

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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.)	

**SBC MISSOURI'S RESPONSE TO
SPRINT'S MOTION TO CHALLENGE
HIGHLY CONFIDENTIAL DESIGNATIONS**

COMES NOW Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") and for its Response to Sprint's Motion to Challenge Highly Confidential Designations states as follows:

1. On November 5, 2003, the Missouri Public Service Commission ("Commission") issued its Order Creating Case and Establishing Initial Filing Deadlines ("Order"). Pursuant to that Order, on November 12, 2003, SBC Missouri filed its Response to Order Directing Filing ("SBC Missouri Response"). In that filing, SBC Missouri identified certain information as "Highly Confidential" under the terms of the Protective Order issued by the Commission on November 6, 2003. SBC Missouri classified as Highly Confidential information in two specific areas: (1) the identification of competitive local exchange carrier ("CLEC") switches serving the mass market (Exhibit A-HC to SBC Missouri Response); and (2) the identification of CLECs providing dedicated transport utilizing their own facilities (Exhibit B-HC to SBC Missouri's Response).

2. On November 17, 2003, Sprint Missouri, Inc. and Sprint Communications, L.P. ("Sprint") filed a Motion to Challenge Highly Confidential Designation ("Sprint's Motion"). In its Motion, Sprint maintained that the name of CLECs providing switching services is publicly available through the Local Exchange Routing Guide ("LERG") and was publicly filed with the

FCC in connection with the Triennial Review proceeding. Sprint Motion, para. 4. In addition, Sprint maintained that the list of companies providing dedicated transport was not Highly Confidential since the information was not tied to specific routes and since some of these facilities providers offer their services on a commercial basis. Sprint's Motion, para. 5. In the on-the-record portion of the prehearing conference held on November 18, 2003, the parties were directed to respond to Sprint's Motion by November 19, 2003.

3. SBC Missouri identified the information included on Exhibit A-HC and Exhibit B-HC to its November 12, 2003 Response to Order Directing Filing as Highly Confidential on the basis that those CLECs identified might consider that information to be confidential. If the CLECs or the Commission believe the information is not Highly Confidential, SBC Missouri has no objection to reclassification. SBC Missouri identified the information as highly confidential in order to avoid any claims by the CLECs involved that SBC Missouri was inappropriately disclosing their information.

4. With regard to the identification of CLECs providing switching services to mass market customers in the St. Louis, Kansas City and Springfield Metropolitan Statistical Areas ("MSAs"), Sprint's claim that the information is publicly available is only partially correct. While all switching providers are necessarily included in the LERG, SBC Missouri's filing did not identify all of those entities providing switching services in the St. Louis, Kansas City and Springfield MSAs. Instead, SBC Missouri utilized its own information to identify a particular subset of switches identified in the LERG, i.e., those switches being utilized to provide switching to mass market customers (with mass market customers identified pursuant to the FCC's default rule of three DS0s or less). That information is not publicly available and may be considered by the CLECs involved to be Highly Confidential. Similarly, Sprint's contention that the companies were identified in the FCC's Triennial Review proceeding is also only partially correct. While the

evidence in the FCC's Triennial Review proceeding identified all of the carriers offering switching services in the respective MSAs, there was no attempt to identify the subset of that group as set forth in Exhibit A-HC to SBC Missouri's November 12, 2003 filing. Again, the CLECs involved may consider the information to be Highly Confidential and SBC Missouri appropriately designated it as such. To the extent the CLECs involved or the Commission does not consider the information to be Highly Confidential, SBC Missouri has not objection to reclassifying.

5. With regard to identification of companies providing transport services as identified in Exhibit B-HC to SBC Missouri's November 12, 2003 filing, Sprint maintains that the list of providers is not Highly Confidential if not associated with a particular route. Sprint also maintains that "some of these facilities providers commercially offer their services," (Sprint's Motion, para. 5) but does not identify those carriers or provide the basis for its assertion. SBC Missouri utilized its own information to identify the CLECs which provide transport services and designed the material as Highly Confidential on the basis that the CLECs might consider it to be such. If the CLECs do not, or the Commission does not, SBC Missouri has no objection to reclassifying Exhibit B-HC.

6. In its Motion, Sprint also requests that "in all future filings, the party designating the information as Highly Confidential in any pleading be required to make a demonstration that such a designation is justified." Sprint Motion, para. 6. Sprint does not explain precisely what it means, and SBC Missouri has significant concerns with this approach if it could be used to violate the protective order. This proceeding will involve information of ILECs that is considered Highly Confidential as well as information of CLECs that would be considered Highly Confidential. The parties will obtain certain of this information from each other through discovery and may well seek to include it in testimony or pleadings. A party utilizing information designated as Highly Confidential by another party must respect that designation in any pleadings or testimony filed

with the Commission in this case. A party which believes that the information is not Highly Confidential may file a Motion, just as Sprint has done here. That is the appropriate manner for handling any disputes regarding Highly Confidential designations, and a party should not refuse to follow a highly confidential designation placed by another party on information produced during the course of discovery. To do so would itself be a violation of the Protective Order which requires that the Highly Confidential designation be honored.

**Response to Supplement to Sprints
Motion to Challenge Highly Confidential Designations**

7. At the prehearing conference, the parties were directed to file by November 19, 2003, Responses to Sprint's Motion to Challenge Highly Confidential Designations and another Sprint Motion to Modify the Protective Order, both of which were filed on November 17, 2003. Given that the parties were in Jefferson City engaged in a prehearing conference, that direction clearly imposed some burden, but one to which no party objected. The Regulatory Law Judge did not, however, direct or authorize Sprint to file a "supplement" to its Motion, nor did it require the parties to respond to the supplement today. Nevertheless, because Sprint seeks to obtain some advantage by its unauthorized filing, SBC Missouri will present at least a preliminary response at this point.

8. Sprint's Supplement purports to draw upon discussions held at the prehearing conference. As is not uncommon at such proceedings, the parties attempted to discuss several issues to see if some resolution could occur that would obviate the need for the Commission to resolve the pending dispute. While such discussions are appropriate and should be encouraged, Sprint's attempt to gain an advantage by mischaracterizing those discussions in an attempt to gain an advantage should not be countenanced. The recitation by Sprint is neither factually accurate nor complete and should be completely ignored by the Commission.

9. Sprint's Supplement apparently contends that SBC Missouri violated the terms of the Protective Order when it designated information that it had in its possession as Highly Confidential because it involved the services and facilities of its competitors. Sprint's contention is baseless. Paragraph G of the Protective Order does not apply to information in SBC Missouri's own possession that was not furnished to it by a party outside of the proceeding. Information which SBC Missouri has obtained on its own and separate from the Protective Order is not, of course, subject to the terms of the Protective Order. As the information was not supplied to SBC Missouri by another party, paragraph G simply does not apply.

10. SBC Missouri designated the information as Highly Confidential in order to avoid claims by any CLEC that it was inappropriately disclosing information concerning that CLEC. That approach is appropriate and correct, balancing the needs of the parties. Sprint failed to disclose that, at the prehearing conference, at least one other CLEC made it very clear that it expected Highly Confidential information concerning it to be designated as such in a filing such as that made by SBC Missouri.

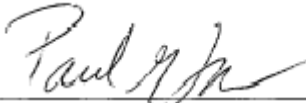
11. The Commission should recognize that Sprint's assertions are late-filed, unauthorized, unsupported by any evidence and detrimental to the appropriate discussions that should take place at prehearing conferences. Moreover, Sprint's claims are factually and legally incorrect. Accordingly, Sprint's Supplement adds nothing to the discussion and should be rejected on its merits.

WHEREFORE, for all the foregoing reasons, SBC Missouri respectfully requests the Commission to determine whether the information included in Exhibit A-HC and Exhibit B-HC to SBC Missouri's November 12, 2003, Response to Order Directing Filing is appropriately classified as Highly Confidential. Further, SBC Missouri respectfully requests the Commission

not to change the terms of the Protective Order with regard to challenges to designation of information as Highly Confidential.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document was served to all parties by e-mail or first-class, postage prepaid, U.S. Mail on November 19, 2003.



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