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 Southwestern Bell

November 27, 2000

FILED³

NOV 27 2000

Missouri Public
Service Commission

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, Missouri 65101

Re: Case No. TO-2000-667

Dear Judge Roberts:

Enclosed for filing with the Missouri Public Service Commission in the above-referenced case is an original and eight copies of Southwestern Bell Telephone Company's Response to MITG's Motion to Declassify.

Please stamp "Filed" on the extra copy and return the copy to me in the enclosed self-addressed, stamped envelope.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Leo J. Bub
LJB

Leo J. Bub

Enclosure

cc: Attorneys of Record

FILED³

NOV 27 2000

Missouri Public Service Commission

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Investigation into the)
Effective Ability for Resale of Southwestern Bell)
Telephone Company's Local Plus Service by) Case No. TO-2000-667
Interexchange Carriers and Facilities-Based)
Competitive Local Exchange Companies.)

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
RESPONSE TO MITG'S MOTION TO DECLASSIFY**

Southwestern Bell Telephone Company, pursuant to the Missouri Public Service Commission's November 16, 2000 Order Granting Motion for Additional Time to Respond, respectfully submits this Response to the Missouri Independent Telephone Group's (MITG) Motion to Declassify:

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

MITG seeks to declassify copies of several internal Southwestern Bell e-mail communications which Southwestern Bell provided to MITG and classified as Proprietary. MITG claims that these documents do not qualify as Proprietary because they "are merely internal communications between SWB personnel concerning network and translation changes necessary to the implementation of LP service, later discovery of the translation errors, and subsequent correction of the translation errors." (MITG Motion to Declassify, p. 2). MITG, however, has cited no authority to substantiate its claim or provided any explanation as to why it is harmed or prejudiced by the Proprietary classification.

Moreover, MITG is incorrect in its claim. The documents Southwestern Bell provided MITG were private internal business communications between Southwestern Bell employees and is properly classified as Proprietary both under the Protective Order issued this case and Missouri law.

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Under the protective order issued in this case, Proprietary” is defined as “Information concerning trade secrets, as well as confidential or private technical, financial and business information.” See, Order Adopting Protective Order, Case No. TO-2000-667, issued September 12, 2000, Attachment A, p. 1. The information sought to be declassified here consists of private and confidential business communications between Southwestern Bell concerning technical problems it encountered with its switching equipment and what it did to resolve those technical problems.

The United States Constitution recognizes a property interest in maintaining the confidentiality of private business data. U.S. Const. Amend. XIV; Ruckelshaus v. Monsanto, 467 US 986, 81 L.Ed.2nd 815 at 831 (1989); see also, Mo. Const. Art. 1 Section 10. Under Missouri law, such a property interest is found by examining the following factors:

- (1) The extent to which the information is known outside of his business;
- (2) The extent to which it is known by employees and others involved in his business;
- (3) The extent of measures taken by him to secure the secrecy of the information;
- (4) The value of the information to him and his competitors;
- (5) The amount of effort or money expended by him in developing the information;
- (6) The ease or difficulty with which the information could be properly acquired or duplicated by others.

See, Ultralife Labs v. Eames, 221 S.W.2d 224, 233 (Mo. App. 1949) (quoting from the Restatement of the Law of Torts).

Here, the information sought to be declassified is an internal company work product based on Southwestern Bell resources. This information is not generally known outside of Southwestern Bell. Those outside of Southwestern Bell to whom it has been disclosed are involved as parties in an industry records test being conducted in Case No. TO-99-593 and have signed the nondisclosure agreement attached to the Commission Protective Order issued in that

case. The information at issue has been distributed only on a limited basis within Southwestern Bell and only to those with a need to know about it. The Southwestern Bell offices in which this information is maintained are locked and/or entry controlled by security personnel. This information would be valuable to competitors of Southwestern Bell because it would reveal problems Southwestern Bell encountered with its switching equipment, how it discovered the problems and what it did to correct them. Access to this information could permit competitors to gain an insight into Southwestern Bell's business systems, how it manages them, and what it has done to improve them. Access to this information could also help competitors improve their own processes. Southwestern Bell has expended significant amounts of management time working on the project reflected in the documents at issue and the insights Southwestern Bell gained from this project would be difficult for competitors to duplicate without having gone through the process itself.

These internal Southwestern Bell documents would also identify by name highly skilled computer and data processing personnel within Southwestern Bell. This information would be very valuable to Southwestern Bell's competitors and other companies. It would enable them to target these highly skilled employees to recruit them away from Southwestern Bell. These employees would be difficult for Southwestern Bell to replace given the very tight labor market for information technology employees.

MITG has not alleged any harm from the classification of these documents as Proprietary. As indicated on the face of its Motion, these documents have already been provided to MITG and are currently in their possession. (MITG Motion to Declassify, p. 2-3). Under the Commission's standard Protective Order, this information may be viewed not only by MITG attorneys and outside consultants, but also by internal MITG-member employees who sign the

standard nondisclosure agreement attached to the Protective Order issued in this case. Southwestern Bell has not in any case objected to MITG's inclusion of any of its members' employees under the standard protective order and would not object to their being included in this case if they wished. There is simply no harm to MITG from maintaining the Proprietary status of these documents. Where the data at issue is available for use by the Commission and all parties to the case, there is no public interest or benefit to the regulatory process in the disclosure of a party's private financial or business information. Southwestern Bell Telephone Company, et al. v. McClure, Case No. CV193-502cc, Findings of Fact and Conclusions of Law and Judgment, Cole County Circuit Court, issued June 21, 1993, p. 10.

SWBT DR Response No. 11

MITG also apparently claims that Southwestern Bell's response to DR No. 11 has been classified as Highly Confidential and seeks to declassify it. MITG is incorrect. Southwestern Bell does not believe it has classified these documents as Highly Confidential. Rather, they have been classified as Proprietary. The basis for this Proprietary classification is the same as that for its responses to DR Nos. 4, 5, 9, 10 and 11 above.

The reason Southwestern Bell has made its response to DR No. 11 available at its premises as opposed to providing copies is that this response is voluminous. Under paragraph D of the Protective Order, "On premise inspection shall not be required for PROPRIETARY information, except in the case of voluminous documents (see Paragraph K)." Paragraph K states:

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 to be reviewed on its own premises. Voluminous material shall mean a single document, book or paper which consists of more than 150 pages.

Here, Southwestern Bell's response to DR No. 11 was in excess of 150 pages. Rather than require MITG's counsel to travel to St. Louis where the document was located, Southwestern Bell had it sent to its Jefferson City office, which is only a short distance from MITG's counsel's office. Southwestern Bell did this to make the documents conveniently available to MITG's counsel. Southwestern Bell is also willing to make arrangements to have this DR response there whenever MITG's counsel wishes to access it again. Alternatively, if MITG's counsel wishes to have his own copy of this document, Southwestern Bell would be willing to entrust it to MITG's counsel for duplication. Southwestern Bell, however, should not be required to bear MITG's copying expenses.

SWBT DR Response No. 6

MITG claims Southwestern Bell classified its response to DR No. 6 as "Highly Confidential" and offered to make arrangements for MITG to review it. Southwestern Bell, however, does not believe that it classified this document as either Highly Confidential or Proprietary. It is merely voluminous. As MITG's counsel indicated in its Motion, the document is approximately 700 pages in length. Again, Southwestern Bell is willing to make arrangements to have this document available at its Jefferson City office whenever MITG's counsel wishes to see it again. Alternatively, if MITG's counsel wishes to have his own copy of this document, Southwestern Bell would be willing to entrust MITG's counsel with its copy of the document for duplication. Southwestern Bell, however, should not be required to bear MITG's copying expenses.

WHEREFORE, Southwestern Bell respectfully requests the Commission to deny MITG's Motion to Declassify.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail on November 27, 2000.

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by sm

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