

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of a Commission Inquiry into	)	
the Possibility of Impairment without	)	Case No. TO-2004-0207
Unbundled Local Circuit Switching When	)	
Serving the Mass Market.	)	

**MOTION FOR CLARIFICATION OF PROTECTIVE ORDER AND RESPONSE  
TO STAFF MOTION FOR CLARIFICATION**

Come Now Brooks Fiber Communications of Missouri, Inc., MCI WorldCom Communications, Inc., MCImetro Access, Transmission Services, LLC, Intermedia Communications, Inc., Dieca Communications, Inc., d/b/a Covad Communications Company, Big River Telephone Company, LLC, XO Missouri, Inc., and Socket Telecom, LLC and move the Commission to clarify its Protective Order in this matter as follows:

1. The Protective Order provides that highly confidential information may be reviewed by any "attorneys or outside experts who have been retained for the purpose of this case". See Section C. It provides that proprietary information may be reviewed by any "attorneys ... employees who are working as consultants to such attorney or intend to file testimony ... or ... outside experts." See Section D.

2. Notwithstanding the broad language of the Protective Order, it was indicated by the Judge at the recent hearings in this matter that the Order should be interpreted more strictly, to the effect that protected information obtained through discovery may only be reviewed by the attorneys, employees (for P information), and outside experts of the party that propounded the discovery and not by those associated with any other party.

3. Such a restrictive interpretation of the Protective Order would be contrary to established practices, as all parties routinely include protected information obtained from others in prefiled testimony, which is then shared with all other parties long before it is determined whether or not such testimony will actually be received in the record. Likewise, protected exhibits are routinely distributed to all parties at a hearing prior to acceptance into the record. It would not be feasible to conduct a case in any other way.

4. Moreover, such a restrictive interpretation would foreclose candid and productive discussions of the case between counsel for various parties, including discussions aimed at simplifying issues, settling disputes, or cooperation in the presentation of evidence to avoid duplicative and cumulative actions.

5. There is no reason to impose such a restrictive interpretation. The other parties could ultimately obtain the information directly from the source, but requiring all parties to propound the same discovery on each other, and then to respond to duplicative requests from multiple parties would be unduly burdensome and without benefit. It would also inject unnecessary delay into the examination and evaluation of evidence and potential evidence. All parties are subject to the restrictions of the Protective Order no matter what the source of the protected information.

6. Such a restrictive interpretation would be especially burdensome in situations where counsel or outside experts represent multiple parties, placing artificial and unnecessary restrictions on the use of information and requiring a burdensome client-by-client analysis as to each piece of protected information.

7. There is no provision in the Protective Order that needs to be changed to accomplish the requested clarification. The provisions regarding signature of

acknowledgements do not impose any such restriction. See Sections D and L. The provisions of section F should only be read as applying to information that has not previously been classified as HC or P in a discovery response, as there is no reason to read it as requiring duplicative classifications. Sections J and Q already allow disclosure to any person authorized under the Order, without regard to party affiliation. Section S applies to all persons regardless of party affiliation.

8. Regarding Staff's Motion for Clarification, there is no reason to restrict parties from responding to requests to see information obtained from other parties in discovery. Again, the protections afforded by the Protective Order are in no way diluted.

9. Notably, the civil rules of procedure, incorporated by the Commission's rules, require direct service of interrogatories and answers thereto upon all parties. See Rule 57.01. Hence, to the extent information is obtained through such formal measures, the restrictive interpretation of the Protective Order would be in direct conflict with the discovery rules. There is no reason to make information obtained by data request less available to other parties, particularly given the intended informality of the procedures, for the reasons stated above. See 4 CSR 240-2.090.

WHEREFORE, Brooks Fiber Communications of Missouri, Inc., MCI WorldCom Communications, Inc., MCImetro Access, Transmission Services, LLC, Intermedia Communications, Inc., Dieca Communications, Inc., d/b/a Covad Communications Company, Big River Telephone Company, LLC, XO Missouri, Inc., and Socket Telecom, LLC request the Commission to clarify its Protective Order in order to make it clear that persons who have obtained protected information subject to the Order may discuss and

review that information with anyone else that is subject to the Protective Order in connection with the proceedings.

Respectfully submitted,

Curtis, Oetting, Heinz,  
Garrett & O'Keefe, P.C.

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**Certificate of Service**

A true and correct copy of the foregoing was served as required by Commission Order in this case on this 10th day of February, 2004 by e-mail transmission.

/s/ Carl J. Lumley  
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