

**IP Communications Corporation
6405 Metcalf, Suite 120
Overland Park, KS 66202**

June 10, 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, MO 65102**

Re: TO-2002-397

Dear Mr. Roberts:

**Please find enclosed for filing an original and eight (8) copies of IP Communications' Reply to Responses to Order Directing Filing. If there are any questions, Please contact me at (816) 920—6981.
Thank you.**

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Stueven". The signature is fluid and cursive, with a large initial "D" and "S".

**David J. Stueven
Director, Regulatory
IP Communications corporation**

Attachment

Cc: Counsel of Record

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

COMES NOW IP Communications of the Southwest (“IP”), by and through its undersigned counsel, and for its Reply to Responses to Order Directing Filing, states as follows:

Procedural Background

1. On May 28, 2002, the Regulatory Law Judge ("RLJ") issued an Order Directing Filing seeking comment on four questions. Responses to the Order were due no later than June 5, 2002. Replies are due no later than June 10, 2002.
2. IP filed comments pursuant to the May 28, 2002 Order as did a number of other parties.
3. Pursuant to the May 28, 2002 Order, IP files replies to the responses of other parties herein.

Reply to Responses to Question 1

4. The first question presented by the RLJ is as follows:

Although Southwestern Bell opposes IP's request for a hybrid protective order in this case, Southwestern Bell seems to have recently taken the opposite position in another case. TO-2002-

190. In TO-2002-190, Southwestern Bell has requested that its internal experts have access to information designated as highly confidential. Southwestern Bell's position in these two cases appears to be contradictory. The Commission will direct Southwestern Bell to file a pleading explaining why it opposes a hybrid protective in Case No. TO-2002-397 but appears to want a hybrid protective order in Case No. TO-2002-190.

5. Because this question was directed to SWBT, IP did not provide a response to this question in its initial response and includes its reply to the comments of Southwestern Bell Telephone Company ("SWBT") below.

6. Rather than focusing on the crux of the Commission's question, SWBT merely includes its "legalistic" response supported by SWBT's opinion of what it believes to be HC to itself. SWBT, however, does not address the critical point of the Commission's question. The clear contradiction in SWBT's position in TO-2002-190 and TO-2002-397 is that SWBT supports a burdensome protective order in this docket that prevents internal CLEC witnesses from accessing information critical to the CLECs' effective participation in this and other proceedings. Yet, in TO-2002-190, SWBT implores the Commission to allow its own internal experts to access information critical to that proceeding.

7. The obvious question that SWBT does not answer is: How can the Commission expect CLECs to be able to effectively participate in regulatory proceedings if their internal witnesses are prevented from full access and participation when SWBT tacitly admits that its ability to effectively participate would be curtailed if its internal witnesses had less than full access to all relevant information? The frank answer should be that CLECs would similarly not be able to effectively participate. Moreover, such inequities and limitations will

necessarily be greater on smaller carriers without the deep pockets which come from being the incumbent, historic monopoly, provider. SWBT believes its internal experts need direct access to information and that it needs to utilize internal experts to put forward its best case; CLECs should receive no less.

Response to Question 2

8. The second question presented by the RLJ is as follows:

The Commission also has questions for IP. IP suggests that its hybrid protective order should be used instead of the Commission's standard protective order. IP claims that the "primary change" with regard to its hybrid protective order "is that instead of highly confidential and proprietary information designations, there is a single confidential designation." How else is the hybrid order different from the Commission's standard protective order? Are these additional changes necessary, and if so, why? Explain why the Commission standard protective order should be replaced instead of simply modified to adopt a single confidential designation scheme. Which provisions of the Commission's standard protective order would need to be modified to change from a three-tier scheme of highly confidential, proprietary, and nonproprietary, to a two-tier scheme of confidential and public information?

9. IP was the only party to respond to this question. As a result, IP has no reply.

Responses to Question 3

10. The third question presented by the RLJ is as follows:

This set of questions is directed to IP, Southwestern Bell, and any interested party. If the Commission adopts a hybrid protective order, similar to the one suggested by IP, should that hybrid protective order be used in all Commission cases or just in this case? Explain your reasoning.

11. In response to this question, AT&T, like IP, noted its position that the Commission should transition to the new protective order beyond this case. IP agrees with AT&T and also AT&T's rationale. Specifically, IP and AT&T both noted that the public interest is better served by adopting the protective order proposed by IP as the new standard protective order. And, like IP, AT&T also stated that the proposed protective order will allow parties to more fully participate in the proceedings while continuing to protect confidential information as internal experts will still be held to the high standard that outside experts are held and are required not to divulge or misuse any confidential information to which they are given access.

12. SWBT, on the other hand, supports the old protective order but bases that support on arguments that do not withstand scrutiny. SWBT, for example, suggests that the old protective order is "critical to the proper functioning of the Commission, as the parties before the Commission will not willingly part with highly confidential information if they are not assured that the heightened protection of the Commission is recognized and its Standard Protective Order will be followed."¹ Although SWBT provides this rhetorical argument, it is well aware that it has factual information that demonstrates that the rhetoric is not true.

13. As SWBT and the Commission are aware, SWBT operates under a single confidentiality category, protective order in Texas that does not impose special restrictions on internal CLEC employees. Where such a protective order

¹ SWBT Response at 6.

is in place, SWBT provides confidential (both what is called proprietary and highly confidential under the existing Missouri protective order) information every day. As a result, using Texas as a case study, it is simply false to suggest that the regulatory and discovery processes will be harmed by moving to a single tier of confidentiality. SWBT as the dominant incumbent in Texas is certainly aware that the facts do not support its arguments here.

14. SWBT also raises a side issue as to how Commission practice outside of telecommunications would be affected. IP first notes that the Commission can make the transition in protective orders in telecommunications only and then decide over time whether to apply the revisions to other industries. Also using Texas as a case study, the Texas commission first applied the new protective order in the SWBT arbitrations in 1996. That protective order became the standard order for all FTA cases. Then, that protective order began being applied in almost all telecommunications cases. Over time that protective order has been used outside of the telecommunications cases. At no time has the parade of horrors cited by SWBT come to fruition. Instead, the protective order worked so well, the Texas commission repeatedly expanded its applicability.

Response to Question 4

15. The fourth question presented by the RLJ is as follows:

The final question is directed to IP and Southwestern Bell; however, any interested party respond. What are the advantages and disadvantages of the Commission adopting the standard protective order but granting exceptions to it on a case-by-case basis, in order to allow specific internal experts access to certain highly confidential information?

16. AT&T, like IP, argued against a case-by-case process that would cause increased delay in the administrative process and increase litigation costs. IP clearly supports the comments of AT&T. There is simply no reason to subject the administrative process with a built-in procedural dispute when there are sufficient protections contained in the protective order proposed by IP.

17. SWBT supports allowing a case-by-case review that keeps the old protective order as the status quo. SWBT, however, does not address the many procedural hurdles that such a case-by-case process would raise or how unworkable it would be in practice. IP refers to its initial response on this question to show that it is simply impractical. Just as the Commission was not in a position to engage in an *in camera* inspection of documents in TO-2001-440, the Commission will not be in a position to take on this case-by-case review on repeated cases.

WHEREFORE, IP Communications of the Southwest respectfully requests that the Missouri Public Service Commission issue an order consistent with IP's responses to order directing filing and the replies herein.

Respectfully submitted,



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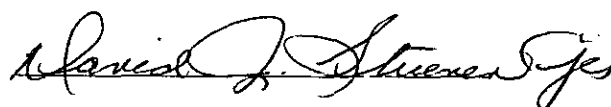
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Certificate of Service

I hereby certify that copies of the foregoing have been emailed, faxed, mailed or hand-delivered to all counsel of record as shown below this 10th day of June 2002.



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