

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of an Investigation for the Purpose)
of Clarifying and Determining Certain Aspects)
Surrounding the Provisioning of Metropolitan) Case TO-99-483
Calling Area Service after the Passage and)
Implementation of the Telecommunications)
Act of 1996.)

BROADSPAN COMMUNICATIONS, INC.
d/b/a PRIMARY NETWORK COMMUNICATIONS, INC.'S
INITIAL BRIEF

COMES NOW BroadSpan Communications, Inc., d/b/a Primary Network Communications, Inc., and for its Initial Brief in this case adopts the Initial Brief of Gabriel Communications of Missouri, Inc. filed in this proceeding on all issues except the following:

c. Should there be any restrictions on the MCA Plan (for example resale, payphones, wireless, internet access, etc.)?

The Commission should not restrict customers from continuing to use MCA service to access internet service providers (ISPs) on a locally dialed and rated basis. (Dale Surrebuttal, p. 2).¹ The Commission has relied upon the availability of such toll-free calling in various prior cases concerning expanded calling. (Dale Rebuttal, p. 7). Companies have been dealing with this traffic for some time, including in the making of interconnection agreements and in planning for network facilities. (Dale Rebuttal, p. 6, 8). It would be against the public interest to suddenly place such limitations on consumers, particularly consumers in the more rural portions of the MCA. As Ms. Dale testified:

... there is a perceived "digital divide" between urban and suburban customers and customers in rural areas, which can only be worsened by forcing MCA customers to place toll calls to reach the ISP of their choice. The Commission should not exacerbate any problems Missourians may have gaining access to

¹ Ms. Dale sponsored the pre-filed testimony of Mr. Phillips at the hearing.

online services by requiring them to place toll calls to reach their ISP when a local alternative exists.

(Dale Rebuttal, p. 6). There would be no doubt be significant public upset if local calls to ISPs suddenly became toll calls.

It would also be difficult, if not impossible, to administer such a restriction. (Dale Rebuttal, p. 6, 8).

Further, a restriction on use of MCA service to access ISPs would violate the FCC's policy of allowing ISPs to subscribe to local business service. In ruling that SWBT had agreed to pay reciprocal compensation on calls to ISPs served by CLECs, the Fifth Circuit Court of Appeals of the United States relied in part on the FCC's long-standing policy of requiring LECs to serve ISPs as end users out of local business tariffs. SWBT v. PUC of Texas, 208 F.3d 475 (5th Cir. 2000). See also Illinois Bell Tel. Co. v. WorldCom Technologies, Inc., 179 F.3d 566 (7th Cir. 1999). Hence, there is no legal means of limiting use of MCA service to call ISPs as MCA subscribers.

As explained in Gabriel's Initial Brief, MCA traffic should continue to be exchanged between adjoining LECs on a bill-and-keep basis, as it has been. Hence, rural ILEC customer usage of MCA service to call ISPs served by CLECs would not cause the ILECs to incur termination expenses with the CLECs. (Dale Rebuttal, p. 6-7).

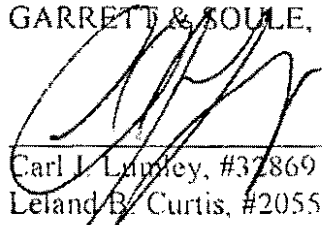
Likewise, MCA traffic should continue to be exchange between competing LECs pursuant to their approved interconnection agreements. The Commission should not succumb to SWBT's efforts to use this proceeding to cut short the pending complaints regarding its failure to pay reciprocal compensation on local calls to ISPs as required by its interconnection agreements. Existing agreements should not be modified in this case for the reasons explained in Gabriel's Initial Brief, under issue f. Existing agreements should be enforced in the complaint proceedings.

Any permissible modifications must be negotiated or arbitrated in accordance with the Telecommunications Act. (Dale Rebuttal, p. 7; Surrebuttal, p. 2).

The Commission should continue to permit resale of MCA service, as required by the Telecommunications Act. Primary takes no position regarding other restrictions, provided that any restriction must apply to all LECs.

Respectfully Submitted,

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CERTIFICATE OF SERVICE BY MAIL

A true and correct copy of the foregoing was served upon the parties identified in the attached service list on this 30th day of June, 2000, by placing same in a postage paid envelope and depositing in the U.S. Mail.



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