

113
R-10 Binder

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 17th
day of August, 1988.

The Staff of the Missouri Public Service)
Commission,)
)
Complainant,)
)
v.)
)
Southwestern Bell Telephone Company,)
a Missouri corporation,)
)
Respondent.)
)

Case No. TC-89-14

O R D E R

On August 15, 1988, Commission Staff filed a Motion To Compel Access And Authorize The Pursuit Of Injunctive Relief. In support of its motion Staff states that Southwestern Bell Telephone Company (SWB), as of 5:00 p.m., Friday, August 12, 1988, requested the return from Staff of all data claimed by SWB to be proprietary and notified Staff that SWB would no longer make office space at 100 North Tucker available for Staff use. SWB's requests were made by letters to Deputy General Counsel Dottheim and gave Staff until 8:00 a.m., Monday, August 15, 1988, to return the material claimed to be proprietary and until 5:00 p.m., Monday, August 15, 1988, to remove all Staff possessions from SWB's premises. SWB indicated it would make the material claimed to be proprietary available to Staff upon request and during regular working hours.

By its motion Staff seeks an order from the Commission which requires SWB to provide Staff with:

- A) full, unfettered, 24-hour access to SWB data request responses in accordance with the Nondisclosure Agreement executed between Staff and SWB and incorporated herein by reference;
- B) all copies of keys to the file cabinets in SWB's offices in which the answers to Staff data requests have been stored;
- C) adequate audit rooms for the Staff, in which responses claimed to contain confidential information will be stored at all times and to which Staff has 24-hour access;
- D) keys to the Staff audit rooms and identification cards necessary for Staff personnel to enter SWB's offices at any time; and
- E) authorization for the General Counsel to pursue enforcement of the Commission order by seeking temporary restraining orders, preliminary injunctions and/or permanent injunctions against SWB pursuant to Section 386.360, R.S.Mo. 1986, in the event SWB does not comply with the Commission order.

Staff states it needs full and 24-hour access to the information in the responses to data requests even though it has completed its audit and has filed its prefiled direct testimony in this case. Staff states it requires continuing access to its work papers for purposes of preparing for the hearing in this matter and in order to respond to data requests from other parties, as well as to prepare rebuttal testimony. Staff states further that it signed a Nondisclosure Agreement with SWB so that access to this information would be assured.

On August 16, 1988, Public Counsel filed a response to Staff's motion. Public Counsel indicates the problems of access to proprietary information are pervasive and that neither Staff nor Public Counsel are required by statute to sign non-disclosure agreements which limit access to information of public utilities.

The Commission, to allow SWB an opportunity to respond to Staff's motion, held oral argument on the motion on the afternoon of August 16, 1988. SWB during its

resentation argued that its actions of August 12 were a reasonable attempt to regain control of the proprietary information in Staff's possession and to establish procedures and provide facilities for access to that information during the remainder of these proceedings.

The Commission has considered Staff's motion and the arguments and presentations of the parties. The Commission recognizes that SWB may have legitimate concerns regarding the dedication of office space to the Staff, access to SWB buildings by Staff, and control of material claimed to be proprietary. These concerns, though, could have been raised and negotiated with Staff at any time during the audit, which began in November 1987.

The Commission considers SWB's response to these concerns by denying Staff access to Staff's own work papers and changing the locks on filing cabinets and doors to be totally unreasonable and unsupported by any information provided to the Commission. The decision to unilaterally and without notice disregard the procedures followed for eight months during the audit was a blatant disregard for Commission authority and severely damages SWB's credibility.

As stated elsewhere and repeated here, the Staff of the Public Service Commission has the right, under Sections 386.320 and 393.210, R.S.Mo. 1986, to review all books, contracts, records, documents and papers of any person or corporation subject to Commission jurisdiction. Even information claimed to be proprietary cannot be withheld from Staff. In this case the Commission believes Staff has been more than reasonable by signing the Nondisclosure Agreement with SWB which forced Staff to view the documents on SWB property and restricted Staff's ability to remove any material claimed to be proprietary. SWB has not even complied with the Nondisclosure Agreement which Staff executed for SWB's benefit.

The Commission has determined that SWB's actions are so egregious that the Commission must take immediate action to ensure that Staff's access to its work papers and data collected in this case is assured. The Commission will therefore

grant Staff's motion. Once Staff again has access to its work papers, if SWB and Staff are unable to reach an acceptable accommodation of SWB's concerns of access and control, the final solution may be to remove all of Staff's material, including material claimed to be proprietary, to facilities in Jefferson City controlled by Staff.

It is, therefore,

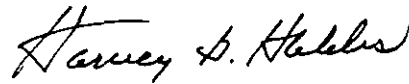
ORDERED: 1. That Southwestern Bell Telephone Company is hereby ordered to provide Commission Staff with:

- A) full, unfettered, 24-hour access to SWB responses to all data requests in accordance with the Nondisclosure Agreement executed between Staff and Southwestern Bell Telephone Company;
- B) all copies of keys to the file cabinets in Southwestern Bell Telephone Company's offices in which the answers to Staff data requests have been stored;
- C) adequate audit rooms for the Staff, in which confidential responses to data requests will be stored at all times, to which the Staff has 24-hour access;
- D) keys to the Staff audit rooms and identification cards necessary for Staff personnel to enter Southwestern Bell Telephone Company's offices at any time.

ORDERED: 2. That the General Counsel of the Missouri Public Service Commission is authorized to pursue enforcement of this order by seeking temporary restraining orders, preliminary injunctions and/or permanent injunctions against Southwestern Bell Telephone Company, pursuant to Section 386.360, R.S.Mo. 1986, in the event Southwestern Bell Telephone Company does not comply with this order.

ORDERED: 3. That this order shall become effective on the date hereof.

BY THE COMMISSION

A handwritten signature in cursive script, appearing to read "Harvey G. Hubbs".

Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Musgrave,
Mueller, Hendren and Fischer,
CC., Concur.