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April 17, 2002

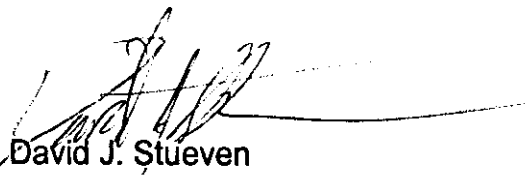
Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, Missouri 65102

Re: TO-2002-397

Dear Mr. Roberts:

Please find enclosed for filing an original and nine (9) copies of IP Communications of the Southwest's Reply to SWBT's Response to IP's Motion for Protective Order. Please stamp the extra copy filed and return in the self addressed stamped envelope. If there are any questions, please contact me at (913) 831-1013. Thank you.

Sincerely,



David J. Stueven  
Director, Regulatory  
IP Communications Corporation

Cc  
Counsel 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  
   )

**REPLY TO SWBT'S RESPONSE TO IP'S MOTION FOR PROTECTIVE  
ORDER**

**COMES NOW** IP Communications of the Southwest ("IP"), by and through its undersigned counsel, and for its Reply to SWBT's Response to IP's Motion for Protective Order, pursuant to 4 CSR 240-2.085, states as follows:

1. On April 2, 2002, IP requested the Missouri Public Service Commission to issue a Protective Order in TO-2002-397. On April 12, 2002, Southwestern Bell Telephone Company ("SWBT") filed its response to IP's motion supporting IP's position that a Protective Order should be adopted but opposing the Protective Order proposed by IP. In this reply, IP provides a very brief response to clarify and/or correct the record on four specific points.

2. In its response, SWBT includes discussion of procedural issues from TO-2001-440.<sup>1</sup> However, SWBT fails to mention that the procedural stature of this docket is substantially different then in that proceeding. In particular, IP's request to clarify/modify protective order in that proceeding was filed after an initial protective order was adopted and after SWBT produced documents in that proceeding. Although IP disagreed with the decision denying IP's motion, it is IP belief and understanding that the timing of IP's request was a consideration in

IP's motion being denied in that proceeding. To alleviate such timing concerns, IP immediately filed its Motion for Protective Order simultaneous with its Motion to Intervene so that the terms of the protective order would be resolved and known at the beginning of the proceeding.

3. Second, SWBT suggests that its willingness to allow CLECs to enter into "side" agreements alleviates the need for what IP deems to be a proper and workable protective order.<sup>2</sup> On the contrary, SWBT's recognition that side agreements are necessary is an implicit admission that the old form protective order is not workable. Instead, SWBT seeks to abuse the fact that the old protective order form is not workable to discriminate between litigants. IP, for example, sought to enter into the SWBT "side" agreement in both TO-2001-438 and TO-2001-440, SWBT has yet to agree to IP's request.<sup>3</sup> This fact evidences that the implicit delegation of authority to SWBT to correct deficiencies in the old protective order form gives too much power to SWBT and does not work, and that it is necessary for the Commission to address the problems with the old protective order form by adopting a new protective order akin to the Protective Order attached to IP's motion.

4. Third, SWBT suggests that the Protective Order attached to IP's Motion for Protective Order would lead to harm to SWBT and SWBT refusing to comply with proper discovery requests.<sup>4</sup> This is simply not true. The Texas

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<sup>1</sup> Southwestern Bell Telephone Company's Response to IP's Motion for Protective Order at 1-2.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> This refusal was even in spite of the fact that SWBT agreed to such a side agreement with IP in TO-2001-439. IP still waits for SWBT to agree to enter into the "side" agreement in TO-2001-438 and TO-2001-440.

<sup>4</sup> *Id.*

Protective Order that SWBT correctly notes as being a basis for IP's proposed Protective Order has not elicited such a response. Instead, SWBT has generally complied with discovery requests and, to IP's knowledge, CLECs have never been accused of misusing information received in discovery for improper business purposes.

5. Finally, SWBT suggests that IP's proposed Protective Order would increase litigation.<sup>5</sup> In fact, the opposite is true. IP has never encountered the level of discovery-related litigation as it has with regard SWBT and its manipulation of the old protective order form. The old protective order form allows SWBT to engage in a multitude of unilateral decisions that a CLEC lacks the ability to effectively contest. For example, in TO-2001-440, IP's motion to declassify documents that IP found to have been improperly marked as highly sensitive was denied in full. Yet, IP is not aware of any in camera inspection of the boxes of documents that were the subject of IP's motion. IP understands that the Commission lacks the free time to review boxes of materials to conduct such an in camera inspection. Yet, the fact remains that this reality allows SWBT to impose unilateral and blanket claims of higher degree of confidentiality that substantively cannot be challenged thereby denying CLECs, particularly small CLECs that utilize internal experts, from due process. Given the fact that harm to SWBT is nonexistent because its documents continue to be treated as confidential under the one-tier of confidentiality approach that SWBT has worked under in Texas for years, the great risk that CLECs will be denied an opportunity

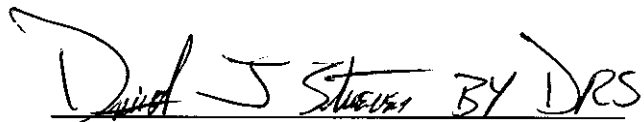
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<sup>5</sup> *Id.*

to present complete cases to this Commission leading a less than complete record cannot be tolerated.

**WHEREFORE,** IP Communications of the Southwest respectfully requests that the Missouri Public Service Commission issue a Protective Order as attached to IP's April 2, 2002 Motion for Protective Order.

Respectfully submitted,


BY DRS

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#### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown below this 17th day of April 2002.

BY DRS

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