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
RESPONSE TO COMMISSION QUESTIONS

Southwestern Bell Telephone Company[1] appreciates the opportunity to provide the following clarifying information, as requested by the Missouri Public Service Commission's May 28, 2002 Order Directing Filing:[2]

In its Order Directing Filing, the Commission directed Southwestern Bell to answer the following questions:

1. **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, TC-2002-190. In TC-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 order in Case No. TO-2002-397 but appears to want a hybrid protective order in Case No. TC-2002-190.[3]**

Southwestern Bell's position with respect to the protective order is the same in both cases. Southwestern Bell believes that the Commission's Standard Protective Order is appropriate in both Case Nos. TC-2002-190 and TO-2002-397, and that there is no need for any type of a hybrid protective order in either case.

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[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] In the Matter of the Determination of Prices of Certain Unbundled Network Elements, Case No. TO-2002-397, Order Directing Filing, issued May 28, 2002

[3] Order Directing Filing, p 2

In Case No. TC-2002-190, it may appear to some that Southwestern Bell wants a hybrid protective order because it has asked that its internal technical and regulatory personnel be permitted to access certain traffic information that Mid-Missouri Telephone Company has recorded at its terminating switches, which Mid-Missouri has classified as highly confidential ("HC"). That is not the case. Southwestern Bell is not seeking any change in the Commission's Standard Protective Order in order to gain access to HC data. The data at issue in Case No. TC-2002-190 relates to traffic which either originated on Southwestern Bell's network, or is information given to Southwestern Bell by the originating carrier so that it can be terminated to a Mid-Missouri customer. To the extent a Southwestern Bell customer originated the call, it is Southwestern Bell's HC data and Southwestern Bell may view its own data. To the extent another carrier's customer originated the call, it is not HC as to Southwestern Bell as that same information was given to Southwestern Bell and to Mid-Missouri by the originating carrier.

It is the joint activity of Southwestern Bell and Mid-Missouri and the nature of the data itself that gives rise to Southwestern Bell's expectation and belief that its internal technical experts should be given access to the information, even though it is classified as HC. The information sought pertains to interexchange traffic that traversed both Southwestern Bell's and Mid-Missouri's facilities.

In the normal situation, Southwestern Bell and Mid-Missouri jointly provide access services, on a meet-point bill basis, to other carriers (e.g., Sprint-Missouri, Verizon, Spectra) whose customers place 1+ dialed intraLATA toll calls to end-users in Mid-Missouri's exchanges. For example, when a Sprint-Missouri customer in Warrensburg makes a 1+ dialed toll call to a Mid-Missouri customer in Pilot Grove, Sprint-Missouri carries the call to its meet-point with Southwestern Bell, where Sprint-Missouri hands the call off to Southwestern Bell. Southwestern

Bell then carries the call to its meet-point with Mid-Missouri, where Southwestern Bell hands the call to Mid-Missouri, which carries and terminates the call to an end-user in its Pilot Grove exchange. Since Sprint-Missouri has no facilities that connect directly to Mid-Missouri, Sprint-Missouri completes its calls to Mid-Missouri through the collaboration of Southwestern Bell and Mid-Missouri in providing meet-point billed access services (meet-point billing is the method specified in both Southwestern Bell and Mid-Missouri's access tariffs for billing jointly-provided access services under which each bills the originating carrier for the portion of its facilities used) and Sprint –Missouri pays Mid-Missouri for terminating its end user's call.

In order to handle these types of calls, call-related information is made available by the originating carrier (e.g., Sprint-Missouri) to all carriers on the call path. This information is necessary for them to correctly route the calls and bill access charges to the originating carrier on such calls. While this call-related information would be HC as to other parties, it would not be HC as to the originating carrier and any connecting carrier on the call path (i.e., the transiting carrier and the terminating carrier).

The situation in Case No. TC-2002-190 is different from the norm in that Mid-Missouri is claiming that certain interexchange calls (i.e., from CLECs) should not be allowed to transit Southwestern Bell's network destined for Mid-Missouri's exchanges. Although the facilities used and information passed on these calls should be similar to those Mid-Missouri permits into its exchanges, Mid-Missouri asserts that CLEC-originated calls should be blocked by Southwestern Bell. Southwestern Bell sought Mid-Missouri's data in Case No. TC-2002-190 so that Southwestern Bell's technical and regulatory personnel could investigate the specific calls Mid-Missouri asserted should be blocked. But just as in the normal situation with jointly-

provided access, call-related information on these calls would not be HC to Southwestern Bell because it is one of the carriers on the call path.

As the Commission is aware, it is not unusual for HC data to be viewable by more than one party's internal experts. For example, in access rate proceedings, specific information pertaining to access services supplied by a LEC (e.g., Southwestern Bell) to an interexchange service provider (e.g., AT&T) would not be considered HC to that access provider or to its carrier customer purchasing those services, and that data would be viewable by internal experts of both companies. But that same data would be considered HC to other companies involved in the proceeding, and that information would be viewable only by those companies' attorneys and outside experts. Similarly, information pertaining to an end-user's bill in a particular proceeding would not be considered HC as to either the providing carrier or the end-user customer, but would be considered HC to all other parties in the case.

Another example could arise with respect to private line services. As the Commission is aware, many private line circuits in the State are jointly provided by two (or more) LECs. Such circuits originate in one LEC's territory and terminate in another LEC's territory. The revenue from customers of such private line circuits is apportioned between the LECs based on the portion of the route handled by each LEC and the private line rates in the LECs' tariffs. Information pertaining to a specific jointly-provided private line circuit would not be HC to any of the LECs providing the service or to the private line customer, and that information would be available to the internal experts of any of those companies. However, that same data would be HC to any other company and that information could only be viewed by the attorneys and outside experts of those companies in any proceeding where such circuits might be discussed.

The Commission should also note that while Mid-Missouri in Case No. TC-2002-190 is claiming that the traffic at issue should be blocked, Mid-Missouri is also asking the Commission to order Southwestern Bell to pay terminating access charges on this traffic as if Southwestern Bell were Mid-Missouri's access customer with respect to this traffic.[4] While Southwestern Bell vehemently disagrees that it should be financially responsible for this traffic (as it was originated by other carriers) Southwestern Bell at a minimum should have the right for its internal technical and regulatory personnel to see the usage information upon which such charges are based.

2. If the Commission adopts a hybrid protective order, similar to the ones suggested by IP, should that hybrid protective order be used in all Commission cases or just in this case? Explain your reasoning.

If the Commission adopts a hybrid protective order for this case, that order should be used only for the purposes of this case. Materially changing the Standard Protective Order simply because a few parties in one case do not like the Commission's standard language could potentially result in disruption of regulatory proceedings in other cases both in the telecommunications field and other areas regulated by the Commission. 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 ensure that information can be disclosed in regulatory proceedings in a way that protects the legitimate business interests of a party and allows the Commission to make appropriate decisions.

As the Commission is aware, parties regularly request the Commission to issue its Standard Protective Order to maintain the confidentiality of information to be produced during cases and to facilitate discovery. For example, just two weeks ago at the prehearing in Southwestern Bell's Winback Promotion case, MCI WorldCom asked that the Commission's

[4] See, Mid-Missouri's Complaint, Motion for Southwestern Bell Telephone Company to Show Cause, Request for

Standard Protective Order be issued. No party, including AT&T, opposed this request[5] and the Commission granted the request that same day.[6]

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. These dual classifications have proven to be a highly effective tool, carefully balancing the needs of both the party seeking production of sensitive information and the party producing such information. For example, 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 which protect the legitimate competitive interests of the producing party. Compliance with the Commission's Standard 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. As the Commission has previously recognized, there is a true need to protect companies' confidential information and the issuance of its Standard Protective Order has helped minimize disputes in past cases.[7]

With respect to the substantive terms of the proposed hybrid protective order, it is obvious that the Commission has recognized that IP has made several other material changes aside from merely creating a single "confidential" designation instead of the dual "Highly Confidential" and "Proprietary" classifications. In considering whether to adopt some form of

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Investigation, Injunction, Mandamus, Case No TC-2002-190, filed October 16, 2001, at p. 6, subpara. (f)

[5] See, Transcript from May 22, 2002 prehearing in Case Nos. TT-2002-472 and TT-2002-473, Vol. 1 at pp. 5-6

[6] Order Establishing Protective Order, Case Nos. TT-2002-472 and TT-2002-473, issued May 22, 2002 at p 1

[7] See, e.g., Case No. TO-2001-440, Order Adopting Protective Order, issued April 5, 2001 at p 1

hybrid protective order in this case, the Commission has appropriately questioned the need for such additional changes.

If the Commission believes there is a need to modify its Standard Protective Order in this case to make Highly Confidential cost information more available to parties, while protecting the legitimate competitive concerns of producing parties, the Commission could simply add a provision to its Standard Protective Order that would permit access to such data by a small group of a party's internal regulatory employees who could certify that they were not involved in retail marketing, pricing, procurement or strategic analysis or planning. As Southwestern Bell has indicated in other pleadings in this case, it is willing to make this accommodation in this case (as it has in several other UNE costing proceedings), but would prefer to do so through a separate supplemental nondisclosure agreement with CLECs seeking such information in order to put appropriate safeguards in place to support this limited access to highly confidential cost study information.[8]

3. 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?

The Commission's adopting the Standard Protective Order but granting exceptions to it on a case-by-case basis would provide needed certainty to parties in the various utility fields that practice before the Commission that their highly confidential information would receive the appropriate measure of protection from the Commission. In addition, such a case-by-case approach is consistent with the terms of the existing Standard Protective Order and would allow

[8] See, e g , SWBT's Response to IP's Motion for Protective Order, filed April 12, 2002 in Case No TO-2002-397, at p 3

the Commission the flexibility to address special circumstances that may arise in a particular case.

The purpose of the Standard Protective Order, and the limitations placed on access to highly confidential information, stands on a firm foundation. The Commission is regularly called upon to review matters which involve highly confidential information, including market analysis, employee and market-specific information, reports, workpapers and similar documents, as well as documents concerning strategies in similar matters. Southwestern Bell and other companies regulated by the Commission regularly provide their highly confidential information in connection with regulatory proceedings, in reliance upon their protection afforded by the Commission's Standard Protective Order. If those protections are not accorded, and if employees of a company's competitors are given access to highly confidential information, the number of discovery disputes which this Commission will be asked to resolve will be substantially increased. Companies will be more reluctant to provide such information in the course of regulatory proceedings if highly confidential information is not given the type of protection to which it is entitled. It is the existence of the Standard Protective Order, and the heightened protection given to highly confidential information, that permits the regulatory process to function as the statute contemplates.

The Commission should note that its Standard Protective Order does contemplate modifications where necessary on a case-by-case basis. Section U of the Commission's Standard Protective Order states: "The Commission may modify this order on motion of a party or on its own motion upon reasonable notice to the parties and opportunity for hearing."[9] As the Commission has witnessed in recent UNE pricing proceedings, parties themselves have in

[9] See, e.g., Order Adopting Procedural Schedule and Adopting Protective Order, issued January 28, 2002, in Case No. TC-2002-190, Attachment A, p. 7

limited circumstances negotiated exceptions to the Standard Protective Order, but with appropriate safeguards, on a case-by-case basis in order to allow a specific internal expert to access to certain types of highly confidential information, obviating the need for Commission involvement and any changes to the Commission's Standard Protective Order. Specifically, Southwestern Bell has allowed access to its highly confidential cost information by a limited number of internal CLEC regulatory cost witnesses. Southwestern Bell and those CLECs have done this pursuant to a supplemental nondisclosure and protective agreement under which the CLEC and its internal personnel certify that those employees were not involved in retail marketing, pricing, procurement or strategic analysis or planning. The agreement incorporated the Commission's Standard Protective Order and continued to require a higher degree of care for material designated as "Highly Confidential." It defined who could access the data, what it could and could not be used for, and provided appropriate remedies for violations. Southwestern Bell also entered into mirror image agreements to allow it access to the highly confidential cost information of the CLECs.

As Southwestern Bell has indicated in its prior pleadings in this case, it is willing to make the same arrangements here and believes there is no need to alter the Commission's Standard Protective Order.[10] However, if the Commission believes that any changes are needed here, Southwestern Bell believes that it would be preferable to grant specific exceptions to the Standard Protective Order on a case-by-case basis rather than make a wholesale change in the Commission's Standard Protective Order based only on comments from a small handful of the

[10] See, SWBT's Response to IP's Motion for Protective Order, p 3; SWBT's Reply, filed April 26, 2002 in Case No TO-2002-397, at p. 1; and SWBT's Reply to AT&T's attempt to join IP's Motion, filed May 18, 2002 in Case No TO-2002-397 at pp 3-4

many parties that appear before the Commission. A case-by-case approach, as contemplated by Section U of the Standard Protective Order, that provided parties an opportunity to present their views on any proposed modifications to the Standard Protective Order would be least disruptive to practice before the Commission.

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 June 5, 2002.

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