that could arise. By letter dated October 8, 1999 SWBT requested that Covad reconsider its position and agree to a clear definition for the term "substantive changes." Covad elected not to do that and to arbitrate instead.

37. With respect to Paragraph 44 of the Petition, SWBT agrees with Covad's position. SWBT's proposed language clearly reflects that it does not plan or intend to make the terms and conditions of the Interconnection Agreement subject to SWBT's ability to unilaterally modify the Interconnection Agreement by substantively changing its Tech Pubs. Rather, SWBT simply

wants to define the term "substantive" so that there is a meeting of the minds as to what that term means. SWBT must have the ability to unilaterally and substantively modify its TechPubs.

C. Access to SWBT's Cost Studies

Issue: Should SWBT have furnished Covad with, or at least granted meaningful access to its cost studies?

38. Covad's allegation with regard to SWBT's alleged failure to provide it meaningful access to its cost studies is a red-herring. SWBT is obligated to provide cost data during negotiations pursuant to the FCC's Order in 96-98, paragraph 155 and did so here. What Covad now claims is that it should have been given copies of highly confidential data including its cost data. SWBT must be permitted to protect its competitively sensitive cost studies in the context of negotiations with competitors and is not obligated to produce such information except in the context of an arbitration. SWBT provided cost data (overview, methodology and results) to Covad during negotiations and further will make the actual cost studies available for review, pursuant to the terms of the protective order, on SWBT premises in Kansas City where Covad's counsel is also located.

PENDING ISSUES

39. SWBT agrees with Covad that the Parties are still negotiating the terms and conditions of an Acceptance Testing Process.

RESOLVED ISSUES

40. SWBT agrees that the Parties have agreed on all of the other provisions of the proposed Interconnection Agreement except those issues specifically identified in the petition and to which SWBT hereby responds. No other issues other those specifically identified above remain open or should be subject to the arbitration proceeding now before the Commission.

RELIEF REQUESTED


41. SWBT requests the Arbitrator and the Commission dismiss Covad's allegation that SWBT failed to furnish Covad with its costing information and find that SWBT did satisfy its obligation to negotiate with Covad in good faith.

42. SWBT requests the Arbitrator and the Commission deny Covad's request for unlimited opportunity to amend or modify its petition at anytime prior to the conclusion of this arbitration as such an amendment or modification would be prejudicial to SWBT.

43. SWBT requests the Arbitrator and the Commission dismiss Covad's allegations concerning the issues set forth above and adopt the language and terms proposed by SWBT.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By  _____
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by Airborne Express and by e-mail on December 3, 1999.



Katherine C. Swaller

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APPENDIX DSL

SCHEDULE 1

PRICING

Schedule 1
Attachment DSL – Pricing
Missouri

	Recurring	Nonrecurring	
		Initial	Additional

PSD #1 Capable Loop - 2-Wire Very Low-band
Symmetric Technology:

a. 2-Wire Digital “ISDN Digital
Subscriber Line” (“IDSL”) technology

Zone 1	\$ 25.79	\$ 57.77	\$ 30.22
Zone 2	\$ 42.10	\$ 57.77	\$ 30.22
Zone 3	\$ 58.44	\$ 57.77	\$ 30.22
Zone 4	\$ 41.44	\$ 57.77	\$ 30.22

b. 2-Wire Copper “Symmetric Digital
Subscriber Line” (“SDSL”)

Zone 1	\$ 12.71	\$ 26.07	\$ 11.09
Zone 2	\$ 20.71	\$ 26.07	\$ 11.09
Zone 3	\$ 33.29	\$ 26.07	\$ 11.09
Zone 4	\$ 18.23	\$ 26.07	\$ 11.09

PSD #2 Capable Loop - 2-Wire Low-band
Symmetric Technology

Zone 1	\$ 12.71	\$ 26.07	\$ 11.09
Zone 2	\$ 20.71	\$ 26.07	\$ 11.09
Zone 3	\$ 33.29	\$ 26.07	\$ 11.09
Zone 4	\$ 18.23	\$ 26.07	\$ 11.09

PSD #3 Capable Loop – Mid-band Symmetric
Technology:

a. 2-Wire Mid-band Symmetric Technology

Zone 1	\$ 12.71	\$ 26.07	\$ 11.09
Zone 2	\$ 20.71	\$ 26.07	\$ 11.09
Zone 3	\$ 33.29	\$ 26.07	\$ 11.09
Zone 4	\$ 18.23	\$ 26.07	\$ 11.09

b. 4-Wire Mid-band Symmetric
Technology

Zone 1	\$ 19.79	\$ 28.77	\$ 11.09
Zone 2	\$ 35.35	\$ 28.77	\$ 11.09
Zone 3	\$ 61.16	\$ 28.77	\$ 11.09
Zone 4	\$ 30.08	\$ 28.77	\$ 11.09

PSD #4 Capable Loop – 2 Wire High-band
Symmetric Technology

Zone 1	\$ 12.71	\$ 26.07	\$ 11.09
Zone 2	\$ 20.71	\$ 26.07	\$ 11.09
Zone 3	\$ 33.29	\$ 26.07	\$ 11.09
Zone 4	\$ 18.23	\$ 26.07	\$ 11.09

PSD #5 2-Wire Capable Loop - 2-Wire
Asymmetrical Digital Subscriber Line
Technology

Zone 1	\$ 12.71	\$ 26.07	\$ 11.09
Zone 2	\$ 20.71	\$ 26.07	\$ 11.09
Zone 3	\$ 33.29	\$ 26.07	\$ 11.09
Zone 4	\$ 18.23	\$ 26.07	\$ 11.09

PSD #7 2-Wire Capable Loop – 2-Wire

Short Reach Very High-band Symmetric

Technology

Zone 1	\$ 12.71	\$ 26.07	\$ 11.09
Zone 2	\$ 20.71	\$ 26.07	\$ 11.09
Zone 3	\$ 33.29	\$ 26.07	\$ 11.09
Zone 4	\$ 18.23	\$ 26.07	\$ 11.09

*Loop Qualification Process

N/A \$15.00

ADSL Shielded Cross Connect to Collocation
(without test)

\$.80 \$ 19.96 \$ 12.69

2-Wire Analog Cross-Connect to Collocation
(without test)

\$.31 \$ 19.96 \$ 12.69

2-Wire Digital Cross-Connect to Collocation

\$ 1.89 \$ 35.83 \$ 29.44

2-Wire Digital Cross-Connect to Collocation

\$.31 \$ 19.96 \$ 12.69

(without test)			
4-Wire Analog Cross-Connect to Collocation	\$.63	\$ 25.38	\$ 17.73
(without test)			

DSL Conditioning Options

Removal of Repeaters	N/A	\$ 289.51	\$ 13.74
Removal of Bridged Taps and Repeaters	N/A	\$ TBD	\$ TBD
Removal of Bridged Taps	N/A	\$ 484.19	\$ 24.24
Removal of Bridged Taps and Load Coils	N/A	\$ TBD	\$ TBD
Removal of Load Coils	N/A	\$ 797.78	\$ 18.18
Conditioning for loops over 17,500 ft	N/A	\$ TBD	\$ TBD

*Effective August 1, 1999, the rates for Loop Qualification reflect SWBT's planned implementation of partial mechanization. SWBT agrees to notify CLEC of any additional changes in the Loop Qualification process and any associated rate modifications. Upon CLEC's receipt of such notification by SWBT, the Parties will meet for the sole purpose (unless otherwise agreed to by both Parties) of negotiating rates, terms and conditions for CLEC's use of the modified Loop Qualification process.

The Parties acknowledge and agree that the provision of these DSL-Capable Loops and the associated rates, terms and conditions set forth above are subject to any legal or equitable rights of review and remedies (including agency reconsideration and court review). Any reconsideration, agency order, appeal, court order or opinion, stay, injunction or other action by any state or federal regulatory body or court of competent jurisdiction which stays, modifies, or otherwise affects any of the rates, terms and conditions herein, specifically including those arising with respect to the Petition of Broadspan Communications, Inc. for Arbitration of Unresolved Interconnection Issues Regarding ADSL with Southwestern Bell Telephone Company before the Missouri Public Service Commission, Case No. TO-99-370, or any other proceeding, the Parties shall expend diligent efforts to arrive at an agreement on conforming modifications to this Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or the provisions affected shall be handled under the Dispute Resolution procedures set forth in this Agreement.

John T. Stankey
Vice President
Industry Markets

SBC Telecommunications, Inc.
70 Third Street, Room 714
San Francisco, California 94107
Phone 415 542-4500
Fax 415 641-0885

The SBC logo consists of the letters "SBC" in a bold, sans-serif font, enclosed within a stylized circular graphic that resembles a signal or a network connection.

July 26, 1999

Ms. Cathy Hemmer
President-Network Services
Covad Communications Company
2330 Central Expressway
Santa Clara, CA 95050

Dear Cathy:

Based on our prior negotiations in Texas, it appears likely that we will have substantial differences of opinion concerning several fundamental aspects of our Interconnection Agreements for Missouri, Oklahoma, Kansas and Arkansas ("MOKA"). These differences of opinion likely will need to be resolved by the relevant state commissions in light of the public policy considerations in each of those states.

Consistent with our willingness to work with you to expedite your market entry in Texas by, for example, offering to process collocation requests in advance of a final Interconnection Agreement and by entering into an interim Interconnection Agreement, we want to offer you the opportunity to enter an interim agreement in the northern four states incorporating provisions that already have been approved by regulators in one or more of these states. We think these interim terms are reasonable and would allow Covad, if it so desires, to immediately enter the market in each of the MOKA states.

Specifically, SWBT is willing to extend to Covad the rates, terms and conditions for loop qualification and loop conditioning recently established by the Missouri Public Service Commission ("PSC") in the *Petition of Broadspan Communications, Inc. for Arbitration of Unresolved Issues Regarding ADSL with Southwestern Bell Telephone Company*, Case No. TO-99-370, in each of the MOKA states, on an interim basis, until such time as final Interconnection Agreements are negotiated and/or arbitrated in those states. Although the Broadspan Order explicitly addresses ADSL-capable loops, SWBT is willing to expand the scope of that interim contract to include additional DSL-capable loop types that should cover your business needs. In addition, SWBT is willing to extend to Covad the appropriate arbitrated loop rates established by each of the respective state commissions for such DSL-Capable loops, subject to any appeals. In Kansas, the loop rates, which have been approved by the Commission in several proceedings under Section 252 of the Federal Act, will be subject to modification based on the outcome of the pending generic cost proceeding.

Exhibit B

Ms. Cathy Hemmer

-2-

July 26, 1999

In addition, on a state-specific basis, SWBT will incorporate in the agreement rates, terms and conditions for transport which have already been approved by the state commissions in arbitrations and resulting agreements from the applicable state. Such terms would govern the provision of transport under the interim agreement until such time as an Interconnection Agreement is finalized and approved by the state commissions in each of the MOKA states.

The interim agreement would be subject to, and replaced by, the terms of the final Interconnection Agreements negotiated and/or arbitrated in each of those states upon approval by each of the state commissions; provided, however, the terms and conditions of such transport would be subject to the outcome of any appeals.

Finally, as in Texas, SWBT is willing to begin processing collocation orders immediately, in advance of a final Interconnection Agreement, in each of the MOKA states. If Covad would like SWBT to handle its orders on an expedited basis, you should provide us with your applications for collocation on a measured basis as they are completed, rather than waiting to send all of the applications at one time as you did in Texas. In any event, SWBT is willing to extend to Covad rates, terms and conditions for collocation which have already been ordered and approved by each of the commissions in the MOKA states.

We hope that you will seriously consider our offer as a genuine attempt to provide you with everything you need from SWBT to enter the MOKA markets on an expedited basis under rates, terms and conditions which have already been determined to be reasonable by one or more public service commissions in our northern four states.

Please contact me if you should have any questions. We look forward to hearing from you.

Sincerely,

John

John T. Stankey
Vice President-Industry Markets

Rec. Bill Drew
Amy Wagner

Exhibit B



Via E-Mail

September 29, 1999

Laura A. Izon
Covad Communications
2330 Central Expressway
Santa Clara, California 95050

Re: Negotiations for Interconnection Agreements in MOKA

Dear Laura:

This is in response to your September 23, 1999 letter and to follow-up our September 27, 1999 conference call.

Collocation Appendix

Section 2.10

On our September 27, 1999 conference call, the Parties tentatively agreed to add the following language at the end of SWBT's original Section 2.10 (now 2.11):

Once Covad has placed equipment in the initial collocation space within a Central Office, its right to lease additional collocation space will be commensurate with SWBT's reservation rights, and its obligation to place additional equipment in that reserved space will correspond to SWBT's own obligation, if any.

Please confirm whether the Parties are now in agreement on this issue.

Section 13.0

On our September 27, 1999 conference call, SWBT agreed to incorporate Covad's proposed language at the end of Section 13.0 so that the language will now read:

In addition to any other provision hereof, Collocator agrees to indemnify, defend and save harmless SWBT (including its officers, directors, employees, and other agents) from any and all claims, liabilities, losses, damages, fines, penalties, costs, attorneys' fees or other expenses of any kind arising in connection with Collocator's use of the dedicated

collocation space, conduct of its business activity, in or about the dedicated collocation space or any act or omission of Collocator (including its officers, directors, employees, agents, contractors, servants, invitees, or licensees), except to the extent that such claims arise from SWBT's own negligence and/or intentional misconduct.

Subloops/Remote Collocation of DSLAMS

As discussed in our September 27, 1999 conference call, SWBT will agree to add language to Section 30.18, "Intervening Law, in the General Terms and Conditions of our MOKA Agreements to address any FCC ruling relating to the provisioning of subloops, Remote Collocation and/or Line Sharing. Specifically, SWBT would agree to add the following language to such Section:

Upon the request of either Party, the Parties shall meet within fourteen (14) days following the effective date of any FCC order ("Order") relating to the provisioning of Subloops, Remote Collocation and/or Line Sharing, to commence negotiations regarding the implementation of such Order. The Parties agree that the Order shall be incorporated into the Agreement within a reasonable time following commencement of such negotiations, subject to any appeal, reconsideration, stay or injunction which modifies, stays or otherwise affects ~~such~~ Order.

and a decision made by
We believe we previously addressed the other comments you made regarding subloops in your September 23, 1999 letter. Specifically, in our September 16, 1999 letter to you, we advised that SWBT would continue to abide by all regulatory decisions of state and federal regulators and where such regulators had determined that SWBT should provide a subloop element, subloop was available to Covad and other CLECs through the MFN process. Covad has apparently elected not to pursue that option, although it is certainly an option which is still available to you. With respect to your question on where subloop has been ordered, it is my understanding that subloop was previously ordered in Missouri and Kansas. However, we would encourage Covad to conduct its own research into the arbitration decisions of each of the MOKA state regulatory commissions to ensure that such understanding is accurate. Finally, as previously noted, we fully recognize that the FCC is currently reviewing the issue of subloop in the UNE remand proceeding and its rules on the issue may change in the future. In such event, as previously discussed, SWBT will reevaluate its position on this issue to ensure we continue to comply with all regulatory rules and decisions.

Cost Information

Your assertion that SWBT is only willing to provide Covad with summary cost information is not accurate. Rather, SWBT previously agreed to provide Covad summary detail cost support on Covad's premises and advised that it is willing to make the back-up cost detail available for inspection by Covad on SWBT's premises. Covad has advised it does not wish to review the back-up cost detail information on SWBT's premises.

Therefore, as previously discussed, SWBT will forward the summary cost support to Covad for SWBT's proposed 2-wire digital loop rate and the rates for conditioning DSL-Capable loops in Kansas and Missouri for review by Covad on its premises upon receipt by SWBT of the executed originals of the attached Non-Disclosure Agreements for each of the respective states. As discussed on our September 27, 1999 conference call, Covad may make two (2) copies of the cost summary information SWBT is providing to Covad for review by Ms. Terry Murray and Mr. Scott Cratty with Covad. The original shall be retained by Covad Legal. You have also confirmed that the only individuals who will review such summary cost detail are: Terry Murray, Scott Cratty, Bernard Chao, Chris Goodpastor and Laura Izon. It is also our understanding that all of these individuals are employed in-house by Covad. If our understanding is not accurate, please let me know as soon as possible.

Firm Order Commitments

The Parties have agreed to the Firm Order Commitment language set forth in your September 23, 1999 letter.

Acceptance Testing

Attached as Attachment "A" is SWBT's proposed language with respect to Acceptance Testing which we briefly discussed on our September 27, 1999 conference call. Please let us know whether such language is acceptable to Covad. If the Parties can agree on this language, then we do not believe the operational meeting discussed in your September 23, 1999 letter would be necessary. However, if Covad plans to propose significant changes to such language, then we believe that an operational meeting might be the best and most efficient way to attempt to negotiate some mutually satisfactory language with respect to this issue.

While we appreciate the information which Covad reportedly gathered in connection with its operational experience with Pacific Bell, we believe the language set forth in Attachment "A" hereto comprehensively addresses Covad's perceived need for acceptance testing. Under such proposal, SWBT would only charge Covad for a loop which is successful. In other words, Covad will not be charged for Acceptance Testing if a problem with the loop is determined to have been created or caused by SWBT equipment, facilities or personnel. As reflected by such language, it is SWBT's belief that it will turn up loops appropriate and in the same manner, irrespective of whether a loop is or is not subject to Acceptance Testing.

Finally, SWBT is also willing to agree to hold quarterly or semi-annual cooperative meetings with Covad to address any concerns or problems with respect to Acceptance Testing should they arise. It is our hope that through such meetings, we could manage the process to both companies' satisfaction.

We remain willing to discuss this issue further with Covad should you so desire or to consider any proposed redlines Covad has to such language.

Confidentiality

On our September 27, 1999 conference call, the Parties tentatively agreed to the following language:

Only personnel employed by SWBT with a need to know to implement requests from Covad will be granted access to Covad's proprietary information, subject to an appropriate non-disclosure agreement. None of Covad's proprietary information will be shared with anyone in SWBT's retail department. SWBT shall not use any of Covad's proprietary information for marketing or selling its own retail services.

Please confirm that the Parties are now in agreement on this issue.

Outstanding Collocation Issues

Section 2.6

In your September 23, 1999 letter, you advised that Covad will agree to the intervals and pricing contained in this Section of the Collocation Appendix provided that SWBT make available to Covad its costing information and studies that support its collocation pricing, pursuant to a Non-Disclosure Agreement. On our September 27, 1999 call, SWBT once again advised Covad that it would provide Covad with the cost detail support information upon which the ICB pricing is based following the placement of an order for collocation by Covad. On the call, Covad clarified that it did not intend to request cost studies, but rather, its discussion on this issue relates to Section 6.12 below. It appears the Parties have now reached a tentative agreement with respect to Section 6.12. Therefore, it appears that there is no outstanding issue between the Parties with respect to Section 2.6.

Please confirm whether our understanding is accurate.

Section 3.1.3

In your September 23, 1999 letter, you requested that certain language be added as the third paragraph to this Section. On our September 27, 1999 conference call, Covad tentatively agreed to certain revisions proposed by SWBT to Covad's language. Based upon our discussion, the language in Section 3.1.3 would read:

Consistent with Paragraph 51 of the FCC's 99-48 Order in CC Docket 98-147, SWBT will not require the first collocating party to pay the entire cost of space preparation, security measures, including the cost of constructing cages around SWBT's own equipment, and other collocation charges. Such charges shall be allocated on a pro-rated basis among all collocators. It will be SWBT's sole obligation to pay for the removal of

and/or rearrangement of cages surrounding its equipment in order to free up collocation space.

Please confirm whether the Parties are now in agreement on this issue.

Section 5.1

On our September 27, 1999 conference call, the Parties reached a tentative, conceptual agreement with respect to the issue regarding modifications to technical publications referenced in the DSL and Collocation Appendices of the Interconnection Agreement. For clarification, we believe this is a non-issue with respect to DSL since SWBT's generic DSL language only contains one reference to its technical publications and that is in Section I which provides: "SWBT shall publish Technical Publications for the purpose of communicating current standards and their application within the PSTN, as set forth in paragraph 72 of FCC Order 99-48 (rel. March 31, 1999) CC Docket No. 98-147." Therefore, Covad is not bound by such Technical Publications, nor are such Technical Publications incorporated by reference into the DSL Appendix. Consequently, we believe this is only an issue with respect to the Collocation Appendix and we propose that the following language be included there to address Covad's concerns:

(a) In the event that SWBT makes any substantive changes to its Technical Publications referenced in the Agreement, as that term is defined in subsection (c) below, SWBT agrees to notify Covad of such changes by Accessible Letter or otherwise. Upon receipt of such notice, Covad shall have forty-five (45) days within which to raise any concerns it has with respect to any SWBT proposed substantive changes. In the event Covad raises any such concerns, the Parties shall attempt to negotiate and resolve such concerns. Any disputes with respect to substantive changes to SWBT's Technical Publications shall be subject to the dispute resolution process set forth in the Agreement. If Covad does not raise any concerns within forty-five (45) days of receipt of notice by SWBT of any substantive changes to its Technical Publications, then such changes shall be deemed incorporated into the Agreement.

(b) If SWBT believes a change to a Technical Publication is not substantive in nature, it shall not be obligated to provide Covad with notice under subsection (a) above; provided, however, in the event that Covad learns of a change to a Technical Publication that it did not receive notice of, but which it believes to be substantive in nature, it may dispute such change under the dispute resolution process set forth in the Agreement.

(c) For purposes of subsections (a) and (b) above, the term "substantive changes" shall mean any changes to SWBT Technical Publications referenced in the Agreement which affect costs, timing and availability of space and/or services.

On our September 27, 1999 conference call, Covad advised that it did not wish to define the term "substantive changes." However, we believe that the term needs to be defined up front so that the Parties have a clear understanding as to what that term means. Thus, we have included the language, verbatim, that Covad requested in its September 23, 1999 letter with respect to this issue. Please let us know whether such language is acceptable to Covad or if you have any proposed revisions to such language

Section 6.12

On our September 27, 1999 conference call, SWBT tentatively agreed to make available all subcontractor pricing to a CPA, Covad attorney and Covad engineer, subject to a non-disclosure agreement, for the purpose of verifying that the work was performed on Covad's behalf, that it was accurately billed and that such charges were accurately passed on to Covad. Covad agreed that it would not use such information for any other purpose, including its own negotiations with such vendor(s)/subcontractor(s).

Please confirm whether the Parties are now in agreement on this issue.

Outstanding DSL Issues

We agree with the assessment in your September 23, 1999 letter that the Parties are not in agreement on the following DSL issues: Loop Provisioning, Provisioning Intervals, ISDN Loop Rates, Conditioning Charges, Spectrum Management and Loop Qualification.

Interim Agreement

In your September 23, 1999 letter, you requested a copy of the Missouri Broadspan Agreement. We will forward a copy of such document to you.

This is also to follow-up our September 27, 1999 conference call relating to SWBT's July 26, 1999 proposal to Covad to enter into Interim Agreements in each of the MOKA states. As addressed on such call and in our July 26 letter, SWBT is willing to extend to Covad the following rates, terms and conditions to allow Covad to immediately enter the market for DSL-based services in each of the MOKA states:

SWBT is willing to extend to Covad the rates, terms and conditions for loop qualification and loop conditioning established by the Missouri Public Service Commission ("PSC") in the *Petition of Broadspan Communications, Inc. for Arbitration of Unresolved Issues Regarding ADSL with Southwestern Bell Telephone Company*, Case No. TO-99-370, in each of the MOKA states, on an interim basis, until such time as final Interconnection Agreements are negotiated and/or arbitrated in those states. Although the Broadspan Order explicitly addresses ADSL-capable loops, SWBT is willing to apply that arbitration order in the interim agreement to additional DSL-capable loop types that should cover your business needs.

In addition, SWBT is willing to offer to Covad the appropriate arbitrated loop rates established by each of the respective state commissions for such DSL-Capable loops, subject to any appeals. In Kansas, the loop rates, which have been approved by the Commission in several proceedings under Section 252 of the Federal Act, will be subject to modification based on the outcome of the pending generic cost proceeding.

In addition, on a state-specific basis, SWBT will incorporate in the interim agreement rates, terms and conditions for transport which have already been approved by the state commissions in arbitrations and resulting agreements from the applicable state, subject to any appeals. Such terms would govern the provision of transport under the interim agreement until such time as an Interconnection Agreement is finalized and approved by the state commissions in each of the MOKA states.

The interim agreement would be subject to, and replaced by, the terms of the final Interconnection Agreements negotiated and/or arbitrated in each of those states upon approval by each of the state commissions; provided, however, the terms and conditions of such final agreements would be subject to the outcome of any appeals.

Finally, as in Texas, SWBT is willing to begin processing collocation orders immediately, in advance of a final Interconnection Agreement, in each of the MOKA states. As previously discussed on a number of occasions, if Covad would like SWBT to handle its orders in an expeditious manner, you should provide us with your applications for collocation on a measured basis as they are completed, rather than waiting to send all of the applications at one time. In any event, SWBT is willing to extend to Covad the rates, terms and conditions for collocation which the Parties have negotiated for our final Interconnection Agreements in each of the MOKA states upon confirmation from Covad that the Parties are now in agreement with respect to all of the outstanding issues relating to collocation above, and that the only issues that will be arbitrated in the MOKA state will pertain to DSL.

As discussed on our September 27, 1999 conference call, it will be necessary for SWBT and Covad to agree upon an existing Interconnection Agreement in each of the respective states to operate under pending the negotiation and/or arbitration of a final Interconnection Agreement by the Parties in each of the MOKA states.

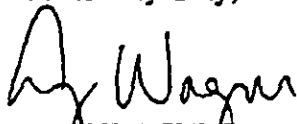
We hope that this clarifies our offer for an interim agreement in each of the MOKA states, which we remain willing to offer, should Covad so desire.

Finally, it is important to note that the concessions and agreements noted above with respect to the collocation issues are being offered by SWBT to attempt to reach a complete settlement as to all of the outstanding collocation issues between the Parties. In the event that Covad elects to arbitrate any collocation issues, SWBT reserves the right to withdraw any of the concessions/agreements set forth above.

We believe that this fully addresses the issues outlined in your September 23, 1999 letter and the matters discussed on our September 27, 1999 conference call.

We look forward to hearing from you and to discussing these matters further on our follow-up conference call scheduled for Thursday, September 30, 1999 from 11:00 a.m. to Noon, CST.

Yours very truly,


AMY WAGNER