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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 28th
day of October, 1998.

In the Matter of the Application of BroadSpan)
Communications, Inc., for Expanded)
Certificates of Service Authority to Provide)
Basic Local Telecommunications Service,) Case No. TA-99-22
Local Exchange Access Services, and)
Interexchange Telecommunications Services in)
the State of Missouri and for Continued)
Competitive Classification.)

ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES
IN ADDITIONAL EXCHANGES

Procedural History

BroadSpan Communications, Inc. (BroadSpan), a Missouri corporation with principal offices located at 6631A Delmar Boulevard, St. Louis, Missouri 63130, applied to the Commission on July 10, 1998, for an expanded certificate of service authority to provide basic local exchange telecommunications services, local exchange telecommunications services, exchange access services, and interexchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1997. BroadSpan also asked the Commission to continue to classify it as a competitive company and to continue to waive certain statutes and rules as authorized by Sections 392.361 and 392.420.

¹ All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

The Commission has previously issued an Order Granting Certificate of Service Authority to BroadSpan in Case No. TA-98-181. In that Order, issued on May 20, 1998, BroadSpan was granted certificates of service authority to provide basic local telecommunications services in Missouri in a specified list of exchanges. In the same order, BroadSpan was also granted a certificate of service authority to provide dedicated, non-switched local exchange telecommunications services and intrastate interexchange telecommunications services in the state of Missouri.

In this Application, BroadSpan seeks to expand the list of exchanges in which it is authorized to provide basic local telecommunications services and exchange access services to include all the exchange service areas of Southwestern Bell Telephone Company (SWBT), GTE Midwest Inc. (GTE) and United Telephone Company of Missouri d/b/a Sprint (Sprint). BroadSpan also seeks confirmation from the Commission that it has permission and authority to operate as a facilities-based and resale provider of intrastate local non-switched private line telecommunication services and switched interexchange telecommunications services throughout the state of Missouri, pursuant to its existing certificates of service authority.

The Commission issued a notice and schedule of applicants on July 14, directing interested parties wishing to intervene to do so by August 13. The Commission granted permission to intervene to SWBT on September 1.

The parties filed a Stipulation and Agreement (Agreement), which is included with this order as Attachment 1, on October 6. The Staff of the Commission (Staff) did not file Suggestions in Support of the

Agreement. However, Staff did file a Recommendation to Approve BroadSpan's Application on August 28. In the Agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. 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). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

Discussion

BroadSpan wishes to expand its certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated (GTE), and United Telephone Company of Missouri, d/b/a Sprint. BroadSpan is not asking for certification in any area that is served by a small incumbent local exchange provider. BroadSpan proposes to operate in all of the exchanges described in Exhibit A to its application. BroadSpan is requesting that its basic local services continue to be classified as competitive and that the application of certain statutes and regulatory rules be waived.

A. Requirements of 4 CSR 240-2.060(4)

Commission rule 4 CSR 240-2.060(4) requires a Missouri corporation applying for certification to provide telecommunications services to include in its application a certified copy of the Articles of Incorporation and Certificate of Incorporation from the Secretary of

State, a description of the types of service it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. BroadSpan has provided all the required documentation except for the proposed tariff. BroadSpan requested a temporary waiver of 4 CSR 240-2.060(4)(H). BroadSpan agreed to amend its initial tariffs to cover additional territory in this certification case and to serve all parties with written notice at the time the amended tariff(s) are submitted to afford them an opportunity to participate in the tariff approval process. Along with that filing BroadSpan has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas, all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier, and its explanation of why such an interconnection agreement is unnecessary for such areas.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1997, sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. A new entrant must: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographic area in which it proposes to offer service and demonstrate that such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. In addition, the Commission must

give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

The parties agreed that BroadSpan possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service. The Commission will continue to rely upon its determination in Case No. TA-98-181 of BroadSpan's technical, financial and managerial resources and ability to provide telecommunications service.

BroadSpan continues to agree to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. The parties agreed that BroadSpan proposes to offer basic local services that satisfy the minimum standards established by the Commission.

BroadSpan wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE, and Sprint as described in their basic local tariffs (see Exhibit A to the application). The parties agreed that BroadSpan has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange.

BroadSpan has agreed to offer basic local telecommunications service as a separate and distinct service and to provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services in compliance with Section 392.455(5), RSMo Supp. 1997.

C. Competitive Classification

The Commission may classify a telecommunications provider as a competitive company if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. § 392.361.2. In making that determination the Commission may consider such factors as market share, financial resources and name recognition, among others. In the matter of the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri, 30 Mo. P.S.C. (N.S.) 16 (1989); In the matter of Southwestern Bell Telephone Company's application for classification of certain services as transitionally competitive, 1 Mo. P.S.C. 3d 479, 484 (1992). In addition, all the services a competitive company provides must be classified as competitive. Section 392.361.3. The Commission has found that whether a service is competitive is a subject for case-by-case examination and that different criteria may be given greater weight depending upon the service being considered. *Id.* at 487.

The parties have agreed that BroadSpan should continue to be classified as a competitive telecommunications company. The parties have also agreed that BroadSpan's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on BroadSpan's ability to charge for its access services. BroadSpan has agreed that, unless otherwise ordered by the Commission, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect at the date of certification for the large incumbent LECs within those service areas in which BroadSpan seeks to operate. The parties have agreed that

the grant of service authority and competitive classification to BroadSpan should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1997, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1997, and 392.230, rather than Sections 392.500 and 392.510.

The parties agreed that continued waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1997, and 392.340. The parties also agreed that application of these Commission rules should continue to be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

- A. The Commission finds that competition in the basic local exchange telecommunications market is in the public interest.
- B. The Commission finds that BroadSpan has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with a 45-day effective date.

- C. The Commission finds that BroadSpan has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that BroadSpan meets the statutory requirements for provision of basic local telecommunications services and has agreed to abide by those requirements in the future. The Commission determines that granting BroadSpan a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. BroadSpan's certificate for its expanded area shall become effective when its amended tariff becomes effective.
- E. The Commission finds that BroadSpan is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.
- F. The Commission finds that BroadSpan's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1997, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1997, and 392.230, rather than Sections 392.500 and 392.510.
- G. The Commission finds that, by the Commission's May 20, 1998 Order in Case No. TA-98-181, BroadSpan was granted a certificate of service authority to provide dedicated, non-switched local exchange telecommunications services and

intrastate interexchange telecommunications services in the State of Missouri. That certificate of service authority permits BroadSpan to provide those services throughout the state. No further Order of the Commission is required with regard to that authority.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. BroadSpan has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1997 which permit the Commission to grant a certificate of service authority where it is in the public interest. Sections 392.361 and .420 authorize the Commission to modify or suspend the application of its rules and certain statutory provisions for companies classified as competitive or transitionally competitive.

The federal Telecommunications Act of 1996 and Section 392.455, RSMo Supp. 1997, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1997.

The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1997. Based upon the Commission's review of the applicable law and Stipulation and Agreement of the parties, and upon its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties, filed on October 6, 1998, is approved.

2. That BroadSpan Communications, Inc. is granted a certificate of service authority to provide basic local exchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when the company's tariff becomes effective.

3. That BroadSpan Communications, Inc. is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall continue to be waived:

Statutes

392.210.2 - uniform system of accounts
392.270 - valuation of property (ratemaking)
392.280 - depreciation accounts
392.290.1 - issuance of securities
392.300.2 - acquisition of stock
392.310 - stock and debt issuance
392.320 - stock dividend payment
392.340 - reorganization(s)
392.330, RSMo Supp. 1997 - issuance of securities,
debts and notes

Commission Rules

4 CSR 240-10.020 - depreciation fund income
4 CSR 240-30.040 - uniform system of accounts
4 CSR 240-35 - reporting of bypass and
customer-specific arrangements

4. That the request for temporary waiver of 4 CSR 240-2.060(4)(H) is granted for good cause in that BroadSpan Communications, Inc. does not yet have an approved interconnection

agreement with all the incumbent local exchange carriers within whose service areas it seeks authority to provide service. When BroadSpan submits its amended tariffs in this case to the Commission such amended tariffs shall have a minimum of a 30 day effective date and BroadSpan shall serve written notice upon the parties hereto of such submittal, and shall provide copies of such amended tariffs to such parties immediately upon request. When filing its amended tariffs in this case, BroadSpan shall also file and serve upon the parties hereto a written disclosure of all interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is unnecessary for any such area.

5. That BroadSpan Communications, Inc. shall file amended tariff sheets with a minimum 30-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of a Commission order approving an interconnection agreement which will allow BroadSpan to provide services. The tariff shall be filed in Case No. TA-99-22 and shall include a listing of the statutes and Commission rules waived above.

6. That BroadSpan Communications, Inc.'s certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1997, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1997, and 392.230, rather than Sections 392.500 and 392.510.

7. That this order shall become effective on November 10, 1998.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Woodruff, Regulatory Law Judge

FILED
OCT - 6 1998
Missouri Public
Service Commission

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the matter of the Application of)
BroadSpan Communications, Inc., for)
Certificates of Service Authority to Provide)
Expanded Basic Local Telecommunications)
Services, Local Exchange Telecommunications)
Services, Exchange Access Services, and)
Interexchange Telecommunications Services)
in the State of Missouri and for Continued)
Competitive Classifications.)

Case No. TA-99-22

STIPULATION AND AGREEMENT

1. BroadSpan Communications, Inc. ("BroadSpan" or "Applicant") initiated this proceeding on July 10, 1998, by filing an Application requesting an expansion of its certificates of service authority to provide basic local telecommunications service, local exchange telecommunications service and exchange access service in additional exchanges currently served by Southwestern Bell Telephone Company ("SWBT"), GTE Midwest Incorporated ("GTE"), and United Telephone Company of Missouri d/b/a Sprint ("Sprint-United"), and confirm its authority to provide local non-switched private line telecommunications services and switched and dedicated interexchange services throughout the State of Missouri.

2. SWBT timely sought and has been granted intervention in this proceeding.

3. For purposes of this Stipulation and Agreement, the parties agree that applications for basic local exchange authority in exchanges served by "large" local exchange companies (LECs)¹ should be processed in a manner similar to that in which applications for interexchange and local exchange authority are currently handled.

¹Large LECs are defined as LECs who serve 100,000 or more access lines. Section 386.020 R.S.Mo. Supp. 1996. In Missouri, the current large LECs are SWBT, GTE and United.

4. In determining whether BroadSpan's application for expanded certificates of service authority should be granted, the Commission should rely upon its determination in Case No. TA-98-181 of BroadSpan's technical, financial and managerial resources and abilities to provide telecommunications service. BroadSpan continues to agree that the basic local services it proposes to offer will satisfy the minimum standards established by the Commission, including but not limited to the filing and maintenance of basic local service tariffs with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies with which BroadSpan seeks to compete. Further, BroadSpan continues to agree to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the incumbent local exchange telecommunications companies with which BroadSpan seeks to compete. Notwithstanding the provisions of Section 392.500 R.S.Mo. (1994), as a condition of expanded certification and continued competitive classification, BroadSpan continues to agree that, unless otherwise ordered by the Commission, BroadSpan's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect at the date of certification for the large incumbent LECs within those service areas in which BroadSpan seeks authority to provide service. Further, BroadSpan continues to agree to offer basic local telecommunications service as a separate and distinct service and has identified the geographic service area in which it proposes to offer basic local service. Such area follows exchange boundaries of the incumbent local exchange telecommunications companies and is no smaller than an exchange. Finally, BroadSpan continues to agree to provide equitable access to affordable telecommunications services, as determined by the Commission, for all Missourians within

the geographic area in which it proposes to offer basic local service, regardless of residence or income. See Section 392.455 R.S.Mo. (1996 Supp.).

5. BroadSpan has submitted tariffs in Case No. TA-98-181 and seeks a temporary waiver of 4 CSR 240-2.06(4)(H) herein.² BroadSpan agrees to amend its initial tariffs to cover additional territory in this certification docket and serve all parties with written notice at the time the amended tariff(s) are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the amended tariff(s) will be provided by BroadSpan to such parties immediately upon request. Any expanded service authority shall be regarded as conditional and shall not be exercised until such time as amended tariff(s) for services have become effective. When filing such tariff amendments, BroadSpan shall also file and serve a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier, and its explanation of why such an interconnection agreement is unnecessary for such areas.

6. BroadSpan has, pursuant to Section 392.420 R.S.Mo. requested that the Commission continue to waive the application for the following statutory provisions and rules regarding all of its services, and all parties agree that the Commission should grant such request provided that Section 392.200 R.S.Mo. should continue to apply to all of BroadSpan's services:

Statutes

Section 392.210.2
Section 392.270
Section 392.280
Section 392.290.1
Section 392.300.2
Section 392.310

Rules

4 CSR 240-10.020
4 CSR 240-30.040
4 CSR 240-35

²Good cause for failure to file proposed tariffs with the Application must be shown. The lack of an approved interconnection agreement (47 USC 252) constitutes good cause. The fact that BroadSpan's initial tariffs are still pending approval is also good cause not to submit revised tariffs.

Section 392.320
Section 392.330
Section 392.340

BroadSpan also requests that the following statutes and regulations continue to be waived regarding all of its services other than basic local telecommunications services consistent with the Commission's treatment of other companies:

Statutes

Section 392.240.1

Rules

4 CSR 240-30.010(2)(c)
4 CSR 240-32.030(1)(B) & (C), (2)
4 CSR 240-32.050(3) - (6)
4 CSR 240-32.070(4)
4 CSR 240-33.030

7. In negotiating the remaining provisions of this Stipulation and Agreement, the parties have employed the foregoing standards and criteria, which are intended to meet the requirements of existing law and Sections 392.450 and 392.455 R.S.Mo., regarding applications for certificates of local exchange authority to provide basic local telecommunications services.

B. BROADSPAN'S CERTIFICATION

8. BroadSpan has submitted a listing of the specific additional exchanges in which it seeks authority to provide service, which is attached hereto as Exhibit 1. The exchanges identified are currently served by SWBT, GTE and Sprint-United. BroadSpan hereby agrees that its Application should be deemed amended as required to include by reference the terms and provisions described in paragraphs 4-6 hereinabove to the extent that its original Application might be inconsistent therewith.

9. Based upon its verified Application, as amended by this Stipulation and Agreement, BroadSpan asserts and no other party makes a contrary assertion, that there is sufficient evidence from which the Commission should find and concluded that BroadSpan:

A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange telecommunications service, including exchange access service, and switched and dedicated interexchange telecommunications services;

B. proposes and agrees to offer basic local services that will satisfy the minimum standards established by the Commission;

C. has sufficiently identified the geographic area in which it proposes to offer basic local service and such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange;

D. will offer basic local telecommunications services as a separate and distinct service;

E. has agreed to provide equitable access as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services; and

F. has sought authority which will serve the public interest.

10. BroadSpan asserts, and no party opposes, that BroadSpan's application and request for expanded authority to provide basic local telecommunications service and local exchange telecommunications services (including exchange access service) should be granted, and its existing authority confirmed. All services authorized herein should continue to be classified as competitive telecommunications services, provided that the requirements of Section 392.200 continue to apply,

and BroadSpan should continue to be classified as a competitive telecommunications company. BroadSpan asserts and no party opposes, that its services will be subject to sufficient competition by the services of the incumbent LECs and by IXC's to justify a lesser degree of regulation of BroadSpan's services consistent with the protection of ratepayers and the promotion of the public interest. BroadSpan's expanded authority should be conditional, not to be exercised until such time as amended tariffs for the new service areas have been filed (together with the written disclosure as stipulated above) and have become effective. The Commission's Order should state the foregoing conditions substantially as follows:

“The additional service authority herein granted is subject to the requirements of Section 392.200 and is conditional and shall not be exercised until such time as amended tariffs for services have become effective.”

The parties agree that the applicant's switched exchange access services may continue to be classified as competitive services. The parties further agree that the applicant's switched exchange access services are subject to Section 392.200. Any increases in switched access service rates above the maximum switched access service rates as set forth in paragraph 4 herein shall be cost-justified and be made pursuant to 392.220 and 392.230 and 392.500 and 392.510. The Commission's order should state the foregoing conditions substantially as follows:

“The additional service authority for switched access granted herein is expressly conditioned on the continued applicability of Section 392.200 and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be cost-justified and be made pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510.”

11. BroadSpan's request for a temporary waiver of 4 CSR 240-2.060(4)(H), which requires applications to include a proposed tariff with a 45-day effective date, is not opposed and should be granted because, at the time of the filing of the application, BroadSpan does not yet have approved interconnection agreements with all of the large incumbent LECs and has initial tariffs already pending. BroadSpan agrees that at such time as all facts necessary for the development of amended tariffs become known, it will submit tariffs in this docket, with a minimum 30-day proposed effective date, to the Commission for its approval, together with the written disclosure as stipulated above. BroadSpan shall serve notice to all parties and participants in this docket of the filing of its amended tariffs at the time they are filed with the Commission, and serve them with the aforesaid written disclosure and shall upon request immediately provide any party with a copy of those amended tariffs. The Commission's order should state these obligations to the temporary waiver of 4 CSR 240-2.060(4)(H), substantially as follows:

"Applicant's request for temporary waiver of 4 CSR 240-2.060(4)(H) is hereby granted for good cause in that Applicant does not yet have an approved interconnection agreement with all the incumbent local exchange carriers within whose service areas it seeks authority to provide service and has initial tariffs pending; provided, when Applicant submits its amended tariffs in this docket to the Commission such amended tariffs shall have a minimum of a 30-day effective date and the Applicant shall serve written notice upon the parties hereto of such submittal, and shall provide copies of such amended tariffs to such parties immediately upon request. When filing its amended tariffs in this docket, the Applicant shall also file and serve upon the parties hereto a written disclosure of: all interconnection agreements

which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is unnecessary for any such areas.”

12. BroadSpan’s request for continued waiver of the application of the following rules and statutory provisions as they relate to the regulation of all of BroadSpan’s services should be granted:

Statutes

Rules

Section 392.210.2
 Section 392.270
 Section 392.280
 Section 392.290.1
 Section 392.300.2
 Section 392.310
 Section 392.320
 Section 392.330
 Section 392.340

4 CSR 240-10.020
 4 CSR 240-30.040
 4 CSR 240-35

BroadSpan’s request for continued waiver of the following statutes and regulations regarding all of its services other than basic local telecommunications services should also be granted:

Statutes

Rules

Section 392.240.1

4 CSR 240-30.010(2)(c)
 4 CSR 240-32.030(1)(B) & (C), (2)
 4 CSR 240-32.050(3) - (6)
 4 CSR 240-32.070(4)
 4 CSR 240-33.030

13. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The Stipulations herein are specific to the resolution

of this proceeding and are made without prejudice to the rights of the signatories to take other positions in other proceedings.

14. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.080.1, R.S.Mo. (1994), to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 R.S.Mo. (1994); and their respective rights to seek rehearing pursuant to Section 386.500 R.S.Mo. (1994) and to seek judicial review pursuant to Section 386.510 R.S.Mo. (1994). The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of BroadSpan's application made herein.

15. The Staff may subject a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, if requested by the Commission, the Staff shall have the right to subject to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participate herein shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties and participants. All memoranda submitted by the parties shall be considered privileged in the same manner as settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties and participants, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided

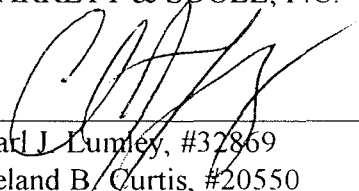
by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure.

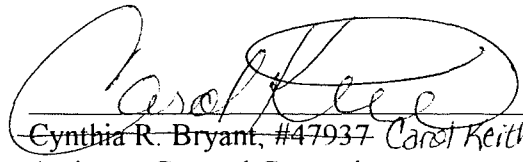
16. The Office of Public Counsel, while not a signatory to this Stipulation and Agreement, has been contacted with regard to its filing and has offered no objection.

WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and Agreement and issue its Order granting authority and classification and waiving certain statutes and rules as requested by BroadSpan Communications, Inc., subject to the conditions described above, as expeditiously as possible.

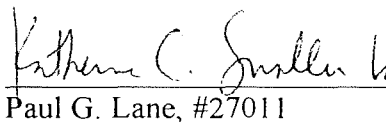
CURTIS, OETTING, HEINZ,
GARRETT & SOULE, P.C.


Carl J. Lumley, #32869
Leland B. Curtis, #20550
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)

For: BroadSpan Communications, Inc.


Cynthia R. Bryant, #47937 *Carol Keith, 45065*
Assistant General Counsel
Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
(573) 751-7485
(573) 751-9285 (FAX)

For: Staff of the Missouri Public
Service Commission

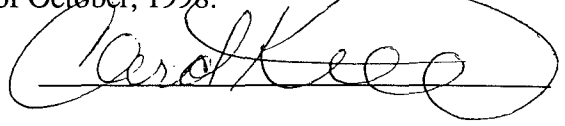

Paul G. Lane, #27011
Leo J. Bub, #34326
Anthony K. Conroy, #35199
Katherine C. Swaller, #34271
One Bell Center, Room 3536
St. Louis, Missouri 63101
(314) 235-4314
(314) 247-0014 (FAX)

*per telephone attachment
on September 21, 1998
for Katherine C. Swaller*

For: Southwestern Bell Telephone
Company

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the service list below this 6th day of October, 1998.

A handwritten signature in cursive script, appearing to read "Carol Kee", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65101

Paul G. Lane/Katherine C. Swaller
Leo J. Bub/Anthony K. Conroy
Southwestern Bell Telephone Company
One Bell Center
St. Louis, MO 63101-1976

Carl J. Lumley
Curtis, Oetting, Heinz, Garrett & Soule
130 Bemiston, Suite 200
Clayton, MO 63105