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July 29, 2002

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. TR-2001-65

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 in Opposition to Motion for Reconsideration.

Pursuant to the Missouri Public Service Commission's March 14, 2002, Order Adopting Procedural Schedule, Clarifying The Scope of This Proceeding, and Concerning Motion to Waive Service Requirement and Motion to Compel Discovery, Southwestern Bell Telephone Company hereby notifies parties not represented by counsel that its Response in Opposition to Motion for Reconsideration describes Southwestern Bell Telephone Company's opposition to AT&T Communications of the Southwest, Inc.'s, TCG Kansas City's and TCG St. Louis' Motion for Reconsideration of the Commission's July 8, 2002, Order Regarding Protective Order and Regarding Procedural Schedule. Any unrepresented party may obtain a copy of this pleading upon request at no cost.

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

Very truly yours,

Anthony K. Conroy

Enclosures

cc: Attorneys of Record (with Pleading enclosed)
Unrepresented parties (cover letter only)

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of an Investigation of the Actual Costs Incurred in Providing Exchange Access Service and The Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri.	)))))	Case No. TR-2001-65

SOUTHWESTERN BELL TELEPHONE COMPANY'S
RESPONSE IN OPPOSITION TO MOTION FOR RECONSIDERATION

COMES NOW Southwestern Bell Telephone L.P., d/b/a Southwestern Bell Telephone Company (Southwestern Bell), and for its Response in Opposition to the Motion for Reconsideration filed by AT&T Communications of the Southwest, Inc., TCG Kansas City and TCG St. Louis (collectively AT&T), states to the Missouri Public Service Commission (Commission) as follows:

1. The Commission established this case on August 8, 2000.[1] Nearly two full years later, on the eve of the scheduled evidentiary hearing in this case,[2] AT&T asks the Commission to reconsider its July 8, 2002, Order Regarding Protective Order and Regarding Procedural Schedule, in which the Commission correctly rejected AT&T's last ditch effort to "discard its standard protective order in favor of the hybrid sponsored by AT&T,"[3] and refused to suspend the procedural schedule in this case.[4]

2. The Commission's decision to not abandon its Standard Protective Order in this case is completely appropriate, and AT&T's Motion for Reconsideration of that decision should be denied. In its Motion for Reconsideration, AT&T characterizes the "issue before the Commission" to be "whether there is any legitimate basis to maintain the legacy protective order

[1] Order Establishing Case and Adopting Protective Order.
[2] This case is scheduled for hearing September 9-13, 2002.
[3] Order Regarding Protective Order and Regarding Procedural Schedule, p.4.
[4] Id.

that is currently in place in this case."[5] Southwestern Bell believes a more appropriate statement of the real issue before the Commission is whether the Commission should scrap its Standard Protective Order, which was developed by the Commission over a decade ago and which has proven to be effective balancing the interests of parties participating in Missouri regulatory proceedings, based on a last minute request of one party (AT&T) that has chosen to not fully participate in this case. The answer in this case is obvious – the Commission should not discard its Standard Protective Order, and permit AT&T to further delay the procedural schedule in this case.

3. As the Commission described in its Order Establishing Case and Adopting Protective Order, this case was established to investigate underlying cost information relating to switched access service, so that the Commission could adopt a permanent solution to permit competitive local exchange carriers (CLECs) to remain classified as competitive telecommunications companies pursuant to Section 392.361.3 R.S.MO. 2000, and replace the interim cap on CLEC exchange access rates adopted by the Commission in Case No. TO-99-596.[6]

4. In its August 8, 2000, Order Establishing Case and Adopting Protective Order, the Commission expressly recognized the very sensitive competitive nature of the "detailed cost information" at issue in this investigation, and sua sponte adopted "its standard protective order immediately."[7] The Commission went further, however. The Commission also stated that "[P]arties are encouraged to suggest such *additional and further measures* to protect proprietary and highly confidential information as they may believe are necessary."[8]

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[5] AT&T Motion for Reconsideration, p. 4.
[6] Order Establishing Case and Adopting Protection Order, p. 2.
[7] Id. at pp. 2-3.
[8] Id. at p. 3 (emphasis added).

5. The basic thrust of AT&T's argument in its Motion for Reconsideration is that the legitimate protection from disclosure to competitors afforded "highly confidential" information under the Commission's Standard Protective Order violates AT&T's due process rights. AT&T has cited no authority which supports such a broad and extreme position. Nor are there any facts which support this claim. AT&T had the opportunity to (a) produce its own cost study using its internal witnesses to establish its cost of providing switched access service, with such data presumably subject to the same highly confidential designation as the data submitted by other parties to this case or (b) engage an outside consultant, as it has done in numerous cases before the Commission, who would have the ability to review highly confidential cost study data submitted by other parties pursuant to the Standard Protective Order.

6. Like all other parties in this case, AT&T was afforded the exact same opportunity to submit its own cost study addressing its cost to provide exchange access service in Missouri to Staff's consultant in this case, but chose not to do so. AT&T was likewise free to submit its own cost study results to the Commission by July 1, 2002, as required by the procedural schedule adopted by the Commission on March 14, 2002, but again, AT&T chose not to do so. Had AT&T done so, the Standard Protective Order would permit AT&T's internal employees to review the highly confidential cost study results produced by Staff's consultant based on AT&T's highly confidential costing information, just as the Standard Protective Order permits Southwestern Bell's internal employees to review Southwestern Bell's results, which are based on Southwestern Bell's highly confidential information. AT&T could also have utilized the services of an outside consultant to review highly confidential cost study data submitted by other parties to this case. As the Commission is aware, AT&T has routinely done so in countless cases

before the Commission, including Case No. TO-2001-438 and Case No. TO-2001-439, each of which involved highly confidential cost study information.

7. Contrary to AT&T's argument, Southwestern Bell has the exact same access to the highly confidential cost information of other parties as AT&T and every other party to this case. Pursuant to the Standard Protective Order, only attorneys and outside consultants can review the highly confidential cost information of other parties. AT&T asserts that "[N]ot only does Southwestern Bell have access to its own cost studies, it also has access to AT&T's cost results, as well as the cost results of other CLECs, because Staff's consultant relied upon data or models provided by SWBT to produce these results."[9] AT&T is simply wrong in this claim. First, AT&T apparently did not submit any highly confidential cost information to Staff's consultant, despite the fact that it had the same opportunity as every other party to do so, and despite the fact that the focus on this case is on CLEC access rates, not incumbent LEC access rates. Moreover, contrary to AT&T's claim, Southwestern Bell's internal employees have not been afforded access to the cost information prepared for CLECs by Staff's consultant. Because the cost information for CLECs was designated highly confidential by Staff, and Staff has indicated that the illustrative CLEC results are based on highly confidential information from several sources, Southwestern Bell has not permitted its internal employees to review this information. AT&T's statements to the contrary are simply wrong.

8. The Commission's Standard Protective Order has not unreasonably impeded AT&T's or any other party's ability to participate in this case, and does not violate AT&T's due process rights in this case. In fact, AT&T has the exact same access to Southwestern Bell's highly confidential cost information that Southwestern Bell has to the costing information which has been designated highly confidential by other parties participating in this proceeding.

[9] AT&T Motion for Reconsideration, p. 18.

Furthermore, Southwestern Bell's (and most likely other carriers') willingness to disclose such a large amount of competitively sensitive cost information in this investigation case was and continues to be based upon the continued availability of the "highly confidential" designation for such information.

9. The Commission's Standard Protective Order issued in this and countless other cases has unquestionably stood the test of time as 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 provisions of the Standard Protective Order ensure reasonable access to highly sensitive cost and marketing information to competitors who would not otherwise have any right to review such material, but under conditions 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 effectively in Missouri.

10. The "hybrid" protective order proposed by AT&T would eliminate the distinction between "highly confidential" and "proprietary" information (as both classifications are defined in paragraph A of the Commission's Standard Protective Order), by simply eliminating the "highly confidential" classification. Among other things, AT&T's proposal would permit its internal employees to copy, fax and review Southwestern Bell's highly confidential information (which would be relabeled "confidential information"), before AT&T discloses the identity or title of such employees to Southwestern Bell. AT&T's proposal to eliminate the "highly confidential" category of sensitive information flies in the face of reality. The distinction between "highly confidential" and "proprietary" information contained in the Commission's Standard Protective Order has worked well in practice throughout the years and has fostered an

environment where parties are willing to produce more sensitive information to competitors, subject to the availability of the "highly confidential" designation. AT&T has failed to explain why the hybrid protective order it is proposing at the eleventh hour in this case would work any better than the Standard Protective Order which has worked so well in Missouri for so many years. As the competitive landscape continues to evolve, the Commission should be vigilant to retain the legitimate protections afforded the most competitively sensitive information by the "highly confidential" designation contained in the Standard Protection Order.

11. It would be particularly unfair if the Commission were to scrap its Standard Protective Order at this late stage in this investigative proceeding. The Commission adopted its Standard Protective Order in August, 2000, on the same day it established this case. If AT&T believed a protective order more to its liking should have been adopted in this case, it could have made such a proposal much earlier in this case, and certainly earlier than April, 2002, after Southwestern Bell and other carriers submitted voluminous highly confidential cost information to Staff's consultant in reliance upon the protections afforded highly confidential cost information by the Standard Protective Order. AT&T chose not to do so, and instead waited until the parties with the most sensitive highly confidential costing information had already produced this information to Staff's consultant, and then belatedly asked the Commission to change the protective order so that this cost information would be subject to less protection. The Commission should not countenance such tactics.

12. AT&T also claims that the competitively sensitive cost study information should be classified as "proprietary" rather than "highly confidential" under the terms of the Standard Protective Order entered by the Commission in this case. This claim clearly has no merit. The competitively sensitive nature of cost information is well established in Missouri. As the

Commission is 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.

13. As Southwestern Bell has previously pointed out, it is surprising to Southwestern Bell 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 what both parties recognized as highly confidential cost information. This supplemental agreement was negotiated and first used without issue last year 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 No. TO-2001-438 (which was the largest generic UNE pricing proceeding to date) and Case No. TO-2001-439. Southwestern Bell informed AT&T in April, 2002, that it was willing to make the same arrangements with AT&T and any other party in this case, and in fact has already entered into such an arrangement with one party to this case. AT&T has never pursued this offer and instead, has focused on attempting to convince the Commission that it should weaken its Standard Protective Order. There is simply no need to jettison the Commission's Standard Protective Order based on AT&T's inaccurate claim that it does not have sufficient access to Southwestern Bell's highly confidential company-specific cost information to enable it to fully participate in this proceeding.

WHEREFORE, Southwestern Bell respectfully requests that the Commission deny AT&T's Motion Reconsideration of the Commission's July 8, 2002 Order Regarding Protective Order and Regarding Procedural Schedule.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this document was served on all counsel or record by first-class, postage prepaid, U.S. Mail or via hand-delivery on July 29, 2002.

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