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August 12, 1999

FILED

AUG 13 1999

Dale Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
Truman State Office Building, 5th Floor  
301 West High Street  
Jefferson City, Missouri 65101-1517

Missouri Public  
Service Commission

Re: Case No. TO-2000-92

Dear Mr. Roberts:

Enclosed please find for filing with the Commission an original and fifteen copies of BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc.'s Supplement of Application for Determination of Dispute Regarding Physical Collocation Completion Intervals. Upon your receipt, please file stamp the extra copy received and return to the undersigned in the enclosed, self-addressed, stamped envelope. If you have any questions, please do not hesitate to contact us.

Very truly yours,

Carl J. Lumley

CJL:dn

Enclosures

cc. General Counsel (W/Enclosures)  
Public Counsel (W/Enclosures)  
Paul Lane (W/Enclosures)

FILED

AUG 13 1999

Missouri Public  
Service Commission

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Physical Collocation Completion )  
Intervals under the Interconnection Agreement )  
between BroadSpan Communications, Inc. )  
d/b/a Primary Network Communications, Inc. )  
and Southwestern Bell Telephone Company. )

Case No. TO-2000-92

**SUPPLEMENT TO**  
**APPLICATION FOR DETERMINATION**  
**OF DISPUTE REGARDING PHYSICAL COLLOCATION**  
**COMPLETION INTERVALS**

COMES NOW BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc. (PNC) and for its Supplement to Application states:

1. On August 9, 1999, the Commission issued its Order Directing Applicant to Supplement Application, instructing PNC to "file a pleading stating with specificity a reference to the statutory provision or other authority under which relief is requested and ... also make clear whether the Applicant seeks mediation, arbitration, a complaint case, or such other procedure as may be appropriate."

2. Pursuant to the Commission's direction, PNC supplements its Application by means of this pleading.

3. PNC seeks relief pursuant to the Commission's December 11, 1996 Arbitration Order in Case No. TO-97-40, as incorporated into the Interconnection Agreement between PNC and Southwestern Bell Telephone Company (SWBT), at Appendix Collocation, Section 4.12.

4. PNC and SWBT are parties to an Interconnection Agreement (the "Agreement") that was approved by the Commission on August 12, 1998, in Case No. TO-98-518. The Agreement includes an Appendix Collocation that was adopted by PNC under section 252(i) of the FTA from the Interconnection Agreement between AT&T Communications of the Southwest, Inc., and SWBT, that was in turn approved by the Commission in Case No. TO-98-

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115 on March 19, 1998, and includes the results of the first arbitration between AT&T and SWBT in Case No. TO-97-40. A copy of the Appendix Collocation is attached to the Application as Exhibit A.

5. In its introductory language, Appendix Collocation states that it "sets forth terms and conditions applicable to the Parties' rights and obligations pertaining to physical collocation." Under the Appendix Collocation, when PNC requests Collocated Space, SWBT must provide a price quotation within 35 business days, including a Completion Interval. (Sec. 3.2). The Completion Interval is "SWBT's estimate of the amount of time required for it to prepare the Collocated Space to comply with [PNC's] collocation application. (Sec. 3.3.3).

6. Appendix Collocation requires that "SWBT will exercise due diligence to prepare the Collocated Space in a reasonable time period, not to exceed three months from [PNC's] acceptance of SWBT's price quotation, unless otherwise mutually agreed to in writing by [PNC] and SWBT." (Sec. 4.12).

7. The requirement that SWBT complete preparation of collocation space in a period not to exceed three months was established by the Commission in the arbitration between AT&T and SWBT that resulted in the Appendix Collocation that was adopted by PNC. In the Arbitration Order in Case No. TO-97-40, the Commission held: "If the LSP accepts SWBT's cost estimate, and unless otherwise mutually agreed to by the parties in writing, the provision of such physical collocation shall be completed in not more than three months from the date of the LSP's acceptance of SWBT's cost estimate for such physical collocation." Arbitration Order, p. 18, Case No. TO-97-40 (Dec. 11, 1996) (copy of excerpt attached to Application as Exhibit B).

8. Both Appendix Collocation of the Agreement (Sec. 4.12) and the Commission Arbitration Order incorporated therein (Ex. B) provide for Commission resolution of disputes

regarding physical collocation completion intervals. In the Arbitration Order, at page 18, the Commission held: "If a completion date outside the three-month period is not agreed to by the parties, the issue may be presented to the Commission for determination." (Ex. B). PNC and SWBT incorporated this holding into Appendix Collocation of their Interconnection Agreement at section 4.12, stating: "If the revised Completion Interval is objectionable to [PNC], and the parties cannot resolve [PNC's] objection, the issue may be presented to the State Commission for review."

9. In addition to the provisions of the Commission's Arbitration Order, as incorporated into the Interconnection Agreement, Section 386.230 RSMo. authorizes the Commission to arbitrate disputes submitted by agreement of the parties, including agreement in advance by means of an interconnection agreement.

10. Section 252 of the Federal Telecommunications Act also authorizes the Commission to resolve disputes regarding the provisions of arbitrated and approved agreements. See, e.g., Illinois Bell Tel. Co. v. WorldCom, 157 F.3d 500, 501-02 (7<sup>th</sup> Cir. 1998); 1999 WL 436474 (7<sup>th</sup> Cir. June 18, 1999); Michigan Bell Tel. Co. v. MFS Intelenet of Michigan, Inc., 16 F.Supp.2d 817, 822-24 (W.D. Mich. 1998).

11. PNC seeks a binding resolution of the present dispute. The Commission did not expressly state the procedures it would employ to resolve such disputes when it ordered that such disputes be brought before it. However, given that the order was issued in an arbitration proceeding, and given the underlying authority granted by Section 386.230 RSMo and Section 252 of the Act involves arbitration, PNC assumes that the Commission intended to arbitrate such matters. Accordingly, PNC seeks resolution of this matter by arbitration.

12. However, in the alternative, PNC seeks binding resolution by complaint case under Sections 386.320, 386.390, and 386.400. As described in the Application, SWBT's efforts to delay completion of collocation spaces are unreasonable, prejudicial and disadvantageous to PNC and should be rectified expeditiously by the Commission pursuant to its authority under Sections 392.200.3, 392.240 and 392.250.

13. The Commission specifically directed PNC to present such disputes as the instant matter for resolution and PNC has followed that directive. The Commission clearly recognized the need for expedited resolution of disputes concerning completion of collocation space, when absent dispute such completion must occur within three months. PNC cannot obtain such expedited relief under an initial "request for interconnection" arbitration under Section 252 of the Act, because it could not even file the petition until 135 days after the request – long after expiration of the three-month standard completion interval. As the Commission recognized in its Order, expedited dispute resolution proceedings were necessary in such circumstances because otherwise SWBT could delay completing collocation space simply by engaging in a lengthy dispute.

14. As expressed by numerous parties in Case No. TO-99-227, it is essential to the development of local competition that SWBT promptly deliver completed collocation space to CLECs like PNC. Expedited resolution of the instant dispute, pursuant to the Commission's prior directives, is likewise essential to the development of local competition. SWBT has admitted in a pleading filed in Case No. TO-99-227 on August 12, 1999, that the issues raised by PNC herein "can and should be addressed" in the instant case. (SWBT Objections to BroadSpan's Application to Re-Intervene, p. 3).

WHEREFORE, PREMISES CONSIDERED, the Commission should:

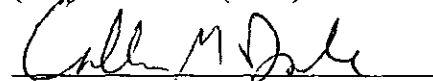
1. Make SWBT a party to this proceeding and require it to respond to the Application within three (3) days of such order;
2. Issue a standard protective order;
3. Set this matter for hearing with live testimony as soon as possible;
4. Order SWBT to provide all requested cageless physical collocation arrangements within a time period of three months from the date of acceptance of the related price quotations;  
and
5. Grant such other and further relief to which PNC may be justly entitled.

Respectfully submitted,

CURTIS, OETTING, HEINZ,  
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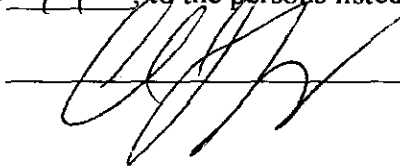


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Attorneys for BroadSpan Communications, Inc.  
d/b/a Primary Network Communications, Inc.

**Certificate of Service**

A true and correct copy of the foregoing document was mailed this 12 day of August, 19 99, to the persons listed on the attached list.

  
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