



Rebecca B. DeCook
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May 3, 2002

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

Re: Case No. TR-2001-65

Dear Judge Roberts:

Attached for filing with the Commission is the original and eight (8) copies of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc. Motion Requesting the Adoption of a Modified Protective Order.

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".

Rebecca B. DeCook

Attachment

cc: All Parties of Record

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Access Rates Charged)
by Competitive Local Exchange)
Telecommunications Companies in the)
State of Missouri)

Case No. TR-2001-65

**AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.,
TCG ST. LOUIS, INC., AND TCG KANSAS CITY, INC.
MOTION REQUESTING THE ADOPTION
OF A MODIFIED PROTECTIVE ORDER**

COMES NOW, AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc. and TCG Kansas City, Inc. (collectively named "AT&T" or the "AT&T Companies") and state as follows:

1. On August 8, 2000, the Missouri Public Service Commission issued an order establishing this case and adopting a protective order. Under that legacy 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 persons signing a non-disclosure agreement. Information designated as "Highly Confidential" may only be reviewed by counsel of record and outside consultants signing the non-disclosure agreement. Internal cost experts of the receiving company are prohibited from reviewing information designated as "Highly Confidential" by the providing company. This legacy protective order has proved unmanageable in this proceeding, has unduly delayed parties obtaining access to information necessary to effectively participate in this proceeding, thus impeding those parties' ability to participate fully and equally.

2. Consistent with the procedural schedule, Staff provided the parties with draft cost studies on April 1, 2002. Those draft studies have been classified as "Highly Confidential" in their entirety meaning that the cost models, the inputs to those cost models, and even the results of those studies are designated as "Highly Confidential". As a result, AT&T's in-house cost experts are unable to review the studies that are purported to represent the costs that incumbent local exchange carriers incur in the provision of switched access.

3. In addition, the draft cost studies also include cost models, inputs, and results that are purported to represent the costs incurred by "CLECs" in the provision of switched access. It is AT&T's understanding that the generic CLEC studies produced by Staff reflect Staff's estimate of the costs the AT&T Companies would incur in the provision of switched access. It is the AT&T Companies understanding that those costs were calculated using inputs and cost models developed by other companies and, as a result, those studies and results have been designated as "Highly Confidential." For this reason, the AT&T Companies' internal cost experts are unable to review any of Staff's draft cost studies and the results that are purported to reflect the AT&T Companies' switched access costs. AT&T believes this is a violation of AT&T's due process rights because AT&T is unable to analyze and assess the credibility of Staff's cost estimates.

4. Under the procedural schedule adopted by the Commission, any party wishing to produce its own cost study must notify the Staff by May 1, 2002. It is AT&T's belief that any party doing so will similarly designate such studies as "Highly Confidential." This means that AT&T's in-house cost experts will also be unable to review those studies under the current protective order. This limited access to cost

studies, inputs, and results has already made this case simply unmanageable. These issues will only be exacerbated as case participants choose to rely upon their own cost studies.

5. Denying access to AT&T's and other companies' internal cost experts will impede those parties' ability to participate equally and fully in this proceeding. Given the state of the telecommunications industry, most companies, including the AT&T Companies, simply cannot afford to hire outside experts for every case and, as a result, these companies would be unable to fully participate without internal experts having access to confidential information.

6. The AT&T Companies have attempted to work with Staff and the other parties to reach an agreement that would permit AT&T's in-house cost experts to review the cost studies to be used in this proceeding. To date, AT&T has been unable to make any progress on resolving this issue. In any case, it should not be forced to enter into ad hoc "side agreements" in every case. The fact that SWBT has been willing to enter into side agreement to allow in house experts access to highly confidential information in other proceedings is a clear indication that this process can and should be standardized.

7. For the reasons stated herein, AT&T requests the Commission replace the current protective order with the AT&T Companies' attached protective order. This protective order is the same Protective Order that IP has requested the Commission enter in Case No. TO-2002-397 and is a hybrid of this Commission's standard protective order and the protective order utilized at the Public Utility Commission of Texas. The Texas protective order has been used in arbitration and generic hearing settings for approximately five and a half years. The primary change made in the protective order

AT&T proposes is that this alternative protective order establishes a single confidentiality designation and allows internal experts to review such information, subject to the restrictions of the protective order.

8. The AT&T Companies recognize that cost information must be protected from inappropriate use. The proposed protective order provides more than adequate protection. This proposed protective order contains a single designation of "Confidential Information". Access to "Confidential Information" is limited to counsel of record, regulatory personnel acting at the direction of counsel, and outside consultants employed by the receiving party. Persons afforded access under the attached protective order are prohibited from either using or disclosing such information for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and are also required to keep that information secure. Clearly, the material designated as "Confidential Information" is protected from misuse by internal experts using the same high standard that applies to outside experts under the legacy Protective Order. Internal experts would be prohibited from divulging or misuse any confidential information. Access by internal experts is the norm in many standard protective orders around the country. In fact, AT&T's internal cost experts have reviewed cost studies produced by other incumbent local exchange carriers in Kansas, Oklahoma, and Texas as well as in virtually every state in which Qwest operates. 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.

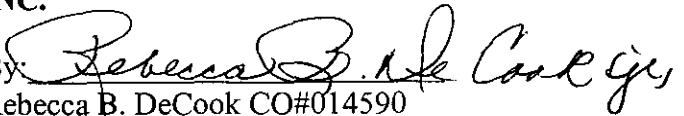
9. The use of the single designation of "Confidential" will expedite access to confidential information, avoiding disputes regarding the proper designation of

documents from one-esoteric tier to another. In addition, the AT&T Companies are not aware of any material provided in this case that has been designated as "Proprietary" under the current Protective Order. With the adoption of the proposed protective order, all information previously designated as "Highly Confidential" should be reclassified as "Confidential"

10. In considering the AT&T Companies request, the Commission should also be aware that the AT&T Companies have provided data request responses that included information classified as "Highly Confidential". The AT&T Companies also anticipate the need to file testimony and possibly cost studies that contain the "Confidential Information" of the AT&T Companies. Thus the AT&T Companies recognize and accept that other parties will have the same access to AT&T's information that AT&T seeks of other parties.

WHEREFORE, the AT&T Companies respectfully request that the Missouri Public Service Commission enter an order replacing the current protective order with the AT&T's Companies Proposed Protective Order.

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

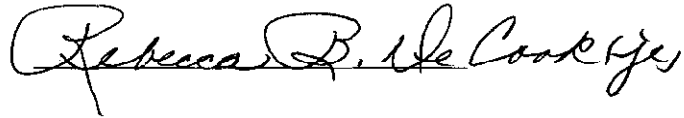
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CERTIFICATE OF SERVICE

(TR-2001-65)

I certify that AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc. Motion Requesting the Adoption of a Modified Protective Order was served upon the following by depositing true copies in the U.S. Mail, postage prepaid, on May 3, 2002.



Thomas R. Parker
GTE Midwest Inc. d/b/a Verizon
Midwest
601 Monroe Street, Suite 304
Jefferson City, MO 65101

Craig S. Johnson
Andereck/Evans/Milne/Peace/Baumhoer
(MITG)
301 East McCarty Street, PO Box 1438
Jefferson City, MO 65102

Mary Ann Garr Young
P.O. Box 104595
Jefferson City, MO 65110

Tony Conroy
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101

Brian T. McCartney/W.R. England, III
Brydon, Swearengen & England P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456

Sheldon K. Stock
Greensfelder, Hemker & Gale, P.C.
10 South Broadway, Suite 2000
St. Louis, MO 63102

Carl J. Lumley/Leland B. Curtis
Curtis, Oetting, Heinz, Garrett & Soule
130 South Bemiston, Suite 200
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MCI Telecommunications Corp.
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Larry W. Dority, Esq.
Fischer & Dority (Verizon/Alltel)
101 Madison Street, Suite 400
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Marc D. Poston, Senior Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102

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

PROTECTIVE ORDER

A. The following definitions shall apply to information which a party claims should not be made public.

1. The term "party" as used in this Protective Order means any party to the Commission proceeding.

2. The term "Confidential Information" refers to portions of petitions or applications and all documents, data, information, studies, cost study information, and other materials furnished in the proceeding or pursuant to requests for information or other modes of discovery, including but not limited to depositions, that are claimed to be trade secrets, confidential business information, and information subject to an evidentiary privilege or exempt from public disclosure under the Public Information Act. The parties will work cooperatively to determine if certain limited, summary information from cost studies may be designated as not "Confidential Information" for use at the Hearing. "Confidential Information" shall not include information contained in the public files of any federal or state agency that is subject to disclosure under the Public Information Act or a similar statute, nor shall it include information that, at the time it is provided through discovery in these proceedings or prior thereto, is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Order. "Confidential Information" shall not include information found by the Regulatory Law Judge, the Commission or a court of competent jurisdiction not to merit the protection afforded Confidential Information under the terms of this Order.

B. During the course of discovery a party may designate information as CONFIDENTIAL (hereinafter, "designated information") and shall make such designated information available to the party seeking discovery, if such information is not objectionable on any other ground, under the restrictions set out in paragraph C. The party designating the information as CONFIDENTIAL shall provide to counsel for the requesting party, at the time the designation is made, the ground or grounds for the designation. The requesting party may then file a motion challenging the designation. The party designating the information confidential shall have five days after the filing of the challenge to file a response. No other filings are authorized.

C. Confidential Information

(1) General. In the discovery or other proceeding or filings to be conducted in connection with this proceeding, a party may designate certain material produced by such party as "Confidential Information." Copies of the material shall be delivered to the Filing Clerk of the Commission and to the Regulatory Law Judges in a sealed document that is clearly marked on the outside, in letters at least 1" tall, as containing "Confidential Information." Each page of the material submitted under seal shall be consecutively numbered and the envelope shall clearly specify the number of pages contained therein. The party designating the material as confidential information shall clearly identify each portion of the material alleged to be confidential information, and provide a written explanation of the claimed exemption. Such explanation may be accompanied by affidavits providing appropriate factual support for any claimed exemption. In the event that any party questions whether an item has been

inadvertently classified as confidential, then the party shall bring the matter to the producing party's attention prior to taking any action at either the Commission or elsewhere.

(2) Material Provided to Parties. Material claimed to be confidential information must be provided to the other parties to this proceeding provided they agree in writing to treat the material as Confidential Information. One copy of the material shall be provided to each party. The receiving party shall be entitled to make limited copies of the Confidential Information, provided that no more than one copy of the Confidential Information shall be made for each individual who has executed an Exhibit A and is authorized to review the information and that a tracking report is developed by the receiving party accounting for the additional number of copies and the individuals in possession. The receiving party and any individuals in possession of Confidential Information shall keep the Confidential Information properly secured during all times when the documents are not being reviewed by a person authorized to do so. Faxes shall be permitted and any faxed documents shall be treated as copies of the original material; provided that it shall be the responsibility of the party transmitting documents by fax to insure that the documents are only received by individuals authorized to receive the applicable information.

(3) Review by Parties. Each receiving party may designate specific individuals associated with the party who will be allowed access to the Confidential Information. The individuals who may have access to the Confidential Information shall be limited to

the receiving party's counsel of record, regulatory personnel acting at the direction of counsel, and outside consultants employed by the receiving party.

Prior to giving access to Confidential Information as contemplated above to any party authorized to be given access pursuant to this Order, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to such persons, and prior to disclosure, such persons shall affirmatively state that the individual has personally reviewed the Order, and will observe the limitations upon the use and disclosure of Confidential Information, in the form of Appendix A, attached hereto. By signing such statements, a party may not be deemed to have acquiesced in the designation of the material as Confidential Information or to have waived any rights to contest such designation or to seek further disclosure of the Confidential Information. Said counsel shall, at the time of the review of such Confidential Information, or as soon thereafter as practicable, deliver to counsel for the party that produced the Confidential Information a copy of Appendix A as executed, which shall show each signatory's full name, permanent address and employer, and the party with whom the signatory is associated.

Counsel of record for the persons authorized hereunder who requested the copies shall sign a statement in the form of Appendix C, attached hereto, verifying that the sealed envelope clearly marked as containing Confidential Information has been received, and designate the name and address of the individual into whose custody the copies shall be delivered. The designated representative of the producing party shall

also sign Appendix B and verify to whom the sealed envelope was delivered. Access to said copies shall be limited to those persons specified in this Order.

- D. Intentionally Left Blank
- E. Intentionally Left Blank
- F. If material or information to be disclosed in response to a data request contains material or information concerning another party which the other party has indicated is confidential, the furnishing party shall notify the other party of the intent to disclose the information. The other party may then choose to designate the material or information as CONFIDENTIAL under the provisions of this Protective Order.
- G. Any party may use material or information designated as CONFIDENTIAL in prefiled or oral testimony at hearing provided that the same level of confidentiality assigned by the furnishing party is maintained, unless otherwise classified by the Commission. In filing testimony all parties shall designate as CONFIDENTIAL only those portions of their testimony which contain information so designated by the furnishing party. If any party plans to use information and testimony which has been obtained outside this proceeding, it must ascertain from the furnishing party if any of such information is claimed to be CONFIDENTIAL prior to filing.
- H. A party may designate prefiled or live testimony, or portions thereof, submitted in this case as CONFIDENTIAL (hereinafter, "designated testimony"). Prefiled testimony designated as CONFIDENTIAL shall be filed under seal and served upon all attorneys of record. Only those portions of the prefiled testimony designated as CONFIDENTIAL

should be filed under seal, and should be marked in a manner which clearly indicates which materials are considered CONFIDENTIAL.

- I. Within five days of the filing of designated testimony, the party asserting the claim shall file with the Commission the specific ground or grounds for each claim. Such filing shall show the nature of the information sought to be protected and specifically state the alleged harm of disclosure. Such filing shall be filed under seal only if it contains CONFIDENTIAL information and shall be served upon all attorneys of record.
- J. Attorneys upon whom prefiled testimony designated CONFIDENTIAL has been served shall make such testimony available only to those persons authorized to review such testimony under the restrictions in Paragraph C.
- K. If a response to a discovery request requires the duplication of voluminous material or material not easily copied because of its binding or size, the furnishing party may require the voluminous material be reviewed on its own premises. Voluminous material shall mean a single document, book or paper which consists of more than 150 pages.
- L. Attorneys of record in this case shall require that the in-house or outside expert read this Protective Order and certify in a written nondisclosure agreement that the person has reviewed the Protective Order and consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, permanent address, employer and the name of the party with whom the signatory is associated. Such agreement shall be filed with the Commission. Attached hereto as Appendix A and

incorporated by reference herein is a form for use in complying with the terms of this paragraph.

- M. In the event a witness discloses the contents of designated prefiled testimony in his or her own prefiled testimony, such testimony shall also be designated in the same manner as the designated prefiled testimony and handled in accordance with this order.
- N. Unless good cause is shown, challenges to the confidential nature of prefiled designated testimony shall be filed with the Commission no later than ten days after the grounds supporting the designations are filed or at the hearing, whichever occurs first. The party making the designation shall have five days to respond to the challenge or may respond at the hearing, whichever occurs first.
- O. The Commission or Regulatory Law Judge may rule on the challenge to the designations prior to the hearing, or at the hearings.
- P. In the event no party challenges prefiled designated testimony, or in the event the Commission or its Regulatory Law Judge rules that testimony was properly designated, then such testimony shall be received into evidence, subject to any other objections being made and ruled upon, and kept under seal.
- Q. In addition, all live testimony, including cross-examination and oral argument which reveals the content of prefiled designated testimony or which is otherwise held to be confidential, including any argument as to whether certain testimony is properly designated, shall be made only after the hearing room is cleared of all persons besides the Commission, its Regulatory Law Judges, court reporters, attorneys of record and

witnesses to whom the designated information is available pursuant to the terms of this Protective Order. The transcript of such live testimony or oral argument shall be kept under seal and copies shall only be provided to the Commission, its Regulatory Law Judges, and attorneys of record. Such attorneys shall not disclose the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order. Persons who have access to the designated information under the terms of this Protective Order shall treat the contents of such transcript as any other designated information under the terms of this Protective Order.

- R. References to designated testimony, whether prefiled or live and transcribed, in any pleadings before the Commission, shall be by citation only and not by quotation. Subject to the jurisdiction of any reviewing court, references to designated testimony in pleadings or oral arguments made to such reviewing court shall also be by citation only.
- S. All persons who are afforded access to information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the information secure and in accordance with the purposes and intent of this order.
- T. Subject to the jurisdiction of any reviewing court, designated testimony constituting part of the record before the Commission shall be delivered to any reviewing court under seal upon service of the appropriate writ of review.

- U. The Commission may modify this order on motion of a party or on its own motion upon reasonable notice to the parties and opportunity for hearing.
- V. Within 90 days after the completion of this proceeding, including judicial review thereof, all designated information, testimony, exhibits, transcripts or briefs in the possession of any party other than Staff or the Public Counsel shall be returned to the party claiming a confidential interest in such information and any notes pertaining to such information shall be destroyed.
- W. The provisions of paragraph C, J and L of this Protective Order do not apply to Staff or Public Counsel. Staff and Public Counsel are subject to the nondisclosure provisions of Section 386.480, RSMo Supp. 2001. Staff and Public Counsel shall provide a list of the names of their employees who will have access to the designated information.
- X. Outside experts of Staff or Public Counsel who have been contracted to be witnesses in this proceeding shall have access to designated information and testimony on the same basis as Staff and Public Counsel except the outside expert shall read this order and sign the nondisclosure agreement attached as Appendix A hereto.
- Y. Outside experts of Staff and Public Counsel who have not been contracted to be witnesses in this proceeding are subject to the provisions of this Protective Order.
- Z. Prefiled testimony and exhibits, whether filed or offered at the hearing, shall be prepared in the manner described in Appendix B.

APPENDIX A

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

NONDISCLOSURE AGREEMENT

I, _____, have
been presented a copy of this Protective Order issued in Case No. _____ on the
_____ day of _____, 2_____.

I have requested review of the confidential information produced in Case
No. _____ on behalf of _____
_____.

I hereby certify that I have read the above-mentioned Protective Order and agree
to abide by its terms and conditions.

Dated this _____ day of _____, 2_____.

Signature and Title

Employer

Party

Address

Telephone

APPENDIX B

1. If prefiled testimony contains parts which are classified as Confidential, it shall be filed with the Commission's Secretary/Chief Regulatory Law Judge's Office as follows:
 - A. One public version of prefiled testimony with the Confidential portions obliterated or removed shall be filed. The Confidential pages shall be stamped "HC" with the Confidential information indicated by two asterisks and underlining before and after the Confidential information, ****[Confidential information removed]****. The designated information shall be removed with blank spaces remaining so that the lineation and pagination of the public version remains the same as the Confidential versions.
 - B. Eight copies of the complete prefiled testimony shall be filed under seal. The Confidential pages shall be stamped "HC" with the Confidential information indicated by two asterisks and underlining before and after the Confidential information, ****Confidential****.

Any deviations from this format must be approved by the Regulatory Law Judge.

2. Three copies of exhibits, whether testimony or other, shall be filed at the hearing with the information separated as described in 1.A and 1.B above with each copy of the Proprietary and Highly Confidential portions placed into separate envelopes to be marked as Exhibit __ and Exhibit __HC.

ATTACHMENT A

COMPLIANCE PROCEEDING PROTECTIVE ORDER

Copies of the following documents have been provided to Counsel of Record, pursuant to the terms of the Protective Order applicable to Case No. _____:

Signature of Counsel for Producing Party

Date