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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Petition of TCG St. Louis)
for Arbitration Pursuant to Section 252(b) of the)
Telecommunications Act of 1996 to Establish an)
Interconnection Agreement with Southwestern Bell)
Telephone Company.)
)

Case No. TO-98-14

ORDER CLOSING CASE

On September 4, 1997, the Commission issued an order finding that the Commission lacks jurisdiction under the Telecommunications Act of 1996 (the Act) to grant the request of TCG St. Louis (TCG) and Southwestern Bell Telephone Company (SWBT) for arbitration of interconnection terms pursuant to the federal Telecommunications act of 1996, 47 U.S.C. § 252(b) (1996) ("the Act"). The Commission's September 4 order directed the parties to file a pleading by September 11 indicating whether the parties wished to proceed under Section 386.230, RSMo 1994, with arbitration pursuant to state law.

On September 11, SWBT filed a pleading indicating that it declined state arbitration under Section 386.230, RSMo 1994, because of the fact that arbitration under this provision would not be required to proceed according to the standards outlined in the Act, and the arbitration order of the Commission would not be appealable to federal district court as provided for in the Act.

On September 11, TCG filed what appeared to be a copy of a letter addressed to Southwestern Bell from a representative of TCG of the same date. This letter did not meet the requirements for submission of

pleadings set forth in 4 CSR 240-2.080. Therefore, on October 9, the Commission ordered TCG to comply with its September 4 order by no later than October 14. On October 10, TCG filed its responsive pleading suggesting that, since SWBT had rejected the Commission's offer to serve as arbitrator for the parties pursuant to Section 386.230, RSMo 1994, arbitration under this provision is not possible. TCG stated that disputes may only be lawfully arbitrated pursuant to Section 386.230, RSMo 1994, when all of the parties to the controversy agree to submit their differences to the Commission.

The Commission finds that the parties have declined the Commission's offer to serve as an arbitrator under Section 386.230, RSMo 1994. The Commission concludes that its jurisdiction to arbitrate pursuant to Section 386.230, RSMo 1994, depends upon the existence of an agreement by the parties to submit their differences to binding arbitration. The parties could agree to submit the case to binding arbitration according to the federal guidelines, and the Commission would follow those guidelines so long as the guidelines are consistent with state law and the public interest. However, the Commission cannot confer any jurisdiction upon itself to arbitrate, or upon the federal courts to hear appeals from the Commission's arbitration orders. Jenkins v. Director of Revenue, 858 S.W.2d 257, 260 (Mo. Ct. App. 1993); Siampos v. Blue Cross and Blue Shield of Missouri, 870 S.W.2d 499, 500 (Mo. Ct. App. 1994).

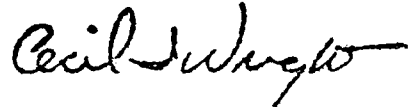
Moreover, the Commission takes official notice of the fact that TCG has now decided to interconnect with SWBT by adoption of SWBT's interconnection agreement with Brooks Fiber rather than through negotiation or arbitration of a new interconnection agreement. TCG filed its notice

of adoption of the Brooks Fiber agreement on October 10, initiating Case No. TO-98-154.

IT IS THEREFORE ORDERED:

1. That this case is closed.
2. That this order shall become effective on November 6, 1997.

BY THE COMMISSION

A handwritten signature in cursive script, appearing to read "Cecil I. Wright".

**Cecil I. Wright
Executive Secretary**

(S E A L)

Amy E. Randles, Regulatory Law Judge,
by delegation of authority pursuant to
4 CSR 240-2.120(1) (November 30, 1995)
and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 28th day of October, 1997.