

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of an Investigation for the Purpose )  
of Clarifying and Determining Certain Aspects )  
Surrounding the Provisioning of Metropolitan ) Case TO-99-483  
Calling Area Service after the Passage and )  
Implementation of the Telecommunications )  
Act of 1996. )

**BROADSPAN COMMUNICATIONS, INC.**  
**d/b/a PRIMARY NETWORK COMMUNICATIONS, INC.'S**  
**REPLY BRIEF AND PROPOSED REPORT AND ORDER**

COMES NOW BroadSpan Communications, Inc., d/b/a Primary Network Communications, Inc., and for its Proposed Report and Order adopts the proposal filed by Gabriel Communications of Missouri, Inc., and for its Reply Brief in this case adopts the Reply Brief of Gabriel Communications of Missouri, Inc. filed in this proceeding on all issues except the following:

c. Should there be any restrictions on the MCA Plan (for example resale, payphones, wireless, internet access, etc.)?

SWBT concedes that the Commission should not restrict current use of MCA service by ISPs and other customers that place local calls to ISPs. (SWBT Brief, p. 43). The Commission has already established that reciprocal compensation applies to all MCA traffic exchanged between competing carriers, which includes local calls to ISPs. Given the Commission's express decision to adopt reciprocal compensation for MCA traffic in the AT&T arbitration, which has subsequently been incorporated into numerous Commission - approved interconnection agreements, there is no room for legitimate debate on this point. (Cadieux Direct, p. 42-43, citing Arbitration Order, Case No. TO-97-40, issued December 11, 1996, Rebuttal, p. 23-24, 26, 39-41; Hughes Tr. 1006-07) (See also Arbitration Order Regarding Motions for Clarification, p. 9 and Attachment B pages 18-22 (October 2, 1997)). Nearly all traffic subject to reciprocal

compensation is MCA traffic. (Voight Tr. 211). SWBT's assertion that the Commission did not address MCA traffic in the AT&T arbitration is untenable. In that case, SWBT's witness expressly reassured the Commission that CLECs would be able to provide MCA (Kohly Direct p.9-10), and SWBT expressly argued for reciprocal compensation because of the adverse impacts of bill-and-keep on it that it said would otherwise result from the provision of MCA service by CLECs. As Mr. Cadieux testified:

As summarized by the Commission, SWBT contended that "if AT&T and MCI do not pay access charges, SWBT will suffer financial losses and 'be unable to effectively compete through its MCA offerings.' The current bill and keep arrangement would allow AT&T and MCI to offer MCA service to its customers without charging them the MCA additive." Arbitration Order, p. 40, Case No. TO-97-40 (December 11, 1996).

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It is noteworthy that SWBT did not contend in the arbitration, as it does now, that CLECs could not participate in the MCA absent Commission action. Rather, as shown by the Commission's summary of SWBT's position set forth above, SWBT acknowledged that CLECs would be participating in the MCA and expressed concerns about its ability to compete with them. Specifically, in its Initial Brief to the Commission (citing the testimony of witness Bill Bailey), SWBT contended that "the MCA additive which is charged by SWBT is set sufficiently high that the carriers will be able to pay access charges while profitably providing 6+ to 40+ hours of MCA calls to customers while matching SWBT's MCA rates." SWBT also described AT&T and MCI as being "able to offer full termination from and to MCA areas." (SWBT Initial Brief, pages 73-74, Case No. TO-97-40).

(Cadieux Rebuttal p. 25 and 27).

SWBT apparently proposes that if the Commission rejects SWBT's efforts to generally overturn existing reciprocal compensation contract provisions as to all MCA traffic, the Commission should nonetheless overturn such contract provisions with respect to local calls to ISPs. (SWBT Brief, p. 44). To the extent SWBT seeks retroactive relief, the Commission cannot act ex post facto.<sup>1</sup> Further, the Commission cannot alter the contracts either retroactively or prospectively as discussed under issue f., either as to all MCA traffic or only MCA calls to ISPs.

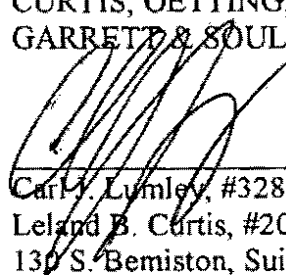
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<sup>1</sup> There is a separate dispute over the applicability of reciprocal compensation to local calls to ISPs pending before the Commission that should be addressed based on the record being developed that specifically addresses the issue. The parties have not provided the necessary information regarding their negotiations in this case. See Case No. TC-2000-225.

MCA call to ISPs exchanged between adjoining carriers should continue to be subject to bill-and-keep along with all other MCA calls, as the rural ILECs request. (Case Brief, p. 12, MITG p. 9-10). However, as shown in PNC's Initial Brief, the FCC requires that MCA be available to ISPs as subscribers.

Respectfully Submitted,

CURTIS, OETTING, HEINZ,  
GARRETT & SOULE, P.C.



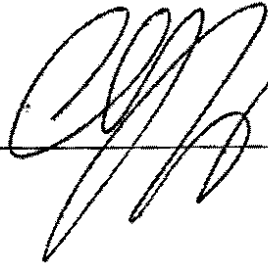
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**CERTIFICATE OF SERVICE BY MAIL**

A true and correct copy of the foregoing was served upon the parties identified in the attached service list on this 17 day of July, 2000, by placing same in a postage paid envelope and depositing in the U.S. Mail.



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