

**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

**SOUTHWESTERN BELL TELEPHONE COMPANY'S REPLY
TO AT&T'S ATTEMPT TO JOINT IP'S MOTION**

Southwestern Bell Telephone Company¹ opposes AT&T's² attempt to join IP
Communications of the Southwest's Motion for a protective order:

1. AT&T's filing is untimely and highly irregular. IP filed its Motion for Protective Order on April 2, 2002. Under Commission Practice and Procedural Rule 2.080(16),³ parties had 10 days -- until April 12 -- to file a response to IP's Motion. AT&T, however, failed to file its response within the required time period. Instead, it is now attempting to introduce its comments supporting IP's Motion by characterizing its pleading as a "response" to Southwestern Bell's April 26, 2002 Reply to IP, which was the last filing in the pleading cycle on IP's Motion.⁴ If parties are permitted to ignore well-established procedural rules and file pleadings way outside clear due dates, the orderly pleading cycles contemplated by the Commission's rules would never end. Accordingly, the Commission should strike AT&T's filing.

2. From a substantive perspective, AT&T is incorrect in its claim that the Commission's Standard Protective Order is not workable and discriminates between litigants. As the Commission is aware, parties from the various utility fields that practice before it have employed the Commission's Standard Protective Order in thousands of cases over the years to

¹ Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company, will be referred to in this pleading as "Southwestern Bell" or "SWBT."

² AT&T Communications of the Southwest, Inc., and its affiliates TCG St. Louis, Inc. and TCG Kansas City, Inc. will be referred to collectively as "AT&T."

³ 4 CSR 240-2.080(16) states: "Parties shall be allowed not more than ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission."

⁴ After IP filed its Motion on April 2, 2002, Southwestern Bell filed a Response on April 12, 2002; IP filed a Reply on April 17, 2002 and Southwestern Bell filed its Reply on April 26, 2002.

ensure that information can be disclosed in regulatory proceedings in ways that protect the legitimate business interests of a party and allow the Commission to make appropriate decisions. The availability of separate "Highly Confidential" and "Proprietary" designations contained in the Commission's Standard Protective Order was adopted by the Commission based on the input of diverse parties in Case Nos. TC-89-14, et al., and has been utilized successfully in numerous costing proceedings since then. In Case Nos. TC-89-14, et al., the Commission initially established a Protective Order with only one category of "confidential" information.⁵ Just three months after adopting its initial Protective Order, however, the Commission found the single classification of "confidential" to be unworkable, and adopted a modified Protective Order containing two separate classifications of confidential information, "HIGHLY CONFIDENTIAL" and "PROPRIETARY."⁶

3. The Protective Order adopted by the Commission in Case Nos. TC-89-14, et al. -- and in particular the dual classification framework for sensitive information contained therein and in the Commission's Standard Protective Order issued in this and countless other cases -- has unquestionably stood the test of time. It has proven to be a highly effective tool which carefully balances the needs of both the party seeking production of sensitive company-specific cost information and the party producing such information. The Standard Protective Order ensures reasonable access to highly sensitive cost and marketing information to competitors who would not otherwise have a right to review such material, but under conditions

⁵ Order Modifying Protective Order and Granting Late Filed Intervention, Case Nos. TC-89-14, TC-89-21, TO-89-29, and TO-89-10, p. 2 (issued November 8, 1988).

⁶ Id., p. 8.

which protect the legitimate competitive interests of the producing party. Contrary to AT&T's claim, it is precisely this Standard Protective Order that has allowed the regulatory process to work in Missouri.

4. On various occasions, some parties have sought modifications to the Commission's Standard Protective Order and on each occasion, the Commission rejected the attempts.⁷ The Commission should similarly reject attempts to modify the Commission's Standard Protective Order in this case.

5. As the Commission is also aware, there have been rare occasions where it has been appropriate for Southwestern Bell to permit a small group of internal CLEC regulatory employees to review highly confidential cost study data during UNE cost proceedings. This very limited exception was permitted only with regard to employees who could certify that they were not involved in retail marking, pricing, procurement or strategic analysis or planning. To make this accommodation, Southwestern Bell has entered into a separate, supplemental nondisclosure agreement with the CLEC to put appropriate safeguards in place to support this limited access to highly confidential cost study information.

6. It is surprising that AT&T is now criticizing this supplemental nondisclosure agreement, as it was developed by AT&T and Southwestern Bell to resolve disputes over access to highly confidential cost information. This agreement was negotiated and used without issue in the third AT&T arbitration, Case No. TO-2001-455. It was also used without incident in subsequent UNE pricing proceedings such as Case Nos. TO-2001-438 (which was the largest generic UNE pricing proceeding to date) and TO-2001-439. As Southwestern Bell is willing to

⁷ See, e.g., Case No. TO-97-40, Order Addressing Motion to Establish Procedural Schedule and Adopt Protective Order, issued August 9, 1996 at p. 4; Case No. TO-2000-322, Order Regarding Arbitration, issued November 29, 1999 at p. 3, and Case No. TO-2001-440, Order Regarding Motion for Reconsideration, issued October 9, 2001 at p. 4.

make the same arrangements in this case as appropriate, there is simply no need to jettison the Commission's Standard Protective Order.

WHEREFORE, Southwestern Bell respectfully requests the Commission to strike AT&T's attempt to belatedly join in IP's Motion to adopt its own version of a protective order, and instead to issue an Order adopting the Commission's Standard Protective Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail and first-class, postage prepaid, U.S. Mail or via hand-delivery on May 13, 2002.


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