

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
November 29, 2000**

CASE NO: TO-2000-667

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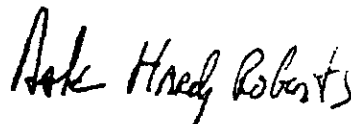
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Investigation into the)
Effective Availability for Resale of South-)
western Bell Telephone Company's Local Plus)
Service by Interexchange Companies and)
Facilities-Based Competitive Local Exchange)
Companies)

Case No. TO-2000-667

ORDER REGARDING MOTION TO DECLASSIFY

On November 13, 2000, the Missouri Independent Telephone Group (MITG) filed a Motion to Declassify. That motion asks that the Commission enter an order declassifying certain documents and data responses that Southwestern Bell Telephone Company (SWBT) has classified as either Highly Confidential or Proprietary pursuant to a Protective Order issued by the Commission on September 12, 2000.

On November 15, SWBT filed a motion asking that the Commission allow it additional time in which to respond to MITG's Motion to Declassify. The Commission granted SWBT's motion on November 16 and directed SWBT to respond to MITG's motion on or before November 27. SWBT filed its response to MITG's motion on November 27.

MITG's motion disputes SWBT's classification of responses to several data requests. Each will be addressed in turn:

SWBT DR Response Nos. 4, 5, 9, 10 and 11:

MITG's motion indicates that in response to its data request numbers 4, 5, 9, 10 and 11, SWBT has provided counsel for MITG with copies of several internal e-mail communications between SWBT operating personnel. When it provided the documents, SWBT indicated that they were

"proprietary." MITG argues that the documents do not qualify as "propriety."

MITG's motion indicates that the e-mail communications in question are internal communications between SWBT personnel concerning network and translation changes necessary to the implementation of LP service, later discovery of translation errors, and subsequent correction of translation errors. SWBT's response essentially agrees with MITG's description of the e-mails but contends that they are indeed properly classified as proprietary.

According to SWBT the information sought to be declassified consists of private and confidential business communications between SWBT employees concerning technical problems it encountered with its switching equipment and what it did to resolve those technical problems. SWBT indicates that the information involved is not generally known outside of SWBT and that the information would be valuable to its competitors because it would reveal problems SWBT encountered with its switching equipment, how it discovered the problems and what it did to correct them. SWBT argues that access to this information would permit competitors to gain an insight into SWBT's business systems, how it manages them, and what it has done to improve them.

SWBT is also concerned that public release of these documents would identify by name the highly skilled computer and data processing personnel employed by SWBT. SWBT fears that this would permit outside companies to identify these key employees and recruit them away from SWBT.

The Protective Order that the Commission issued on September 12, 2000, defines proprietary information as "information concerning trade secrets, as well as confidential or private technical, financial and business information." The Protective Order provides that information

designated as propriety is only to be disclosed to attorneys, employees working as consultants to such attorneys, outside experts, or employees who intend to file testimony. Employees to whom such disclosure is to be made are to be identified to the other party by name, title, and job classification prior to disclosure. On-premises inspection is not to be required for proprietary information, except for voluminous documents.

The descriptions of the disputed documents provided by both SWBT and MITG make it clear that the internal correspondence between SWBT employees refers to private technical information relating to SWBT's efforts to correct problems with its switching equipment. Thus, the information that SWBT has designated as propriety meets the Commission's definition of proprietary information as established in the Protective Order. MITG already has full access to the proprietary information and nothing would be gained by requiring that the disputed information be made fully public. MITG's motion to declassify SWBT's data responses 4, 5, 9, 10 and 11 will be denied.

SWBT DR Response No. 11:

MITG indicates that SWBT's response to data request number 11¹ consists of copies of printouts of routing and call codes for LP traffic in the various Missouri LATAs, as well as printouts of NXXs in the LATAs that could be dialed locally. MITG states that SWBT indicated that the requested information was proprietary and voluminous and could be viewed by making arrangements. Counsel for MITG was allowed to view the documents on November 8, 2000 at SWBT's Jefferson City office, but was not allowed to obtain copies of the documents. MITG argues that the disputed documents do

¹ The appropriateness of the designation of this data response was addressed in the previous section.

not qualify as proprietary and that it should be given a copy of the documents.

SWBT's response indicates that the documents in question are proprietary. SWBT also indicates that the only reason it did not provide a copy of the document for counsel is that it is in excess of 150 pages and thus is voluminous. SWBT indicates that it is willing to provide MITG's counsel with further access to the documents or, if counsel wishes to have his own copy of the document, SWBT will provide it to counsel for duplication. SWBT asserts that it should not be required to pay the cost of copying the document.

The documents in question are properly designated as proprietary as previously indicated. However, the appropriateness of the designation as proprietary is not the issue at hand. Instead, this is a dispute about whether or not SWBT needs to provide MITG with a copy of what it has described as a voluminous document.

Paragraph K of the Protective Order entered in this case provides that "if a response to a discovery request requires the duplication of voluminous material . . . , 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." SWBT's documents are voluminous material as defined in the Protective Order. SWBT properly made this material available for MITG's review and has gone further and indicated that it will provide it to MITG's counsel for the purpose of making a copy of the document. SWBT, however, refuses to bear the cost of copying the document.

SWBT's position is reasonable. If MITG wishes to obtain a copy of the disputed document it may do so by either making the copy itself or by

paying reasonable compensation to SWBT for the cost of copying the document.

SWBT DR Response No. 6:

MITG indicates that SWBT's response to data request number 6 declared the responsive documents to be highly confidential and permitted counsel for MITG to review them but refused to provide copies of the documents. MITG states that the document produced was a manual denominated "Telecordia Technologies Comptrollers Automatic Message Accounting Format Description, Volume IV, issued December 1999. MITG describes the Manual as approximately 700 pages long.

SWBT's response indicates that the document in question is neither Highly Confidential, nor Proprietary. SWBT asserts that it is merely voluminous. SWBT indicates that if MITG wishes to have a copy of the document it will entrust a copy of the document to MITG's counsel for duplication.

SWBT concedes that the document in question is not Highly Confidential. To the extent that SWBT may have previously claimed confidentiality for the document, MITG's motion to declassify will be granted. As previously indicated, if MITG wishes to obtain a copy of the disputed document, it may do so by either making the copy itself or by paying reasonable compensation to SWBT for the cost of copying the document.

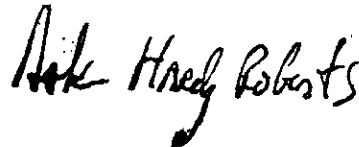
IT IS THEREFORE ORDERED:

1. That with regard to Southwestern Bell Telephone Company's responses to data request numbers 4, 5, 9, 10 and 11, the Motion to Declassify, filed by the Missouri Independent Telephone Group, is denied.

2. That with regard to Southwestern Bell Telephone Company's responses to data request number 6, the Motion to Declassify, filed by the Missouri Independent Telephone Group, is granted.

3. That this order shall become effective on December 9, 2000.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Morris L. Woodruff, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 29th day of November, 2000.

FYI: To Be Issued By Delegation

ALJ/Sec'y: Woodruff/Boye

11-28
Date Circulated

12-1
Return by 3-p.m.

109M

TD-2000-667
CASE NO.

[Signature]
Lumpe, Chair

[Signature]
Drainer, Vice Chair

[Signature]
Murray, Commissioner

[Signature]
Schemenauer, Commissioner

[Signature]
Simmons, Commissioner

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 29th day of Nov. 2000.



Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge