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ALICIA EMBLEY TURNER

May 9, 2002

The Honorable Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

Re: Case No. TC-2002-194

Dear Judge Roberts:

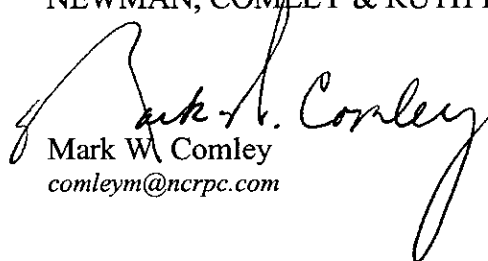
Please find enclosed for filing in the above-referenced matter the original and eight copies of Opposition to Motion for Entry of Standard Protective Order and Motion for Entry of Alternative Protective Order, along with a Motion to File Suggestions in Opposition to Motion for Entry of Standard Protective Order Out of Time.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:

  
Mark W. Comley  
comleym@ncrpc.com

MWC:ab  
Enclosure

cc: Office of Public Counsel  
General Counsel's Office  
Rebecca DeCook  
All Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

Alma Telephone Company, et al.,	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. TC-2002-194
	)	
Southwestern Bell Telephone Company,	)	
et al.,	)	
	)	
Respondents.	)	

**OPPOSITION TO MOTION FOR ENTRY OF STANDARD PROTECTIVE ORDER  
AND MOTION FOR ENTRY OF ALTERNATIVE PROTECTIVE ORDER**

COMES NOW AT&T Communications of the Southwest, Inc. ("AT&T"), by and through its undersigned counsel, and submits this Opposition to Motion for Entry of Standard Protective Order and Motion for Entry of Alternative Protective Order, pursuant to 4 CSR 240-2.085, and states as follows:

1. On April 25, 2002, the Petitioners in the above-captioned proceeding filed a Motion for Protective Order in the above-captioned proceeding. In that Motion, the Petitioners request that the Missouri Public Service Commission issue the standard protective order in this proceeding. In support of this request, the Petitioners state that company-specific and customer-specific billing information will need to be exchanged in order for the parties to determine the nature of the dispute and to facilitate settlement. In the event settlement negotiations fail, Petitioners acknowledge that this information is necessary to the prosecution of the contested case action.

2. AT&T opposes entry of the standard protective order in this proceeding and instead proposes the entry of the attached protective order. Under the standard protective order, a party may

designate information provided as either "Proprietary" or "Highly Confidential." Information designated as "Proprietary" may be reviewed by counsel of record and internal and external personnel who have signed a non-disclosure agreement. Information designated as "Highly Confidential" may only be reviewed by counsel of record and outside consultants. Internal cost experts of the receiving company are prohibited from reviewing information designated as "Highly Confidential" by the providing company. As a result, the standard protective order limits the parties' ability to analyze and assess the information produced, thus preventing the Respondents from effectively presenting a defense to the Complaint, depriving the Respondents of due process. In addition, this limitation on access to the information that forms the basis of the Complaint will undermine the very settlement negotiations that the Petitioners claim this information will facilitate.

3. The complaint in this proceeding was filed by the Petitioners against AT&T and other CLECs and alleges that the CLECs are terminating traffic in the Petitioners' territories without compensation. Based upon the Petitioners' Complaint, it is CLEC-originated traffic information that is at issue and that will be disclosed in this proceeding. AT&T agrees that this information is highly confidential and its disclosure should be protected. However, under the current protective order, to the extent Southwestern Bell, Verizon or Sprint disclose information regarding AT&T-originated traffic that these companies transit to the Petitioners, AT&T personnel would be denied access to such information and could not analyze and assess the accuracy of the information these companies produce. Such an outcome is antithetical and deprives AT&T of the ability to defend itself.

4. AT&T is attaching an alternative protective order, and requests that this alternative protective order be entered in this proceeding in lieu of the standard protective order. This protective order is the same protective order that IP has requested the Commission enter in Case No. TO-2002-

397 and is a hybrid of this Commission's standard protective order and the protective order utilized at the Public Utility Commission of Texas. The Texas protective order has been used in arbitration and generic hearing settings for approximately five and a half years and has been agreed upon by all parties, including Southwestern Bell Telephone Company and other incumbent local exchange companies. The primary change made in the protective order AT&T proposes is that this alternative protective order establishes a single confidentiality designation and allows internal experts to review such information, subject to the restrictions of the protective order. This change will expedite access to confidential information, avoiding disputes regarding the proper designation of documents from one-esoteric tier to another and eliminating the delays associated with trying to negotiate with every party to gain access to confidential information.

5. Affording internal experts access to the information allows both the Respondent companies to more fully participate in the proceedings, which is critical where it is the Respondents' conduct that has been questioned and revenues that are at stake. Given the state of the telecommunications industry, most companies cannot afford to hire outside experts for every case, and, as a result, these companies would be unable to fully participate without internal experts having access to confidential information.

6. Of equal importance, the Petitioners are not harmed by the proposed protective order. Internal experts will still be held to the high standard to which outside experts are held, and are required not to divulge or misuse any confidential information to which they are given access. Access by internal experts is the norm in many standard protective orders in other regions. For example, in virtually every state in which Qwest operates, the standard protective order permits access by internal experts.

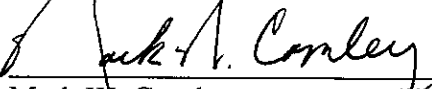
7. Adopting IP's recommended protective order will allow CLECs to more fully participate in these proceedings, alleviate unnecessarily burdensome disputes regarding the classification of documents between different tiers of confidentiality, and allow for the development of a more complete administrative record while still affording more than adequate protection of confidential material.

8. The practice of entering into "side agreements" with CLECs for access to information should not be condoned and cannot be sustained. The fact that the incumbent local exchange carriers have been willing to enter into these "side agreements" is an acknowledgement that CLECs need access to this confidential information and an admission that access by internal experts can be standardized. Forcing CLECs to enter into side agreements with each party unduly delays CLEC access to information that is critical to their effective participation in the proceeding, increases the cost of litigation for the CLECs and affords undue discretion to the Petitioners and other parties, such as SWBT, Verizon and Sprint. The Commission should establish uniform access to confidential information, rather than allowing this ad hoc "side agreement" process to continue.

**WHEREFORE**, AT&T respectfully requests that the Missouri Public Service Commission deny the Petitioner's Motion for entry of the standard protective order and instead issue the attached protective order in this proceeding.

Respectfully submitted,

Rebecca B. DeCook  
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1875 Lawrence St., Rm. 1575  
Denver, CO 80202  
303/298-6489  
303/298-6301 fax

  
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*comleym@ncrpc.com*

ATTORNEYS FOR AT&T  
COMMUNICATIONS OF THE  
SOUTHWEST, INC.

**Certificate of Service**

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, on this 9<sup>th</sup> day of May, 2002, to:

Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

Eric Anderson  
General Counsel  
Mo. Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

William L. West  
222 W. Adams Street  
11<sup>th</sup> Floor  
Chicago, IL 60606

Carl J. Lumley  
Curtis, Oetting, Heinz, Garrett  
& Soule, P.C.  
130 S. Berniston, Ste. 200  
St. Louis, MO 63105

Petra Malik  
Diane L. Peters  
Global Crossing  
Telecommunications, Inc.  
180 South Clinton Avenue  
Rochester, NY 14646

Nathan Christman  
Logix Communications Corp.  
14101 Wireless Way  
Oklahoma City, OK 73134

Southwestern Bell Telephone  
Company  
Attn: Leo Bub, Attorney  
One Bell Center, Suite 3528  
St. Louis, MO 63101

Sprint Missouri, Inc.  
Attn: Lisa C. Hendricks  
5454 West 110<sup>th</sup> Street  
Overland Park, KS 66211

Paul S. Deford  
Lathrop & Gage  
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Kansas City, MO 64108

Gregory Lawhon  
Birch Telecom of Missouri, Inc.  
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Kenneth Meister  
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Louis F. McAlister  
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L.L.C.  
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1701 West Golf Road  
Tower II, Fifth Floor  
Rolling Meadows, IL 60008

Mpower Communications Corp.  
175 Sully's Trail, Suite 202  
Pittsford, NY 14534

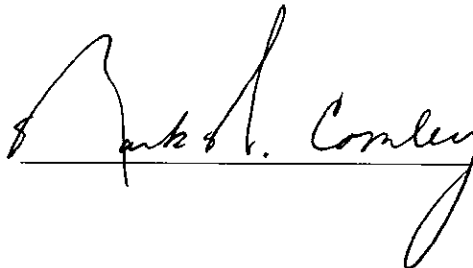
Alexandra Geib  
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Richard Petty  
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Vienna, VA 22182

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Cedar Rapids, IA 52406

Craig S. Johnson  
Lisa Cole Chase  
Andereck, Evans, Milne, Peace  
& Johnson, L.L.C.  
The Col. Darwin Marmaduke  
House  
700 E. Capitol  
P.O. Box 1438  
Jefferson City, MO 65102

A handwritten signature in black ink, reading "Carl J. Lumley", written over a horizontal line.

## **PROTECTIVE ORDER**

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

1. The term "party" as used in this Protective Order means any party to the Commission proceeding.

2. The term "Confidential Information" refers to portions of petitions or applications and all documents, data, information, studies, cost study information, and other materials furnished in the proceeding or pursuant to requests for information or other modes of discovery, including but not limited to depositions, that are claimed to be trade secrets, confidential business information, and information subject to an evidentiary privilege or exempt from public disclosure under the Public Information Act. The parties will work cooperatively to determine if certain limited, summary information from cost studies may be designated as not "Confidential Information" for use at the Hearing. "Confidential Information" shall not include information contained in the public files of any federal or state agency that is subject to disclosure under the Public Information Act or a similar statute, nor shall it include information that, at the time it is provided through discovery in these proceedings or prior thereto, is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Order. "Confidential Information" shall not include information found by the Regulatory Law Judge, the Commission or a court of competent jurisdiction not to merit the protection afforded Confidential Information under the terms of this Order.



B. During the course of discovery a party may designate information as CONFIDENTIAL (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 paragraph C. The party designating the information as CONFIDENTIAL 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 then file a motion challenging the designation. The party designating the information confidential shall have five days after the filing of the challenge to file a response. No other filings are authorized.

C. Confidential Information

(1) General. In the discovery or other proceeding or filings to be conducted in connection with this proceeding, a party may designate certain material produced by such party as "Confidential Information." Copies of the material shall be delivered to the Filing Clerk of the Commission and to the Regulatory Law Judges in a sealed document that is clearly marked on the outside, in letters at least 1" tall, as containing "Confidential Information." Each page of the material submitted under seal shall be consecutively numbered and the envelope shall clearly specify the number of pages contained therein. The party designating the material as confidential information shall clearly identify each portion of the material alleged to be confidential information, and provide a written explanation of the claimed exemption. Such explanation may be accompanied by affidavits providing appropriate factual support for any claimed exemption. In the event that any party questions whether an item has been inadvertently classified as confidential, then the party shall bring the matter to the

producing party's attention prior to taking any action at either the Commission or elsewhere.

(2) Material Provided to Parties. Material claimed to be confidential information must be provided to the other parties to this proceeding provided they agree in writing to treat the material as Confidential Information. One copy of the material shall be provided to each party. The receiving party shall be entitled to make limited copies of the Confidential Information, provided that no more than one copy of the Confidential Information shall be made for each individual who has executed an Exhibit A and is authorized to review the information and that a tracking report is developed by the receiving party accounting for the additional number of copies and the individuals in possession. The receiving party and any individuals in possession of Confidential Information shall keep the Confidential Information properly secured during all times when the documents are not being reviewed by a person authorized to do so. Faxes shall be permitted and any faxed documents shall be treated as copies of the original material; provided that it shall be the responsibility of the party transmitting documents by fax to insure that the documents are only received by individuals authorized to receive the applicable information.

(3) Review by Parties. Each receiving party may designate specific individuals associated with the party who will be allowed access to the Confidential Information. The individuals who may have access to the Confidential Information shall be limited to the receiving party's counsel of record, regulatory personnel acting at the direction of counsel, and outside consultants employed by the receiving party.

Prior to giving access to Confidential Information as contemplated above to any party authorized to be given access pursuant to this Order, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to such persons, and prior to disclosure, such persons shall affirmatively state that the individual has personally reviewed the Order, and will observe the limitations upon the use and disclosure of Confidential Information, in the form of Appendix A, attached hereto. By signing such statements, a party may not be deemed to have acquiesced in the designation of the material as Confidential Information or to have waived any rights to contest such designation or to seek further disclosure of the Confidential Information. Said counsel shall, at the time of the review of such Confidential Information, or as soon thereafter as practicable, deliver to counsel for the party that produced the Confidential Information a copy of Appendix A as executed, which shall show each signatory's full name, permanent address and employer, and the party with whom the signatory is associated.

Counsel of record for the persons authorized hereunder who requested the copies shall sign a statement in the form of Appendix C, attached hereto, verifying that the sealed envelope clearly marked as containing Confidential Information has been received, and designate the name and address of the individual into whose custody the copies shall be delivered. The designated representative of the producing party shall also sign Appendix B and verify to whom the sealed envelope was delivered. Access to said copies shall be limited to those persons specified in this Order.

- D. Intentionally Left Blank
- E. Intentionally Left Blank

- 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 CONFIDENTIAL under the provisions of this Protective Order.
- G. Any party may use material or information designated as CONFIDENTIAL 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 CONFIDENTIAL 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 CONFIDENTIAL prior to filing.
- H. A party may designate prefiled or live testimony, or portions thereof, submitted in this case as CONFIDENTIAL (hereinafter, "designated testimony"). Prefiled testimony designated as CONFIDENTIAL shall be filed under seal and served upon all attorneys of record. Only those portions of the prefiled testimony designated as CONFIDENTIAL should be filed under seal, and should be marked in a manner which clearly indicates which materials are considered CONFIDENTIAL.
- I. Within five 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 CONFIDENTIAL information and shall be served upon all attorneys of record.

- J. Attorneys upon whom prefiled testimony designated CONFIDENTIAL has been served shall make such testimony available only to those persons authorized to review such testimony under the restrictions in Paragraph C.
- K. If a response to a discovery request requires the duplication of voluminous material or material not easily copied because of its binding or size, the furnishing party may require the voluminous material be reviewed on its own premises. Voluminous material shall mean a single document, book or paper which consists of more than 150 pages.
- L. 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.
- M. 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.

- N. Unless good cause is shown, challenges to the confidential nature of prefiled designated testimony shall be filed with the Commission no later than ten days after the grounds supporting the designations are filed or at the hearing, whichever occurs first. The party making the designation shall have five days to respond to the challenge or may respond at the hearing, whichever occurs first.
- O. The Commission or Regulatory Law Judge may rule on the challenge to the designations prior to the hearing, or at the hearings.
- P. 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.
- Q. 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.

- R. 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.
- S. 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.
- T. 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.
- U. 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.
- V. Within 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.

- W. The provisions of paragraph C, 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 Supp. 2001. Staff and Public Counsel shall provide a list of the names of their employees who will have access to the designated information.
- X. 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.
- Y. 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.
- Z. Prefiled testimony and exhibits, whether filed or offered at the hearing, shall be prepared in the manner described in Appendix B.



APPENDIX A

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 \_\_\_\_\_, 2\_\_\_\_\_.

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 \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
Signature and Title

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

## APPENDIX B

1. If prefiled testimony contains parts which are classified as Confidential, it shall be filed with the Commission's Secretary/Chief Regulatory Law Judge's Office as follows:
  - A. One public version of prefiled testimony with the Confidential portions obliterated or removed shall be filed. The Confidential pages shall be stamped "HC" with the Confidential information indicated by two asterisks and underlining before and after the Confidential information, **\*\*[ Confidential information removed ]\*\***. The designated information shall be removed with blank spaces remaining so that the lineation and pagination of the public version remains the same as the Confidential versions.
  - B. Eight copies of the complete prefiled testimony shall be filed under seal. The Confidential pages shall be stamped "HC" with the Confidential information indicated by two asterisks and underlining before and after the Confidential information, **\*\*Confidential\*\***.

Any deviations from this format must be approved by the Regulatory Law Judge.
2. Three copies of exhibits, whether testimony or other, shall be filed at the hearing with the information separated as described in 1.A and 1.B above with each copy of the Proprietary and Highly Confidential portions placed into separate envelopes to be marked as Exhibit \_\_ and Exhibit \_\_HC.

**APPENDIX C**

**PROTECTIVE ORDER**

The copies listed on "Attachment A" have been provided to the designated representative indicated below, pursuant to the terms of the Protective Order applicable to this proceeding.

**These copies will remain in the custody of:**

\_\_\_\_\_  
Name Printed

**STATEMENT OF RECEIPT**

I, \_\_\_\_\_, as (COUNSEL OF RECORD) or (DESIGNATED REPRESENTATIVE) (circle one) have received the sealed envelope marked "Confidential Information." These copies are to remain in the possession of:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Name: \_\_\_\_\_

**ATTACHMENT A**

**COMPLIANCE PROCEEDING PROTECTIVE ORDER**

Copies of the following documents have been provided to Counsel of Record, pursuant to the terms of the Protective Order applicable to Case No. \_\_\_\_\_:

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\_\_\_\_\_  
Signature of Counsel for Producing Party