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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 12th
day of August, 1998.

In the Matter of the Petition of BroadSpan)
Communications, Inc. for Approval of an)
Interconnection Agreement with Southwestern) Case No. TO-98-518
Bell Telephone Company Pursuant to)
Section 252 of the Telecommunications Act)
of 1996.)

ORDER APPROVING INTERCONNECTION AGREEMENT

This case was established when BroadSpan Communications, Inc. (BroadSpan) filed a petition for approval of an interconnection agreement with Southwestern Bell Telephone Company (SWBT) on May 19, 1998 pursuant to the federal Telecommunications Act of 1996 (the Act), 47 U.S.C. § 151 et seq. BroadSpan wishes to adopt the agreement filed on March 4 by SWBT and AT&T Communications of the Southwest, Inc. (AT&T) in Case No. TO-98-115 (the "March 4" or "SWBT/AT&T" agreement) in its entirety. SWBT and AT&T signed and filed the March 4 agreement in compliance with, and in order to implement, the Commission's December 23, 1997 Arbitration Order in Case No. TO-98-115. On March 19, the Commission approved the agreement between SWBT and AT&T. The Commission's order became effective on March 30.

BroadSpan has submitted with its petition an agreement (Agreement) that has been signed by BroadSpan but not SWBT. BroadSpan stated in its petition that the Agreement is identical in substance to the agreement between AT&T and SWBT, with the exceptions of: 1) the change in identity of the interconnecting local competitor from AT&T to

BroadSpan; and 2) changes to certain dates and deadlines resulting from the passage of time since Commission approval of the SWBT/AT&T agreement. BroadSpan states that, although SWBT drafted the proposed Agreement, SWBT has refused to sign the Agreement. BroadSpan urges its approval pursuant to Section 252(i) of the Act, and requests that the Commission order SWBT to sign the Agreement. Alternatively, BroadSpan requests mediation and arbitration of the dispute between BroadSpan and SWBT regarding the proposed Agreement.

On May 26, SWBT filed objections to the interconnection Agreement signed by BroadSpan. BroadSpan replied to SWBT's objections on May 27, and SWBT responded on June 2. SWBT modified its objections on June 8.

The Commission, by its Order and Notice issued June 29, established a deadline of July 14 for proper parties to request permission to participate without intervention or to request a hearing. The Commission indicated that SWBT's objections would be taken up prior to the expiration of 90 days following the filing of BroadSpan's petition, but did not order SWBT to participate as a necessary party. No parties requested to participate without intervention. The Commission's Order and Notice also directed parties wishing to file comments to do so by July 14 and directed the Commission Staff (Staff) to file a memorandum advising the Commission of its recommendation by July 14. SWBT filed suggestions on July 20 that reiterated its modified objections. SWBT also asserted that it is "already a party to the case." BroadSpan filed a response to SWBT's suggestions on July 21. On August 3, the Staff of the Commission filed a Memorandum in which it recommended approval of the Agreement. Staff's counsel simultaneously filed a motion to late file the Staff's recommendation.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). SWBT is a necessary party. Although SWBT urges the Commission to reform the proposed Agreement to address its objections, SWBT has not requested a hearing on the proposed interconnection Agreement. No other party has requested a hearing. Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

Findings of Fact

The Commission finds that Staff's motion to late file its recommendation should be granted.

Staff states in its Memorandum that it has reviewed the Agreement and it is identical to the SWBT/AT&T agreement approved by the Commission in Case No. TO-98-115, except in the respects identified by BroadSpan. Staff states that the Agreement does not appear to discriminate against telecommunications carriers not a party to the agreement and does not appear to be against the public interest. Staff recommends that the Commission approve the Agreement and order SWBT and BroadSpan to submit a fully executed agreement with pages numbered seriatim on the bottom right hand margin, and that the parties be required to submit any modifications or amendments to the Commission for approval. The Commission has reviewed Staff's Memorandum and the relevant case papers and determined that BroadSpan's May 19 Agreement is substantively identical to the SWBT/AT&T interconnection agreement approved in Case No. TO-98-115.

Conclusions of Law

The issues raised by SWBT are legal rather than factual. SWBT states in its June 2 and June 8 objections that it refuses to sign the submitted Agreement because the Commission's arbitration order in Case No. TO-98-115 was based on an erroneous interpretation of federal law. SWBT suggests that BroadSpan cannot adopt those portions of the Agreement that were signed by SWBT only in compliance with a Commission order that is contrary to law. SWBT further argues that, even if it had voluntarily agreed to the terms of the Agreement that relate to separation and recombination of unbundled network elements with AT&T in Case No. TO-97-40 and this was the basis for the Commission's decision in Case No. TO-98-115, SWBT has not reached any agreement to such terms with BroadSpan. SWBT specifies provisions of BroadSpan's May 19 filing that should not be approved for these reasons, but stated that the rest of the Agreement should be approved by the Commission.

Staff states in its recommendation that BroadSpan's proposed Agreement meets the requirements of the Act and should be approved. Staff points out that the Commission has previously addressed this issue in Case No. TO-98-200, involving MCI Telecommunications Corporation and its Affiliates, including MCI metro Access Transmission Services, Inc. (MCI) and SWBT. In Case No. TO-98-200, SWBT raised the same objection to MCI's adoption of the SWBT/AT&T agreement. The Commission overruled SWBT's objections and ordered SWBT to sign, and the parties to file, a fully executed copy of the agreement. The Commission found that SWBT would not be bound by any portions of the adoptive agreement that are eventually invalidated or stayed on appeal in Case No. TO-98-115. BroadSpan's July 21 response to SWBT's objections similarly states that

the issue raised by SWBT was resolved in Case No. TO-98-200 and that SWBT will not be bound by any portion of the Agreement that is overturned or stayed on appeal in Case No. TO-98-115.

Because BroadSpan's petition is made under the same circumstances as MCI's petition in Case No. TO-98-200, the Commission concludes that SWBT will preserve its right to contest the unbundling and recombination terms of the SWBT and AT&T agreement in Case No. TO-98-115 on appeal, and will not be required to offer to BroadSpan any terms found by a reviewing tribunal to be contrary to the Act. Therefore, the Commission concludes that it should overrule the objections filed by SWBT and approve BroadSpan's May 19 Agreement. The Commission has considered the Agreement, the arguments of the parties, and Staff's recommendation. Based upon that review the Commission has reached the conclusion that the Agreement meets the requirements of the Act in that it does not unduly discriminate against a nonparty carrier, and implementation of the Agreement is not inconsistent with the public interest, convenience and necessity. The Commission finds that approval of the Agreement should be conditioned upon the parties submitting any modifications or amendments to the Commission for approval pursuant to the procedure set out below. The Commission will order SWBT and BroadSpan to sign the agreement and submit it to the Commission's Staff as described in this order.

Modification Procedure

This Commission's first duty is to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act. 47 U.S.C. § 252. In order for the Commission's role of review and approval to be effective, the Commission

must also review and approve modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection. 47 U.S.C. § 252(h). This duty is in keeping with the Commission's practice under its own rules of requiring telecommunications companies to keep their rate schedules on file with the Commission. 4 CSR 240-30.010.

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all modifications, in the Commission's offices. Any proposed modification must be submitted for Commission approval, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

The parties shall provide the Telecommunications Staff with a copy of the resale or interconnection agreement with the pages numbered consecutively in the lower right-hand corner. Modifications to an agreement must be submitted to the Staff for review. When approved the modified pages will be substituted in the agreement which should contain the number of the page being replaced in the lower right-hand corner. Staff will date-stamp the pages when they are inserted into the Agreement. The official record of the original agreement and all the modifications made will be maintained by the Telecommunications Staff in the Commission's tariff room.

The Commission does not intend to conduct a full proceeding each time the parties agree to a modification. Where a proposed modification is identical to a provision that has been approved by the Commission in another agreement, the modification will be approved once Staff has verified that the provision is an approved provision, and prepared a

recommendation advising approval. Where a proposed modification is not contained in another approved agreement, Staff will review the modification and its effects and prepare a recommendation advising the Commission whether the modification should be approved. The Commission may approve the modification based on the Staff recommendation. If the Commission chooses not to approve the modification, the Commission will establish a case, give notice to interested parties and permit responses. The Commission may conduct a hearing if it is deemed necessary.

IT IS THEREFORE ORDERED:

1. That Southwestern Bell Telephone Company is joined as a necessary party.

2. That the agreement submitted on May 19, 1998 by BroadSpan Communications, Inc. is approved.

3. That Staff's motion to late file Staff's recommendation is granted.

4. That Southwestern Bell Telephone Company's objections are overruled.

5. That Southwestern Bell Telephone Company and BroadSpan Communications, Inc. shall file a copy of this agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner, no later than August 27, 1998.

6. That any changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedures outlined in this order.

7. That the Commission, by approving this agreement, makes no finding as to whether Southwestern Bell Telephone Company has fulfilled the requirements of Section 271 of the Telecommunications Act of 1996,

including the competitive checklist of any of the fourteen items listed in Section 271(c)92) (B).

8. That this order shall become effective on August 17, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Crumpton, Schemenauer and Drainer, CC., concur.
Lumpe, Ch., and Murray, CC., absent.

Randles, Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION