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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 27th  
day of July, 1999.

Petition of BroadSpan Communications, Inc.)  
for Arbitration of Unresolved )  
Interconnection Issues Regarding ADSL ) Case No. TO-99-370  
with Southwestern Bell Telephone Company. )

ORDER DENYING APPLICATIONS FOR REHEARING FILED BY SOUTHWESTERN BELL  
TELEPHONE COMPANY AND BROADSPAN COMMUNICATIONS, INC.

On June 15, 1999, the Commission issued an Arbitration Order bearing an effective date of June 22. The Arbitration Order sought to resolve three interconnection issues between BroadSpan Communications, Inc., d/b/a Primary Network Communications (BroadSpan), and Southwestern Bell Telephone Company (SWBT). Each of the three issues between the parties concerns Asymmetrical Digital Subscriber Line (ADSL) service. With regard to those three issues, the Arbitration Order directed as follows:

1) That SWBT shall charge BroadSpan a non-recurring charge of \$15.00 per loop for loop qualification services;

2) That SWBT shall charge BroadSpan a non-recurring charge for loop conditioning on loops between 12,000 and 17,500 feet in length in the following amounts:

Removal of Repeater Option	\$289.51
Removal of Bridged Tap Option	\$484.19
Removal of Load Coil Option	\$797.78

That for loops beyond 17,500 feet in length, SWBT shall develop discrete pricing component charges consistent in principle with the charges authorized in this order; and

3) That SWBT shall charge BroadSpan a non-recurring charge of \$19.96 for an initial shielded cross-connect and \$12.69 for additional shielded cross-connect.

On June 21, SWBT and BroadSpan filed separate Applications for Rehearing.

SWBT requested rehearing on two issues. First, SWBT disagreed with the Commission's order that its non-recurring charges for disconnecting interfering devices be reduced by its retail discount of 19.2 percent. Second, SWBT argued that the Commission should not have ordered SWBT to provide shielded cross-connect at the same nonrecurring rates as the standard 8dB (non-shielded) cross-connect.

BroadSpan's Application for Rehearing raised many more issues. In brief, BroadSpan argues that the Commission should have set a lower rate for loop qualification, that the Commission should have accepted BroadSpan's proposed recurring charge of \$0.62 per loop for loop conditioning or that at least it should have reduced SWBT's proposed non-recurring charges for such conditioning by a greater amount, and that the Commission should have ordered SWBT to submit for Commission review the discrete pricing components it is to develop for conditioning loops over 17,500 feet in length. Finally, BroadSpan argued that the Commission failed to establish non-recurring rates for additional conditioning performed at the same time at the same location, an issue that was not presented to the Commission for consideration.

Both Applications for Rehearing share a common flaw. They ask the Commission to rehear this matter when it no longer has the authority to do so. The Commission's authority to hear and decide this arbitration case derives entirely from 47 U.S.C. 252(b) (Section 252 of the Telecommunications Act of 1996). 47 U.S.C. 252(b)(4)(C) explicitly states that "[the state commission] shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section." (emphasis added). In this case, the statutory 9-month period expired on June 22, one day after SWBT and BroadSpan filed their requests for reconsideration. If, at this time, the Commission were to grant reconsideration in this case it would violate the requirements of the Telecommunications Act. See. AT&T Communications of the South Central States, Inc. v. BellSouth Telecommunications, Inc., 20 F.Supp. 2d 1097 (E.D. Ky. 1998).

In short, the Commission no longer has the authority to reconsider or rehear its Arbitration Order. If the parties are dissatisfied with the Commission's Arbitration Order, their proper remedy is to submit an arbitration agreement based on the arbitration order, or other provisions upon which the parties can agree. 47 U.S.C. 252(e)(4) requires that the Commission approve or reject that agreement within 30 days of its submission. If any party is aggrieved by the Commission's determination to approve or reject the agreement, 47 U.S.C. 252(e)(6) allows it to bring an action in an appropriate federal district court to

determine whether the agreement meets the requirements of the Telecommunications Act.

As the Commission has no authority to rehear its Arbitration Order after the expiration of the authority granted by the Telecommunications Act, the Applications for Rehearing filed by SWBT and BroadSpan must be denied.

**IT IS THEREFORE ORDERED:**

1. That the Application for Rehearing filed by Southwestern Bell Telephone Company is denied.
2. That the Application for Rehearing filed by BroadSpan Communications, Inc., d/b/a Primary Network Communications, is denied.
3. That this order shall become effective on July 27, 1999.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Crompton, Murray, Schemenauer and Drainer, CC., concur  
Lumpe, Ch., dissents

Woodruff, Regulatory Law Judge

**RECEIVED**

**JUL 27 1999**

COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION