

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

In the Matter of a Proposed Rule To)	
Establish a Procedure for Handling)	
Confidential Information in Commission)	Case No. AX-2003-0404
Proceedings)	

**AT&T MISSOURI'S REPLY TO OPC'S
AUGUST 9, 2006 POST-HEARING LETTER**

AT&T Missouri¹ respectfully submits this reply to OPC's² August 9, 2006 post-hearing letter. OPC's letter refers to the Sprint rate rebalancing case (Case No. TR-2002-25) in which, according to OPC's letter, Sprint claimed that OPC violated the protective order "by unilaterally transferring Highly Confidential information" from an earlier proceeding into the rate rebalancing case. OPC claims that its "proposed rule amendment sections (16a) would have left no doubt about Public Counsel's (and Staff's) clear right to use HC data from one case to another."³

OPC's implicit suggestion that the Commission's current standard protective order confers a "clear right" to porting confidential material from one case to another is misplaced – to the contrary, such a practice is flatly prohibited. Equally important is that if the Commission were to allow such "porting" of confidential material from one case to another, it also should expect that parties submitting data to the Commission Staff or the OPC will be far less generous in the future than in the past.

¹ Southwestern Bell Telephone, L. P. d/b/a AT&T Missouri ("AT&T Missouri").

² Office of the Public Counsel ("OPC").

³ OPC Letter, p. 2.

OPC's proposed amendment, in pertinent part, would allow it and Staff to "use information designated as highly confidential and proprietary in a proceeding for any purpose in other proceedings relating to the same utility company."⁴ (emphasis added). Despite OPC's contrary claim, such use of confidential information is simply not permitted under the current standard protective order. Paragraph S could not be more clear in this regard:

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. (emphasis added).

Put simply, the current protective order expressly prohibits the practice proposed by OPC, and this proceeding, meant to simply codify existing practice,⁵ should not be used as a means to adopt OPC's eleventh hour change of course.

Adopting OPC's proposed rule would also cause parties to think long and hard before providing Staff and OPC confidential information. In AT&T Missouri's experience, under current practice, companies have tended to be more deferential in responding to data requests when such requests are generated by Staff or OPC. Moreover, the Commission has long been vigilant to police practices that upset parties' privacy expectations regarding the use to which their confidential information may be put.

⁴ OPC Comments, p. 2.

⁵ The purpose of this proceeding is not to change practice, but rather, to formalize it, without the need to request that a protective order be adopted on a case by case basis. See, E-Mail Memorandum of the Honorable Morris L. Woodruff to All Interested Persons, November 23, 2005 ("As it has discussed this proposed rulemaking the Commission has, at various times, considered making rather substantial changes to current practices. However, the goal of this latest version of the rule is simply to move the current practices into a rule without substantially changing those familiar practices.").

In one such instance, OPC had obtained, pursuant to Section 386.480, RSMo 1994, certain financial reports filed by Southwestern Bell with the Commission. Later, in Case No. TO-97-397,⁶ the Attorney General's motion to be provided access to these same reports was denied following Southwestern Bell's objection. Next, however, OPC gave this information to MCI in response to a data request, without informing Southwestern Bell, and MCI used the information in its testimony filed in the case. The Commission's message condemning such a practice was clear:

The Commission finds that the actions of OPC did not comport with the requirements of Section 386.480, RSMo 1994. The Commission also finds that OPC violated the terms of the Protective Order issued in this case. . . .⁷

Now, as then, both Staff and OPC can easily frame a data request intended to yield the kind of data and other information it may desire (such as the financial records that OPC wrongly "ported" to MCI in TO-97-397). However, such an approach offers a critically important safeguard that OPC's proposal here would sacrifice – the opportunity to be heard, and to object as appropriate. Without this important safeguard, the Commission cannot expect that companies requested to provide Staff or OPC confidential information will be as willing to do so in the future. OPC's proposal should be rejected in its entirety. The "clear right" it suggests is inherent in the current standard protective is flatly

⁶ In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that it is Subject to Price Cap Regulation Under Section 392.245, RSMo Supp. 1996, Case No. TO-97-397, Report and Order, September 16, 1997. ("Report and Order").

⁷ Report and Order, p. 13.

prohibited by that order and should remain so when the proposed rule codifying that order is adopted.⁸

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.
d/b/a AT&T MISSOURI

BY 

PAUL G. LANE	#27011
LEO J. BUB	#34326
ROBERT J. GRYZMALA	#32454

Attorneys for AT&T Missouri
One AT&T Center, Room 3516
St. Louis, Missouri 63101
314-235-6060 (Telephone)/314-247-0014(Fax)
robert.gryzmala@att.com

⁸ Notably, AT&T Missouri's notes of the August 7, 2006, public hearing reflect that General Counsel's Office likewise voiced its opposition to OPC's proposal (a transcript of the hearing has not yet been filed in the case).

CERTIFICATE OF SERVICE

Copies of this document were served on each of the following by e-mail or first-class, postage prepaid, U.S. Mail on August 18, 2006.


Robert J. Gryzmala

General Counsel
William Haas
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
gencounsel@psc.mo.gov
William.Haas@psc.mo.gov

Public Counsel
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102
opcservice@ded.mo.gov

Larry W. Dority
James M. Fischer
Fischer & Dority
101 Madison, Suite 400
Jefferson City, MO 65101
lwdority@sprintmail.com
jfischerpc@aol.com

Michael C. Pendergast
Rick Zucker
Laclede Gas Company
720 Olive Street, Room 1516
St. Louis, MO 63101
mpendergast@lacledegas.com
rzucker@lacledegas.com

James B. Lowery
Smith Lewis, LLP
PO Box 918
Columbia, MO 65205
lowery@smithlewis.com