



June 4, 2002

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

Via Express Delivery

Re: TO-2002-397; Response to Notice Regarding Filings

Dear Mr. Roberts:

Please find enclosed for filing an original and nine (9) copies of the responses to the Order Directing Filing of IP Communications of the Southwest ("IP") in the above-referenced proceeding. Please stamp the extra copy filed and return in the self-addressed, stamped envelope.

Thank you for your attention to this matter. If you have any questions, do not hesitate to contact me at (816) 920-6981.

Sincerely,

David J. Stueven  
Director, Regulatory  
IP Communications of the Southwest

Enclosures

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

**RESPONSE OF IP COMMUNICATIONS OF THE SOUTHWEST TO  
ORDER DIRECTING FILING**

**COMES NOW** IP Communications of the Southwest ("IP"), by and through its undersigned counsel, and for its Response 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 are due no later than June 5, 2002. Replies are due no later than June 10, 2002.

2. IP provides its responses to the May 28, 2002 Order herein.

**Response to Question 1**

3. 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.

4. This question is directed to SWBT. As a result, IP does not provide a response to this question but reserves the right to reply to the response provided by SWBT.

### **Response to Question 2**

5. 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?

6. The differences from the old standard protective order and IP's proposed protective order are as follows:

- In Section A, the definitions for "Highly Confidential" and "Proprietary" are replaced with the definitions for "Party" and "Confidential".
- In Section B, and throughout, the reference to "Highly Confidential and Proprietary" is replaced with the term "Confidential".

- In Section C, IP proposes new language which substitutes for Sections C, D, and E on the old standard protective order.
- In Sections J, reference to Section C and D is replaced with a reference to Section C only.
- In Section W, no change was made; however, the reference to Sections C, D, J and L could be replaced with a reference to Sections C, J and L.

7. In preparing its proposed protective order, IP attempted to make the minimum number of changes necessary to assure the necessary level of access to information. All of IP's proposed changes relate to the single issue of moving to a two-tier classification of information that does not contain special restrictions that limit the ability of internal witnesses from fully participating in the regulatory process.

8. Because the only changes proposed by IP were to effectuate the moving to the two-tiered system, the bullet list of proposed modifications contained in paragraph 8 above, is the responsive list of those changes that would be required to modify the standard protective order to implement the transition to the two-tiered system.

### **Responses to Question 3**

9. 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.

10. IP believes the Commission should transition to the new protective order in all Commission cases, not only this case. To effectuate such a transition, IP proposes that the new protective be adopted as the new standard protective order in all cases in which a protective order has not been previously established. In those cases where the earlier protective order has already been adopted, the Commission could consider on a case-by-case basis, when requested, whether it is appropriate to adopt the new protective order given the status of those pending cases.

11. For all cases where a protective order has not yet been adopted, IP believes the public interest is better served by adopting the protective order proposed by IP as the new standard protective order. IP believe the public interest is best served when the Commission is able to develop as complete a record as possible without creating procedural roadblocks that artificially increase costs to participate in Commission proceedings and leading to reduced industry participation (and therefore less complete regulatory records).

12. As discussed in IP's motion, internal experts access to the information allows smaller companies, like IP, to more fully participate in the proceedings. IP, as well as many other companies cannot afford to hire outside experts for every case that it participates in, and, especially in the case of a UNE pricing case, IP cannot fully participate without its witnesses having access to confidential information. Moreover, internal witnesses also bring a different layer of knowledge to Commission proceedings. Internal witnesses, for example, often

have greater knowledge as to the operational interplay between regulatory proposals and the affect on the real world. Any rule that limits the ability of internal witnesses to fully participate necessarily limits the Commission's understanding of the industry and therefore the quality of the Commission's decisions.

13. Similarly, there is no harm to allowing internal experts the same degree of access to information that they generally have in other states. Internal experts will still be held to the high standard that outside experts are held to and are required not to divulge or misuse any confidential information that they are given access to. Internal SWBT employees receive confidential CLEC information every day through the wholesale process. Just as those employees are expected to follow rules of confidentiality, internal CLEC employees can be expected to follow those same rules as they do in other states.

#### **Response to Question 4**

14. 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?

15. IP believes that there are substantial disadvantages to a prospective case-by-case review of protective orders and no benefit to not adopting the new protective order as the new standard protective order. The disadvantages are of two types. As discussed in response to Question 3 above,


the proposed new protective order better serves the public interest than the old order.' It improves the ability of the regulatory process to develop a full and complete record while adequately protecting interests in confidentiality. For procedural purposes, it may be necessary to follow a case-by-case approach where a protective order has already been established. However, there is no benefit to such an approach going forward.

16. Moreover, the additional litigation that would result over the battle of the protective order on a case-by-case basis does not serve the Commission or the parties.

Additionally, in IP's motion additional concerns with the old protective order were raised. For example, the effect of the old order is to allow SWBT to effectively designate documents with impunity because of the limitations on the Commission's time to perform complete in camera inspections on large amounts of discovery. It is IP's understanding, for example, that its motion to declassify in TO-2002-440 was denied without any document inspection taking place. As a result, the current process allows SWBT to claim a heightened classification that creates extreme burdens on litigants without any effective recourse to those litigants.

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

Respectfully submitted,

  
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Attorney for IP Communications of the  
Southwest

#### 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 5<sup>th</sup> day of June 2002.

