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June 10, 2002

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65101

Re: Case No. TO-2002-397

Dear Judge Roberts:

Attached for filing with the Commission is the original and eight (8) copies of AT&T Communications of the Southwest, Inc.'s Response to Order Directing Filing.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

A handwritten signature in cursive script that reads "Rebecca B. DeCook (jcr)".

Rebecca B. DeCook

Attachment

cc: All Parties of Record



### Question 1

3. The Commission's first question directed SWBT to respond to the apparent contradiction regarding access to HC information between SWBT's position in this case and SWBT's position in Case No. TC-2002-190. SWBT attempts to deny that they are espousing contradictory positions by claiming it was not asking for a modification to the standard protective order in Case No. TC-2002-190 (SWBT's Response, p. 2). SWBT's claims are unavailing. In its prayer for relief in Case No. TC-2001-190, SWBT asked for the very relief proposed in IP's protective order when it requested the Commission "to issue an order (1) allowing a limited group of Southwestern Bell employees to have access to and use the call-related information supporting Mid-Missouri's complaint during this case."<sup>1</sup> Further, SWBT's prayer specifically asks for an order from the Commission that would allow access to HC data beyond what is allowed under the current protective order. In the text of its Motion, SWBT acknowledges that its internal experts may not view the HC information and it seeks relief from the existing protective order. While SWBT may claim that it is not seeking to modify the protective order, the result is the same as SWBT is seeking an order permitting its internal experts to review HC information in TC-2002-190 and opposing requests for the identical access made by other companies in this proceeding. Thus, SWBT's attempted distinction rings hollow. SWBT's second argument in response to this question is that it is SWBT's right to see the data classified by Mid-Missouri Telephone Company as HC. SWBT asserts that because Mid-Missouri is requesting SWBT pay terminating access charges on the traffic in dispute and states, "SWBT 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" (SWBT's

Response, pg. 5). In essence, what SWBT is saying is that because it may be materially impacted by Mid-Missouri's requested relief, it has a right to view the HC data. That is precisely why AT&T's supports IP's proposed protective order in this proceeding and has proposed similar revisions in several other proceedings. The current standard protective order improperly limits access to information by parties that could be materially affected by the outcomes of the proceedings. AT&T does not contest SWBT's right to review the data SWBT is seeking to access. However, SWBT has no greater right of access to HC information than any other telecommunications carrier in Missouri. Just as SWBT claims its internal experts have the right to review underlying data related to charges it is being asked to pay, AT&T's internal experts have the same right to review data related to rates that AT&T will have to pay or to review HC information in other cases where AT&T's rights are materially impacted. There is simply no basis for SWBT to argue that its internal experts should be permitted to see HC information in Case No. TO-2002-190, but that is somehow unique and different from other companies' requests to have their internal experts review HC information in other cases.

#### **Questions 3 and 4.**

4. As these two questions are related, AT&T will respond to them jointly. With one exception, all parties filing responses to the Commission's order support the adoption of a protective order similar to the one proposed by IP and support doing so in all cases. The reason for doing so are many, including providing companies participating in the regulatory process with access to information necessary for the regulatory process to function properly while providing due process and adequate safeguards. In addition, the adoption of IP's proposed protective order would lead to

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<sup>1</sup> Case No. TC-2002-190, *Mid-Missouri Telephone Company, Petitioner, vs. Southwestern Bell Telephone Company, Respondent, Southwestern Bell's Motion for Access to Data, to Suspend the Procedural*

reduction in disputes over access to HC information, reduce the potential for discrimination and put Missouri's protective order on par with other states.

5. SWBT is the lone exception and, again, provides no substantive justification for its position, other than stating a preference for modifying the existing protective order on a case-by-case basis through negotiations. However, beyond stating a preference, SWBT provides no compelling reason for such a case-by-case process. One argument that SWBT's uses to support retaining the existing protective order or modifying it in only on a case-by-case basis is an assertion that "[c]ompanies 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" (SWBT, Response, p. 6 and 9). The obvious implication is that SWBT will be less forthcoming providing highly confidential information if IP's proposed protective order is adopted. As IP's proposed protective is essentially the same as the protective order used in other states where SWBT operates, does that mean that SWBT is less forthcoming in those states than in Missouri? It is doubtful SWBT would admit that to regulatory authorities in those other states. The point SWBT fails to recognize is that SWBT does not have the option to choose whether or not to provide relevant information based upon SWBT's view of the protective order. As Staff stated in a motion addressing this same issue that was filed in Case No. TR-2001-65,

SWBT's disclosure is not based upon SWBT's willingness; rather it is based upon the Commission's statutory authority to order disclosure. A modified protective order will not alter the Commission's statutory authority to order disclosure."<sup>2</sup>

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Schedule and Refer the Case to A Staff-Supervised Investigation, pg. 9.

<sup>2</sup> TR-2001-65, *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 Companies in the State of Missouri*, Staff's Reply to Southwestern Bell Telephone Company Regarding the Adoption of a Modified Protective Order and Motion for Expedited Consideration, May 23, 2002, pg. 3.

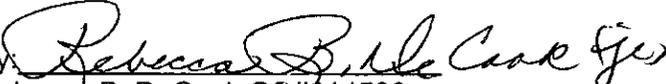
SWBT simply does not have the option of choosing which data it will provide based upon SWBT's preferred protective order.

6. SWBT's claims that adopting IP's proposed protective order will lead to additional discovery disputes is also incorrect. The reality is that SWBT has been protected from close scrutiny because of Missouri's existing protective order and has been much more likely to designate information in Missouri as HC than in other states. Contrary to SWBT's claims that adopting IP's proposed protective order would lead to an increase in litigation, AT&T's experience in the other SWBT states has been the opposite.

7. Finally, the Commission should recognize that IP's proposed protective order provides identical access and safeguards to confidential information that are provided in the other states where SWBT operates. SWBT's has never refuted these statements or suggested anything unique about Missouri's operations that warrant unique treatment. AT&T believes there is no reason why companies participating in Missouri's regulatory process should have less access to confidential information in Missouri than is afforded in other states.

Respectfully submitted,

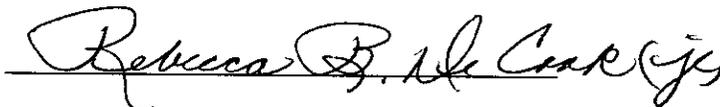
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing in Docket TO-2002-397 was served electronically upon the parties on the following service list on this 10<sup>th</sup> Day of June, 2002.



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