

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED²

NOV 09 1999

Missouri Public
Service Commission

In the Matter of the Petition)
of DIECA Communications, Inc. d/b/a)
Covad Communications Company for)
Arbitration of Interconnection Rates, Terms,)
Conditions and Related Arrangements)
With Southwestern Bell Telephone Company)

Case No. TO 2000-322

MOTION FOR A PROTECTIVE ORDER

Comes now DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), and hereby moves the Missouri Public Service Commission ("Commission") for a Protective Order to govern this proceeding. In support of this Motion, Covad states as follows:

1. Simultaneously with the filing of this Motion for a Protective Order, Covad has filed a Petition for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company ("Petition for Arbitration") and Data Requests. To address any concerns that may be raised by Southwestern Bell Telephone Company ("SWBT") regarding its confidential information that may be responsive to the Data Requests, Covad moves for a protective order at this juncture so that discovery will not be delayed.

2. Attached to this Motion at Exhibit A is a copy of a proposed protective order that Covad is submitting to the Commission. Covad requests that the Commission issue the attached proposed protective order instead of the standard protective order. The

attached proposed protective order contains the following variations from the standard protective order issued by the Commission:

Paragraph C: Covad has removed the following italicized language from the first sentence of Paragraph C:

Materials or information designated as HIGHLY CONFIDENTIAL *may at the option of the furnishing party be made available only on the furnishing party's premises and may be reviewed only by attorneys or outside experts who have been retained for the purpose of this case unless good cause can be shown for disclosure of information off premises and the designated information is delivered to the custody of the requesting party's attorney.*

As reflected in the Petition of Arbitration filed herewith, there is a dispute between Covad and SWBT relating to SWBT's requirement that Covad come to its premises to review relevant information. SWBT has used this requirement as a way of denying meaningful access to its cost studies. In light of this, and in light of the substantial protection afforded to HIGHLY CONFIDENTIAL information under the proposed attached protective order, Covad does not believe that it is necessary or fair for Covad to incur the substantial expense of traveling to St. Louis to review documents and then to be prohibited from taking notes that would allow it to subsequently use the information in connection with the arbitration. Therefore, the italicized language is not in the proposed protective order.

Paragraph K: Covad has removed Paragraph K in its entirety. Paragraph K read as follows:

If a response to a discovery request requires the duplication of voluminous material or material not easily copied because of binding or size, the furnishing party may require the voluminous material to be reviewed on its premises. Voluminous material shall mean a single documents, book, or paper which consists of more than 150 pages.

As reflected in the Petition of Arbitration filed herewith, there is a dispute between Covad and SWBT relating to SWBT's requirement that Covad come to its premises to review relevant information. Covad must incur a substantial expense to send the necessary people to St. Louis to review documents that SWBT refuses to allow off its premises. Covad hereby agrees to pay for all costs of copying and delivery of any documents and any information responsive to its Data Requests. In light of this, Covad sees no circumstances where a burden over and above the gathering and assembling of responsive documents for Covad's review is placed on SWBT by virtue of copying the documents. Therefore, the language of Paragraph K is not in the proposed protective order.

Paragraph D. Covad has removed the following italicized language from the third sentence of paragraph D:

Information designated as PROPRIETARY shall be served on the attorney(s) for the requesting party, *on-premises inspections shall not be required for proprietary information except in the case of voluminous documents (see paragraph K).*

Since Covad has removed Paragraph K for the reason stated above, Covad has also removed reference to Paragraph K in Paragraph D.

3. In all other respects, the attached proposed protective order is the same as the standard protective order issued by the Commission.

WHEREFORE, DIECA Communications, Inc. d/b/a Covad Communications Company hereby requests that this Commission issue the attached protective order.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL



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ATTORNEYS FOR DIECA
COMMUNICATIONS, INC. D/B/A
COVAD COMMUNICATIONS

STATE OF MISSOURI

)

) SS:

COUNTY OF JACKSON

)

1. My name is Lisa C. Creighton and I am the attorney for DIECA Communications, Inc. d/b/a Covad Communications Company. In that capacity, I am authorized to verify this Motion for a Protective Order and the information contained therein on behalf of DIECA Communications, Inc. d/b/a Covad Communications Company.

2022

Lisa C. Creighton

Subscribed and sworn to before me this 8th day of November, 1999.

Carrie M. Wesson

Notary Public

My Commission Expires:

CARMEN M. WESSON
NOTARY PUBLIC STATE OF MISSOURI
CLAY COUNTY
MY COMMISSION EXP. MARCH 23, 2000

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Case No. 76-2000-322

PROTECTIVE ORDER

- A. The following definitions shall apply to information which a party claims should not be made public.

HIGHLY CONFIDENTIAL: Information concerning (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to service offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants, (5) strategies employed, to be employed, or under consideration in contract negotiations.

PROPRIETARY: Information concerning trade secrets, as well as confidential or private technical, financial and business information.

- B. During the course of discovery a party may designate information as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated information") and shall make such designated information available to the party seeking discovery, if such information is not objectionable on any other ground, under the restrictions set out in paragraphs C and D. The party designating the information as HIGHLY CONFIDENTIAL or PROPRIETARY shall provide to counsel for the requesting party, at the time the designation is made, the ground or grounds for the designation. The requesting party may

thereafter file a motion challenging the designation. The party designating the information confidential shall have five (5) days after the filing of the challenge to file a response. No other filings are authorized.

- C. Materials or information designated as HIGHLY CONFIDENTIAL may be reviewed only by attorneys or outside experts who have been retained for the purpose of this case. Outside expert witnesses shall not be employees, officers or directors of any of the parties in this proceeding. No copies of such material or information shall be made and only limited notes may be taken, and such notes shall be treated as the HIGHLY CONFIDENTIAL information from which notes were taken.
- D. Disclosure of PROPRIETARY information shall be made only to attorneys, and to such employees who are working as consultants to such attorney or intend to file testimony in these proceedings, or to persons designated by a party as outside experts. Employees to whom such disclosure is to be made must be identified to the other party by name, title and job classification prior to disclosure. Information designated as PROPRIETARY shall be served on the attorney(s) for the requesting party. Any employees of the party who wish to review such PROPRIETARY materials shall first read this order and certify in writing that (s)he has reviewed same and consented to its terms. The acknowledgment so executed shall contain the signatory's full name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of his/her employer. Such acknowledgment shall be delivered to counsel for the party furnishing the information or documents before disclosure is made.
- E. Attorneys, in-house experts or outside experts who have been provided access to material or information designated HIGHLY CONFIDENTIAL or PROPRIETARY shall be subject to

the nondisclosure requirements set forth in paragraphs C or D, whichever is applicable, and S.

- F. If material or information to be disclosed in response to a data request contains material or information concerning another party which the other party has indicated is confidential, the furnishing party shall notify the other party of the intent to disclose the information. The other party may then choose to designate the material or information as HIGHLY CONFIDENTIAL or PROPRIETARY under the provisions of this Protective Order.
- G. Any party may use material or information designated as HIGHLY CONFIDENTIAL or PROPRIETARY in prefiled or oral testimony at hearing provided that the same level of confidentiality assigned by the furnishing party is maintained, unless otherwise classified by the Commission. In filing testimony all parties shall designate as HIGHLY CONFIDENTIAL or PROPRIETARY only those portions of their testimony which contain information so designated by the furnishing party. If any party plans to use information and testimony which has been obtained outside this proceeding, it must ascertain from the furnishing party if any of such information is claimed to be HIGHLY CONFIDENTIAL or PROPRIETARY prior to filing.
- H. A party may designate prefiled or live testimony, or portions thereof, submitted in this case as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated testimony"). Prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY shall be filed under seal and served upon all attorneys of record. Only those portions of the prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY should be filed under seal, and should be marked in a manner which clearly indicates which materials are considered HIGHLY CONFIDENTIAL and which are considered PROPRIETARY.

- I. Within five (5) days of the filing of designated testimony, the party asserting the claim shall file with the Commission the specific ground or grounds for each claim. Such filing shall show the nature of the information sought to be protected and specifically state the alleged harm of disclosure. Such filing shall be filed under seal only if it contains either PROPRIETARY or HIGHLY CONFIDENTIAL information and shall be served upon all attorneys of record.
- J. Attorneys upon whom prefiled testimony designated HIGHLY CONFIDENTIAL or PROPRIETARY has been served shall make such testimony available only to those persons authorized to review such testimony under the restrictions in Paragraphs C or D, whichever is applicable.
- K. Attorneys of record in this case shall require that the in-house or outside expert read this Protective Order and certify in a written nondisclosure agreement that the person has reviewed the Protective Order and consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, permanent address, employer and the name of the party with whom the signatory is associated. Such agreement shall be filed with the Commission. Attached hereto as Appendix "A" and incorporated by reference herein is a form for use in complying with the terms of this paragraph.
- L. In the event a witness discloses the contents of designated prefiled testimony in his or her own prefiled testimony, such testimony shall also be designated in the same manner as the designated prefiled testimony and handled in accordance with this order.
- M. Unless good cause is shown, challenges to the confidential nature of prefiled designated testimony shall be filed with the Commission no later than ten (10) days after the grounds supporting the designations are filed or at the hearing, whichever occurs first. The party

making the designation shall have five (5) days to respond to the challenge or may respond at the hearing, whichever occurs first.

- N. The Commission or Regulatory Law Judge may rule on the challenge to the designations prior to the hearing, or at the hearings.
- O. In the event no party challenges prefiled designated testimony, or in the event the Commission or its Regulatory Law Judge rules that testimony was properly designated, then such testimony shall be received into evidence, subject to any other objections being made and ruled upon, and kept under seal.
- P. In addition, all live testimony, including cross-examination and oral argument which reveals the content of prefiled designated testimony or which is otherwise held to be confidential, including any argument as to whether certain testimony is properly designated, shall be made only after the hearing room is cleared of all persons besides the Commission, its Regulatory Law Judges, court reporters, attorneys of record and witnesses to whom the designated information is available pursuant to the terms of this Protective Order. The transcript of such live testimony or oral argument shall be kept under seal and copies shall only be provided to the Commission, its Regulatory Law Judges, and attorneys of record. Such attorneys shall not disclose the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order. Persons who have access to the designated information under the terms of this Protective Order shall treat the contents of such transcript as any other designated information under the terms of this Protective Order.
- Q. References to designated testimony, whether prefiled or live and transcribed, in any pleadings before the Commission, shall be by citation only and not by quotation. Subject to

the jurisdiction of any reviewing court, references to designated testimony in pleadings or oral arguments made to such reviewing court shall also be by citation only.

- R. All persons who are afforded access to information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the information secure and in accordance with the purposes and intent of this order.
- S. Subject to the jurisdiction of any reviewing court, designated testimony constituting part of the record before the Commission shall be delivered to any reviewing court under seal upon service of the appropriate writ of review.
- T. 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.
- U. Within ninety (90) days; after the completion of this proceeding, including judicial review thereof, all designated information, testimony, exhibits, transcripts or briefs in the possession of any party other than Staff or the Public Counsel shall be returned to the party claiming a confidential interest in such information and any notes pertaining to such information shall be destroyed.
- V. The provisions of paragraph C, D, J and L of this Protective Order do not apply to staff or Public Counsel. Staff and Public Counsel are subject to the nondisclosure provisions of Section 386.480, RSMo 1994. Staff and Public Counsel shall provide a list of the names of their employees who will have access to the designated information.
- W. Outside experts of Staff or Public Counsel, who have been contracted to be witnesses in this proceeding shall have access to designated information and testimony on the same basis as

Staff and Public Counsel except the outside expert shall read this order and sign the nondisclosure agreement attached as Appendix "A" hereto.

- X. Outside experts of Staff and Public Counsel who have not been contracted to be witnesses in this proceeding are subject to the provisions of this Protective Order.
- Y. Prefiled testimony and exhibits, whether filed or offered at the hearing, shall be prepared in the manner described in Appendix "B".

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

NONDISCLOSURE AGREEMENT

I, _____,
have been presented a copy of this Protective Order issued in Case No. _____ on the
_____ day of _____, 19____.

I have requested review of the confidential information produced in Case No.
_____ on behalf of _____.

I hereby certify that I have read the above-mentioned Protective Order and agree to
abide by its terms and conditions.

Dated this _____ day of _____,
19____.

Signature and Title

Employer

Party

Address

Telephone

APPENDIX "B"

1. If prefiled testimony contains parts which are classified as Proprietary or Highly Confidential, it shall be filed with the Commission's Secretary/Chief Regulatory Law Judge's Office as follows:

- A. An original plus eight (8) copies of prefiled testimony with the Proprietary or Highly Confidential portions obliterated or removed shall be filed.
- B. One (1) copy of those pages which contain information which has been designated as Proprietary, with any Highly Confidential portions obliterated or removed, shall be filed in a separate envelope. The portions which are Proprietary shall be indicated as described in D, below.
- C. One (1) copy of those pages which have been designated as Highly Confidential shall be filed in a separate envelope. The portions which are Highly Confidential shall be indicated as described in D, below.
- D. Six (6) copies of the complete prefiled testimony to be filed under seal for the Regulatory Law Judge and Commissioners. The Proprietary pages shall be stamped "P" and the Proprietary information indicated by two asterisks before and after the information, ****Proprietary****. The Highly Confidential pages shall be stamped "HC" with the Highly Confidential information indicated by two asterisks and underlining before and after the Highly Confidential information, ****Highly Confidential****.

Any deviations from this format must be approved by the Regulatory Law Judge.

2. Three (3) copies of exhibits, whether testimony or other, shall be filed at the hearing with the information separated as described in 1.A, 1.B and 1.C above with each copy of the Proprietary and Highly Confidential portions placed into separate envelopes to be marked as Exhibit ____, Exhibit ____P and Exhibit ____HC.