



Rebecca B. DeCook  
Senior Attorney

Room 1575  
1875 Lawrence Street  
Denver, CO 80202  
303 298-6357

May 2, 2002

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65101

Re: Case No. TO-2002-397

Dear Judge Roberts:

Attached for filing with the Commission is the original and eight (8) copies of AT&T Communications of the Southwest, Inc.'s Joinder in IP's Motion for Protective Order and Response to Southwestern Bell's Reply in the above referenced docket.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

A handwritten signature in cursive script that reads "Rebecca B. DeCook (jr)".

Rebecca B. DeCook

Attachment

cc: All Parties of Record

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**In the Matter of the Determination of Prices of     )  
Certain Unbundled Network Elements.             ) Case No. TO-2002-397  
   )**

**JOINDER OF AT&T IN IP'S MOTION FOR PROTECTIVE ORDER AND  
RESPONSE TO SOUTHWESTERN BELL'S REPLY**

AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc. and TCG Kansas City, Inc. (collectively "AT&T"), by and through their undersigned counsel, hereby submit this Joinder in IP's Motion for Protective Order and Response to Southwestern Bell Telephone Company's ("SWBT") Reply and state as follows:

1. On April 2, 2002, IP filed a Motion for Protective Order in the above-captioned proceeding. In that Motion, IP requested that the Missouri Public Service Commission issue a revised Protective Order and attached the revised form Protective Order to its Motion. In support of its Motion, IP stated that cost study information will be utilized in this case and that cost study information has been routinely treated as confidential information in the past. IP requested a change in the standard Protective Order that is consistent with the protective order utilized by the Texas Commission. This change would establish a single designation of confidential information and would permit access to all confidential information by internal experts on a standardized basis.

2. AT&T supports IP's proposed revised Protective Order in this proceeding and urges the Commission to amend its standard Protective Order to incorporate the practice of allowing access to confidential information by internal experts that heretofore has been handled via "side agreements."

3. Under the standard Protective Order, a party may designate information provided as either "Proprietary" or "Highly Confidential." Information designated as "Proprietary" may be reviewed by counsel of record and internal and external personnel who have signed a non-disclosure agreement. Information designated as "Highly Confidential" may only be reviewed by counsel of record and outside consultants. Internal cost experts of the receiving company are prohibited from reviewing information designated as "Highly Confidential" by the providing company. As a result, the standard Protective Order limits parties' ability to analyze and assess any Highly Confidential information.

4. AT&T agrees with IP that the standard Protective Order should be revised in the manner recommended by IP. AT&T agrees that the standard Protective Order limits parties' ability to fully and effectively participate in Commission proceedings, imposes delays on those parties' access to confidential information, and increases the cost of litigation. Moreover, AT&T agrees that the historical "side agreement" process allows SWBT and other incumbents to discriminate amongst parties to the proceeding and affords undue discretion to companies like SWBT to determine what access to confidential information they will afford to whom and under what conditions.

5. AT&T also agrees that other parties will not be harmed by the protective order proposed by IP. Internal experts will still be held to the high standard that outside experts are held to and would be required not to divulge or misuse any confidential information that they are given access to. Access by internal experts is the norm in many standard protective orders in other regions. For example, in virtually every state in which Qwest operates, the standard protective order permits access by internal experts. In fact,

AT&T's internal cost experts have reviewed cost studies produced by SWBT and other incumbent local exchange carriers in Kansas, Oklahoma, and Texas and AT&T's internal cost experts have reviewed cost studies of SWBT in prior cases in Missouri. In no instance has any party asserted that AT&T's access to this type of information resulted in any harm to the company providing the information.

6. Adopting IP's recommended protective order will allow parties to more fully and effectively participate in these proceedings by eliminating delays in other parties gaining access to relevant information, alleviate unnecessary costs associated with burdensome disputes regarding the classification of documents between different tiers of confidentiality and with negotiating side agreements, and will allow for the development of a more complete administrative record while still affording more than adequate protection of confidential material.

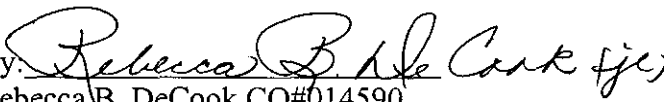
7. In its Reply, SWBT claims that the standard Protective Order is necessary to protect the legitimate business interests of the party that designates information as Highly Confidential. Instead, SWBT requests that it be permitted to continue to engage in the "side agreement" practice. The practice of entering into "side agreements" to enable other parties to access confidential information should not be condoned and cannot be sustained. The fact that SWBT has been willing to enter into these "side agreements" is an acknowledgement that other parties need access to this confidential information in order for them to effectively participate in Commission proceedings. It is also an admission that 1) access by internal experts could be standardized and 2) that the existing use restrictions in the standard Protective Order should be sufficient to protect the confidentiality of this information.

8. Forcing the receiving party to enter into side agreements with each party unduly delays access to information that is critical to the receiving party's effective participation in Commission proceedings, increases the cost of litigation for that party and affords undue discretion to companies like SWBT. As an example, in Case No. TR-2001-65, internal AT&T cost analysts have been unable to review any of the Staff's draft cost studies and results. These draft cost studies reflect Staff's estimate of the access costs of both the incumbent local exchange carriers and competitive local exchange carriers, including AT&T. However, because these draft cost studies and results have been designated by Staff as Highly Confidential, AT&T's internal experts have been unable to review and analyze these studies and results, even costs that Staff purports relate to AT&T's provision of access services in Missouri. As a result, AT&T was unable to meet deadlines for comments that have been established in that proceeding and the time available for it to conduct its review of this data has been substantially reduced. Staff attempted to negotiate with the incumbents, access to this information by other parties but was unable to work that out. AT&T has attempted to negotiate access with SWBT and has received no response. The time has passed for the use of this "side agreement" procedure. AT&T (or any party for that matter) should not be forced to suffer these delays and the costs associated with negotiating these "side agreements." The Commission should establish uniform access to confidential information, rather than allowing this ad hoc "side agreement" process to continue.

**WHEREFORE**, AT&T respectfully requests that the Missouri Public Service Commission grant IP's Motion for Protective Order and issue the Protective Order proposed by IP in this proceeding.

Respectfully submitted this 2<sup>nd</sup> day of May, 2002.

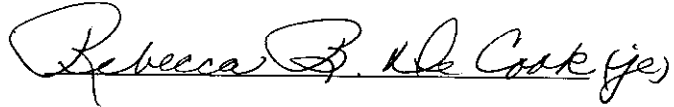
**AT&T COMMUNICATIONS OF  
THE SOUTHWEST, INC., TCG ST.  
LOUIS, INC. AND TCG KANSAS CITY,  
INC.**

By:   
Rebecca B. DeCook CO#014590  
1875 Lawrence Street, Suite 1575  
Denver, CO 80202  
(303) 298-6357 (303) 298-6301 (FAX)  
[decook@att.com](mailto:decook@att.com)

J. Steve Weber MO #20037  
101 W. McCarty, Ste. 216  
Jefferson City, MO 65101  
(573)635-5198 (573)635-9442 (FAX)  
[jsweber@att.com](mailto:jsweber@att.com)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing in Docket TO-2002-397 was served upon the parties on the following service list on this 2<sup>nd</sup> Day of May, 2002 by either hand delivery or placing same in postage page envelope and depositing in the U.S. Mail.

 Rebecca D. Cook (jpc)

Office of the Public Counsel  
PO Box 7800  
Jefferson City, MO 65102

General Counsel  
Missouri PSC  
PO Box 360  
Jefferson City, MO 65102

Paul H. Gardner  
Goller, Gardner & Feather, PC  
131 E. High Street  
Jefferson City, MO 65101

Lisa Creighton Hendricks  
Sprint  
Mail Stop KSOPHN0212-2A253  
6450 Sprint Parkway, Bldg. 14  
Overland Park, KS 66251

Mark P. Johnson/Trina R. LeRiche  
Sonnenschein Nath & Rosenthal  
4520 Main Street, Ste. 1100  
Kansas City, MO 64111

David J. Stueven  
IP Communications  
6405 Metcalf, Ste. 120  
Overland Park, KS 66202

Carol Keith  
NuVox Communications  
16090 Swingley Ridge Rd., #500  
Chesterfield, MO 63017

Carl J. Lumley  
Curtis, Oetting, Heinz, Garrett & Soule  
130 S. Berniston, Ste. 200  
Clayton, MO 63105

Leo J. Bub  
Southwestern Bell Telephone Co.  
One Bell Center, Room 3520  
St. Louis, MO 63101

Sondra B. Morgan  
Brydon, Swearngen & England  
PO Box 456  
Jefferson City, MO 65102