

Paul G. Lane
General Counsel-Missouri

Southwestern Bell Telephone
One Bell Center
Room 3520
St. Louis, Missouri 63101
Phone 314 235-4300
Fax 314 247-0014



December 30, 1999

FILED

DEC 30 1999

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

**Missouri Public
Service Commission**

Re: Case No. TO-2000-322

Dear Judge Roberts:

Enclosed, for filing in the above-captioned case, are an original and fourteen copies of Southwestern Bell Telephone Company's Response to Covad's Motion to Compel Responses to Data Requests.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul G. Lane".

Paul G. Lane

Enclosures

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

DEC 30 1999

In the Matter of the Petition of DIECA)
Communications, Inc. d/b/a Covad)
Communications Company for Arbitration)
of Interconnection Rates, Terms, Conditions)
and Related Arrangements with Southwestern)
Bell Telephone Company.)

Missouri Public
Service Commission

Case No. TO-2000-322

**SOUTHWESTERN BELL TELEPHONE COMPANY'S RESPONSE
TO COVAD'S MOTION TO COMPEL RESPONSES TO DATA REQUESTS**

SUMMARY OF POSITION

COMES NOW Southwestern Bell Telephone Company (SWBT) and for its
Response to Covad's Motion to Compel states as follows:

The Commission has determined that arbitrations under the federal
Telecommunications Act of 1996 are not subject to its procedural rules regarding
discovery and contested cases. Instead, the Commission has issued arbitration
procedures which govern proceedings such as this. Under those arbitration procedures,
discovery is not allowed as a matter of right, but is to be determined on a case-by-case
basis. In the arbitration proceeding involving AT&T and SWBT (Case No. TO-97-40, et
al), which involved issues substantially more complex and numerous than presented here,
the Commission permitted limited discovery only after the filing of the initial round of
testimony. The Commission's order recognized that given the limited time frames of the
Act, discovery before the filing of initial testimony could impact a party's ability to
prepare and present its case.

Although the Commission's arbitration procedures do not require discovery,
SWBT has in good faith responded to Covad's discovery requests. The Commission
should be aware that Covad has submitted more than 90 requests, many containing

multiple subparts, and that SWBT has produced more than nine thousand pages of documents in response to those requests (including all of the cost studies at issue here). It has done so even though Covad has not responded to data requests from SWBT with the same vigor with which it pursues discovery. Of the 10 data requests sent by SWBT, Covad objected to six requests and provided non-responsive answers to the remaining four.

SWBT believes the Commission should deny the Motion to Compel, and should indicate that additional discovery should be considered only after the initial round of testimony is filed in this proceeding. This will permit the parties to focus on the remaining issues (at least three of the issues identified by Covad have been tentatively resolved in continuing negotiations and others may be resolved as well) and to present the Commission with a well-defined set of issues for resolution. The arbitration process is not conducted under the same time frames available in civil litigation, and Covad should not be permitted to engage in far-flung discovery requests that appear to be related to other issues in other states, rather than specifically targeted to this Missouri arbitration.

The data requests to which SWBT has objected primarily seek information about SWBT's retail plans, future network plans, detailed procurement documents and other information which appear related more to Covad's marketing and procurement plans than to the issues presented here. The requests are overbroad, burdensome and beyond the scope of permissible discovery.

SWBT's specific responses to the individual points raised by Covad in the Motion to Compel are set forth below.

1. On November 12, 1999, SWBT received Covad's First Set of Data Requests (DRs) to SWBT consisting of 90 (ninety) requests for information, many of them containing numerous sub-parts.
2. On November 22, 1999, SWBT provided Covad with its objections to certain of the DRs contained in the first set of DRs.
3. During the weeks of December 13 and 20, 1999, the parties exchanged correspondence (copies attached as Exhibits 1 and 2) concerning the DRs and SWBT's objections.
4. SWBT continues to believe that the requested information is not subject to discovery and goes well beyond any concept of proper or necessary discovery in the context of an arbitration under the Act and more specifically the arbitration procedures issued by this Commission. (Copy attached as Exhibit 3).
5. The Commission's arbitration procedures do not contemplate discovery as a matter of right, and the extent of any discovery is to be determined on a case-by-case basis. Notwithstanding those procedures, SWBT voluntarily agreed to respond to reasonable discovery during the brief time frames allowed under the Act for arbitrations. Each of SWBT's objections have been made in the good faith belief that Covad's requests exceed any reasonable bounds of discovery in this matter. Covad has pursued discovery as if this case were litigation in a court with a year or more to prepare for trial. This case is, however, an arbitration under the Act with limited time frames to prepare and project information to the Commission. The Commission has previously addressed the appropriate extent of discovery in an arbitration. The Commission explained in its

Order Addressing Motion To Establish Procedural Schedule and Adopt Protective Order

in Case TO-97-40 (AT&T arbitration, a copy of the Order attached as Exhibit 4).

The Commission had considered whether to allow discovery between the parties in an arbitration proceeding. As stated in the arbitration procedures, the issue of discovery will be looked at on a case-by-case basis. In this case the Commission generally agrees with SWB. There is not enough time to allow for extensive discovery when the time frame for filing testimony and the hearing is so short. Each party may present its case and the Commission will decide the appropriate result. If a party fails to support its case, then it accepts the risk of not prevailing. In addition, many of the costing issues must be considered in light of the decision by the Federal Communications Commission (FCC) in CC Docket 96-98. The Commission will therefore not authorize discovery during the arbitration process. The prefiled testimony should provide sufficient information for each party to understand the other party's position. The Commission will allow parties to file a pleading with the Commission after direct testimony is filed indicating what additional information the party believes it needs, and the Commission will issue an order addressing those requests.

See also September 4, 1996 Order Granting in Part and Denying in Part Motion for Reconsideration. (Copy attached as Exhibit 5).

6. In response to Covad's DRs, SWBT has provided over 9,000 pages of documents and continues to supplement those responses. SWBT has made numerous volumes of highly confidential information available, including all of the cost studies at issue here. Of all of the DRs, SWBT objected to only those which seek information clearly beyond the scope of this docket, including such areas as SWBT's retail operations, SWBT's future network plans, detailed procurement information and information from time frames well before the Act.

7. In contrast to the discovery Covad has pursued, SWBT sent Covad only 10 (ten) DRs. Covad objected to all but four of those DRs and provided non-answers to all of the other requests.

8. SWBT's specific concerns about the objectionable DRs are discussed below. Because Covad's Motion does not set out SWBT's objections, SWBT's objection to the first of each grouping of DRs has been restated followed by a brief discussion of why the requested information is not subject to discovery.

DR 1 – DR 3

1. (a) – (d) Southwestern Bell objects to DR 1 as irrelevant, overbroad and burdensome. An incumbent's obligation to unbundle its network relates to the network currently in place and not a future network. Covad's request for information about Southwestern Bell's future plans to improve its network do not have any bearing on the network in place today, particularly not issues related to conditioning, which is never mandatory and instead is ordered at the discretion of Southwestern Bell's wholesale customer. To the extent future network changes may allow existing loops to be used for DSL services without conditioning, Covad will have the opportunity to make that determination, consistent with the terms of its Interconnection Agreement. Additionally, Southwestern Bell's obligation to disclose information to competing CLECs about network changes is governed by the Act. Covad appears to improperly be attempting to use the discovery process to obtain sensitive marketing information from Southwestern Bell regarding future initiatives of SBC and its affiliates. Such information is not relevant to this docket and production of such information would be prejudicial to Southwestern Bell's and other SBC affiliates' retail operations.

Covad argues that information with regard to Project Pronto is relevant to this case and should be produced because Project Pronto will involve future changes to SWBT's network. SWBT's requirement under the Act is to unbundle the existing network. At this time new cost studies do not exist based on future changes to the network. The methodology SWBT used to prepare the cost studies previously made available to Covad in this case (which are the studies which will be filed with SWBT's direct case), is the methodology required by the Commission in T0-97-40 (AT&T arbitration). Those studies show the relevant costs. Because conditioning is an option solely within the CLEC's discretion, no future changes will affect conditioning costs,

only whether or not a CLEC will need to incur those costs. Finally, with regard to the 8db loop, Covad has already accepted the rates determined in the AT&T arbitration. It is improper for Covad to attempt to arbitrate those rates through the back-door via arbitration of the underlying loop for which conditioning may be required.

DR 13 – DR 14

13. Southwestern Bell objects to the portion of DR 13 stating: "If SWBT claims that it will only condition lines in order to provide its own retail ADSL and/or ISDN services in limited cases, provide a complete description of each such limitation." The requested information is irrelevant and is not likely to lead to the discovery of admissible evidence. Since Southwestern Bell's proposed DSL language is structured so that the wholesale customer decides when and if to order conditioning, the circumstances under which Southwestern Bell will condition loops for its own retail offering is irrelevant. Further, in accordance with the SBC/Ameritech Merger Condition's approved by the FCC, in the future, Southwestern Bell will not have a retail ADSL offering.

SWBT stands by its objection to DR 13 and 14, which seek information about the conditioning charges to SWBT retail customers and SWBT's cost recovery plans with regard to the conditioning costs. SWBT's retail charges, including the circumstances under which those charges will apply, are contained in its FCC tariff already available to Covad. Additionally, the fact that SWBT will no longer have a retail offering is highly relevant to these DRs because the SBC data services affiliate (ASI), which has already been certified by the Commission, will be offered the same rates applicable to Covad or any other interconnector. Cost recovery will not be a SWBT issue since SWBT will be permitted to charge only the rates set by the Missouri Commission. Thus there is no legitimate issue for which Covad requires this information.

DR 16

16. Southwestern Bell objects to DR 16. The requested information is irrelevant and not likely to lead to the discovery of admissible evidence.

Southwestern Bell's booking of expenses for its retail operation is not relevant to Covad's arbitration of wholesale costs. Covad appears to improperly be attempting to use the discovery process to obtain sensitive marketing information from Southwestern Bell regarding future initiatives. Such information is not relevant to this docket and production of such information would be prejudicial to Southwestern Bell's retail and other SBC affiliate's retail.

SWBT stands by its objection to DR 16 which seeks information concerning how SWBT books its outside plant rearrangements. SWBT's internal booking procedures are not relevant to any issue in this case.

DR 17

17. Southwestern Bell objects to subpart (b) in that it seeks information preceding the Telecommunications Act of 1996 which established the obligation for incumbents to unbundle their networks. Subject to the foregoing, Southwestern Bell shall provide the requested information starting with 1996.

SWBT stands by its objection to DR 17(b), which seeks information concerning costs for all unbundled elements over the past five years. The primary costs at issue in this case are conditioning costs and DSL conditioning has only occurred during the past year. Clearly information on other elements and prior to DSL conditioning activities is irrelevant.

DR 31 – DR 32

31. – 32. Southwestern Bell objects to DR 31 - 32. The requested information is irrelevant and is not likely to lead to the discovery of admissible evidence. Since SWBT's proposed DSL language is structured so that our wholesale customer decides how it will provision its own DSL services, the circumstances under which Southwestern Bell plans to provide its own retail offering is irrelevant. Covad appears to be using the discovery process to improperly obtain sensitive marketing information from Southwestern Bell regarding future initiatives which have absolutely no bearing on the issues it has raised in this proceeding. In addition, the disclosure of such information would be prejudicial to Southwestern Bell's and other SBC affiliate's retail operations. Further, in accordance

with the SBC/Ameritech Merger Conditions approved by the FCC, Southwestern Bell will not have a retail ADSL offering.

SWBT stands by its objection to DRs 31 and 32 which seek information about SWBT's future retail marketing plans. Such plans clearly are irrelevant to the arbitration. As with many other DRs, Covad relies upon the Texas arbitrator's award. SWBT's reading of that award, which has no bearing on this case, does not suggest that SWBT's future marketing plans were relevant to that case or to the one at issue here in Missouri.

DR 48 – DR 50

48. – 50. Such detailed information is irrelevant and overbroad. Covad appears to improperly be attempting to use the discovery process to obtain sensitive marketing information from Southwestern Bell regarding procurement activities. Vendor contracts and similar documents are highly sensitive business information that Southwestern Bell is contractually obligated to its vendors not to disclose. Such information is not relevant to this docket and production of such information would be prejudicial

SWBT stands by its objections to DR 48. SWBT offered to make its cost studies available for Covad's review as early as December 3, 1999. Per Covad's request, that review did not occur until December 23, 1999. Additional review, for Covad's outside experts took place on December 29, 1999. Though the information sought by Covad is overbroad since it seeks information about loops that are not at issue in this case, SWBT's cost studies will show how particular costs are treated within the loop and cross connect studies.

SWBT stands by its objection to DR 49. Information on SWBT's future engineering plans is not relevant to the issue in this case. As Covad is aware, SWBT is obligated to unbundle the existing network and Covad will only pay for the conditioning

that it orders, thus SWBT's future engineering plans are not relevant to the issues in this case.

SWBT stands by its objections to DR 50 which seeks documentation about particular procurement activities. The exact name and manufacturer of pieces of equipment, receipts and contracts, are irrelevant, overbroad and unduly burdensome. Covad is not entitled to do an audit in order to pursue its arbitration. It appears that the information is being sought for Covad's own procurement activities and not this case.

DRs 54, 55, 57 – 62

54. Southwestern Bell objects to the request for information concerning the contract, catalog or similar document. Such detailed information is irrelevant and overbroad. Covad appears to improperly be attempting to use the discovery process to obtain sensitive marketing information from Southwestern Bell regarding procurement activities. Vendor contracts and similar documents are highly sensitive business information that Southwestern Bell is contractually obligated to its vendors not to disclose. Such information is not relevant to this docket and production of such information would be prejudicial to Southwestern Bell's and other SBC affiliates' retail operations.

55. Southwestern Bell objects to this DR because it is irrelevant, burdensome and unlikely to lead to the discovery of admissible evidence. The source contract, catalog and similar documents related to the electronics SWBT has purchased is substantially more detailed than is relevant to the issues in this arbitration and appears to be more in the nature of marketing research for Covad's retail needs. Vendor contracts and similar documents are highly sensitive business information that Southwestern Bell is contractually obligated to its vendors not to disclose.

57. Southwestern Bell objects to this DR because it is irrelevant, burdensome and unlikely to lead to the discovery of admissible evidence. The source contract, catalog and similar documents related to the electronics SWBT has purchased is substantially more detailed than is relevant to the issues in this arbitration and appears to be more in the nature of marketing research for Covad's retail needs. Vendor contracts and similar documents are highly sensitive business information that Southwestern Bell is contractually obligated to its vendors not to disclose.

58. Southwestern Bell objects to this DR because it is irrelevant, burdensome and unlikely to lead to the discovery of admissible evidence. The source contract, catalog and similar documents related to the electronics SWBT has purchased is substantially more detailed than is relevant to the issues in this arbitration and appears to be more in the nature of marketing research for Covad's retail needs. Such detailed information is irrelevant and overbroad. Covad appears to improperly be attempting to use the discovery process to obtain sensitive marketing information from Southwestern Bell regarding procurement activities. Vendor contracts and similar documents are highly sensitive business information that Southwestern Bell is contractually obligated to its vendors not to disclose. Further, such information is not relevant to this docket and production of such information would be prejudicial to Southwestern Bell's and other SBC affiliate's retail operations.

59. Southwestern Bell objects to Dr. 59. The network to be unbundled is the network in place today. Recent acquisitions would not reflect the network in place today and the prices paid for such equipment is irrelevant. Covad appears to improperly be attempting to use the discovery process to obtain sensitive marketing information from Southwestern Bell regarding procurement activities. Vendor contracts and similar documents are highly sensitive business information that Southwestern Bell is contractually obligated to its vendors not to disclose. Further, such information is not relevant to this docket and production of such information would be prejudicial to Southwestern Bell's and other SBC affiliate's retail operations.

60. - 62 Southwestern Bell objects to the part of these DRs seeking information about manufacturer, product name and capacity. The requested information is irrelevant, burdensome and unlikely to lead to the discovery of admissible evidence. The source contract, catalog and similar documents related to the electronics SWBT uses in its feeder plant is substantially more detail than is relevant to the issues in this arbitration and appears to be more in the nature of marketing research for Covad's retail needs. Vendor contracts and similar documents are highly sensitive business information that Southwestern Bell is contractually obligated to its vendors not to disclose. Further, such information is not relevant to this docket and production of such information would be prejudicial to Southwestern Bell's and other SBC affiliate's retail operations.

SWBT stands by its objections to DR 54, 55, 57, 58, 59, 60, 61, 62 which seek documentation about particular procurement activities. The exact name and manufacturer of pieces of equipment, receipts and contracts, are irrelevant, overbroad and

unduly burdensome. Covad is not entitled to do an audit in order to pursue its arbitration. It appears that the information is being sought for Covad's own procurement activities and not this case.

DR 56, DR 63

56. Southwestern Bell objects to DR 56 which seeks information about SWBT's retail ISDN services. Such detailed information is irrelevant and overbroad. Covad appears to improperly be attempting to use the discovery process to obtain sensitive marketing information from Southwestern Bell regarding ISDN services. Such information is not relevant to this docket and production of such information would be prejudicial to Southwestern Bell's retail operations.

63. Southwestern Bell objects to Dr. 63. The network to be unbundled is the network in place today. Recent acquisitions would not reflect the network in place today and the prices paid for such equipment is irrelevant. Recent acquisitions would not reflect the network in place today and the prices paid for such equipment is irrelevant.

SWBT stands by its objections to DRs 56 and 63, which seek 10 (ten) years of information on SWBT's retail ISDN service. The Act was passed in 1996 and set new costing procedures for unbundled elements. Information concerning SWBT's retail costing practices for the past 10 (ten) years is clearly irrelevant to this arbitration.

DR 66

66. Southwestern Bell objects to DR 66 in that it seeks information about plans to mechanize loop qualification processes. Southwestern Bell is obligated to unbundle the existing network only and thus future plans are irrelevant.

SWBT stands by its objection to DR 66, which seeks information about future network plans. SWBT is obligated to unbundle its existing network. Subject to that, SWBT has already offered to Covad a price which reflects the planned partially mechanized loop qualification process. Additionally, in response to other DRs, SWBT

has provided extensive information about the partially mechanized process upon which the price was based.

DR 74 – DR 79

74. – 79. Southwestern Bell objects to these DRs as irrelevant, burdensome and unlikely to lead to the discovery of admissible evidence. The only charge being made to Covad for qualification relates to partial mechanization. Accordingly, detailed information about the costs for Southwestern Bell's OSS's, particularly information preceding the passage of the Telecommunications Act is irrelevant. Regarding 78, in that Southwestern Bell's obligation to unbundle is limited to the existing network, information about future OSS plans are irrelevant. Regarding DRs 75, 77 and 79, the request is overbroad in that it seeks information about unbundled elements not at issue in this arbitration.

SWBT stands by its objections to DRs 74 through 79, which seek broad ranging information about SWBT's OSS systems. Such systems are not the subject of this arbitration. Consistent with the determination of the 8th Circuit Court of Appeals regarding FCC 96-98, the Missouri Commission (in the BroadSpan and Sprint arbitrations) determined that SWBT need only unbundle the network in place today, including its OSS systems used for ordering and qualifying DSL capable loops. Covad's only OSS issue (other than qualification for which information has already been provided) relates to provisioning time intervals, not prices. Clearly the requested information goes well beyond the scope of Covad's arbitration.

DR 85 – DR 86

85. – 86 Southwestern Bell objects to DRs 85 – 86. Covad appears to be using the discovery process to improperly obtain sensitive marketing information from Southwestern Bell regarding future initiatives which have absolutely no bearing on the issues it has raised in this proceeding. In addition, the disclosure of such information would be prejudicial to Southwestern Bell's retail operations. Further, in accordance with the SBC/Ameritech Merger Conditions approved by the FCC, Southwestern Bell will not have a retail ADSL offering.

SWBT stands by its objection to DRs 85 and 86 as overbroad, burdensome and not likely to lead to the discovery of admissible evidence. Detailed information about SWBT's retail offerings is not relevant to the provision of unbundled DSL loops to Covad.

WHEREFORE, SWBT urges the Commission to deny Covad's Motion to Compel.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By


PAUL G. LANE

#27011

LEO J. BUB

#34326

ANTHONY K. CONROY

#35199

KATHERINE C. SWALLER

#34271

Attorneys for Southwestern Bell Telephone Company

One Bell Center, Room 3520

St. Louis, Missouri 63101

(314) 235-4300 (Telephone)

(314) 247-0014 (Facsimile)

Lisa C. Creighton
(816) 932-4461

SONNENSCHN NATH & ROSENTHAL

4520 MAIN STREET SUITE 1100
KANSAS CITY, MISSOURI 64111

(816) 932-4400
FACSIMILE
(816) 531-7545

December 13, 1999

Katherine Swaller, Esq.
Southwestern Bell Telephone Company
Legal Department
One Bell Center, Room 3516
St. Louis, Missouri 63101

Re: *In the Matter of the Petition of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements With Southwestern Bell Telephone Company*
Case No. TO-2000-322

Dear Kathy:

The purpose of this letter is to state Covad's concerns with respect to Southwestern Bell Telephone Company's ("SWBT") objections to Covad's First Set of Data Requests. I will address each objection for which Covad has a concern separately. It is Covad's position that it is entitled to all the information addressed in this letter. Given the schedule we are working on, I request SWBT's response to this letter by close of business on Thursday, December 16, 1999. Covad intends to file a motion to compel next week if no agreement is reached.

Data Request No. 1:

Relative to SWBT's recent announcements concerning "Project Pronto" that it plans to "rearchitect its network," please provide the following documentation:

- (a) A summary of the specific changes planned relative to SWBT's current engineering methods and procedures.
- (b) A copy of any existing analysis concerning the affect of its design changes on the cost analysis it has previously performed for unbundled loops.
- (c) Whatever documentation is available within SBC Communications, Inc. identifying how SWBT plans to provide access to unbundled DSL-capable loops in the "neighborhood broadband gateways."
- (d) A description of what forms of "conditioning" (e.g., removal of load coils and bridge tap) SWBT believes may be required to provide DSL-based services to customers served by its target network architecture.

SWBT objected to the above request as irrelevant, overbroad and burdensome. SWBT apparently bases its objections on the belief that any future modifications to its network that will arise from its public commitment to spend \$6 billion is irrelevant because SWBT is only obligated to unbundle its current network. SWBT further contended that such information is sensitive marketing information and that production would be prejudicial to SWBT.

Covad takes issue with these objections. First, as SWBT knows, the costs and prices adopted in this arbitration must reflect long-run, forward-looking network costs in order to comply with the Federal Telecommunications Act. A different network architecture, such as the one SWBT has publicly announced in connection with Project Pronto, will likely have a material effect on forward-looking costs. Further, information relating to how SWBT plans to fulfill its public commitment to change its network to accommodate its own and its affiliates' advanced services is fundamental to an evaluation of whether SWBT's proposals in this arbitration are discriminatory. As strongly noted by the arbitrators in Texas, the extent to which SWBT discriminates between wholesale and retail services is highly relevant. The Texas arbitrators specifically stated that in some instances SWBT's discriminatory practices were barriers to competition. *See Arbitration Award, Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements With Southwestern Bell Telephone Company*, Docket No. 20272, pp. 61 and 99 (hereinafter "Arbitration Award"). Finally, information regarding major planned changes in SWBT's network architecture is essential to Covad's ability to negotiate a fair interconnection agreement. As Covad is negotiating for specific loop types at specific prices, any shift or "rearchitecture" of the network can have a substantial material effect on the value of the interconnection agreement.

With respect to SWBT's objection relating to the sensitive nature of the material requested, as both you and I know, the Commission issued the Protective Order *requested by SWBT*. Covad's access to and use of discovered information is strictly limited by this Protective Order. This Protective Order provides more than adequate protection to any sensitive information. Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request No. 2:

Please confirm or deny that SWBT has claimed that the network plans associated with "Project Pronto" will reduce its network cost structure. If SWBT has claimed that its network cost structure will be reduced, please provide the following:

- (a) A copy of all analyses SWBT has performed to support that assertion.

(b) A copy of any analysis or statements that identify the specific source of the related savings.

(c) A copy of any analysis or statements that estimate the specific magnitude of the related short or long term savings.

SWBT raised the same objections as those stated in response to Data Request No. 1. Further, SWBT responded that "any cost savings are speculative at this time since plans have not been finalized"

The same concerns raised by Covad in response to SWBT's objections to Data Request No. 1 apply here, and are incorporated herein by reference. Additionally, with respect to SWBT's position that any cost savings are speculative, Covad directs SWBT to the description of Project Pronto found on its web site. On the web site, SWBT specifically claims that Project Pronto will "[d]ramatically reduce its network costs. Expense and capital savings *alone* are expected to offset the cost of the *entire initiative*." See *SBC Launches \$6 Billion Initiative to Transform it Into America's Largest Single Broadband Provider* at p.1 (emphasis added). The inconsistency between SWBT's position with respect to this Data Request and its public statements regarding Project Pronto is strikingly apparent. Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request No. 3:

Please provide a detailed description of the "neighborhood broadband gateways" that SWBT plans to deploy as part of "Project Pronto" including a description of the specific equipment that will be deployed and how that equipment will provide ISDN and DSL services.

SWBT raised the exact same objections as those stated in response to Data Request No. 1.

The same concerns raised by Covad in response to SWBT's objections to Data Request No. 1 apply here, and are incorporated herein by reference. Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request No. 13:

Please describe each type of line conditioning (e.g., removing load coils or bridge tap, adding or removing repeaters, rearranging outside plant facilities) that SWBT will undertake (in any circumstance) in order to satisfy a request for its retail ADSL service and/or retail ISDN service. If SWBT claims that it will only condition lines in order to provide its own retail ADSL

and/or ISDN services in limited cases, please provide a complete description of each such limitation.

SWBT objected to the above request as irrelevant to the extent it requires SWBT to describe the circumstance under which it conditions lines for its own retail ASDL and/or ISDN services. SWBT also stated that in the future such services will be provided by an affiliate.

Without question, this response is insufficient. SWBT needs to provide a sufficient amount of information for *Covad*, not SWBT, to determine if SWBT's practices relative to conditioning charges for its retail customers are relevant to the issues in this case. The arbitrators in Texas thought the information requested in Data Request No. 13 was highly relevant to the issue of loop conditioning charges. The Texas arbitrators noted for the record that SWBT could not testify that it had charged any SWBT retail customer the conditioning charges it unsuccessfully sought to impose on Covad in Texas. The Texas arbitrators concluded that charging wholesale customers conditioning charges, while excusing retail customers, appeared to be a barrier to competition and rejected SWBT's proposed charges. See Arbitration Award at pp. 98-99. In light of the fact that the Texas arbitrators relied in part on this information in reaching their decision on conditioning charges, there is no support for SWBT's irrelevancy objection.

Further, the fact that SWBT will be offering services in the future through an affiliate does not negate SWBT's obligation to provide the requested information.¹ Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request No. 14:

For each type of line conditioning (e.g., rearranging outside plant facilities) that SWBT might choose to perform in order to satisfy a request for its retail ADSL service and/or retail ISDN service, please describe specifically how SWBT plans to recover any cost associated with that activity. Please also provide a citation to any language in SWBT's retail tariff(s) that supports its proposed method of cost recovery.

SWBT, once again, objected to this request as irrelevant because it relates to SWBT's retail operations. Covad disagrees with this objection for the same reasons stated above in Covad's response to SWBT's objections to Data Request No. 13, which is incorporated herein by reference. Further, SWBT must provide all requested information relevant to an evaluation of whether or not actions and costs which SWBT claims are necessary are in fact necessary. A very good indication of this is how SWBT treats its retail services. This information is relevant and

¹ While this objection is raised in response to other Data Requests, it will not be addressed as it is irrelevant to whether SWBT will be required to produce information.

Covad is entitled to it. Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request No. 16:

Please provide a detailed description of how operating expenses associated with outside plant rearrangements are reflected in SWBT's books. In responding to this request, please use the widest possible definition of "rearrangement" (i.e., include activities such as pair swaps due to repair calls, maintenance grooming of facilities, pair swaps triggered by service order activity, larger scale rearrangement to rehome facilities for new fiber placement, etc.). If SWBT accounts for the costs associated with different types of rearrangement differently, please provide a complete answer for each different scenario.

SWBT objected to this request as irrelevant because it relates to retail operations. Further, SWBT contended that the requested information is sensitive marketing information and, as such, any production would be prejudicial to SWBT.

Covad takes issue with these objections. First, as stated in the discussion of Data Request Nos. 13 and 14, which is incorporated herein by reference, information relating to how SWBT provides its retail services is directly relevant to the issues in this proceeding. Second, a major issue in this arbitration is SWBT's charges that are allegedly supported by costs and activities. A part of the costs that Covad is challenging relate to costs associated with outside plant rearrangements. Whether or not SWBT incurs the same costs and engages in the same activities in connection with the same retail service is highly relevant. Therefore, the request is relevant. Furthermore, SWBT's objection is inconsistent with its subsequent response to Data Request No. 17(a). In its response to 17(a), SWBT has not objected to providing a detailed description of how any category of costs requested in Data Request No. 16 is considered in the study that developed SWBT's most recent adopted cost for an unbundled loop. Clearly, if SWBT acknowledges that a description of the category of cost associated with outside plant rearrangement that are reflected in SWBT's books is relevant, then the identity of those categories would also be relevant. With respect to SWBT's objection relating to the sensitive nature of the material requested, Covad incorporates herein by reference its discussion of the Protective Order issued in this case in Covad's response to SWBT's objections to Data Request No. 1. Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request No. 17:

For each category of cost that SWBT identified in response to the previous request, please provide:

- (a) A detailed description of how that category of costs is considered in the study that developed SWBT's most recently adopted cost for an unbundled loop.
- (b) The total annual dollars included in SWBT's unbundled element cost study and the total amount reported in SWBT's books of account each of the last 5 years.

SWBT objected to sub-part (b) of Data Request No. 17 because it seeks information preceding the Telecommunications Act of 1996. Based on this objection, SWBT stated it would not produce information prior to January 1996.

Covad takes issue with this objection. SWBT's cost trends over the past five years are directly relevant to the cost issues involved in this arbitration. Assuming that SWBT did not change its methods and procedures for accounting relative to rearrangements in January of 1996, then there is absolutely no basis to claim the requested information is irrelevant. Therefore, Covad asks that SWBT reconsider its objection to this Data Request and produce the requested information.

Data Request No. 19:

Has SWBT done any analysis to establish that the combined cost study results for recurring and non-recurring costs for all loop types it provides represents a least-cost, most efficient plant design? If so, please provide a complete copy of that analysis.

SWBT objected to this request as irrelevant as it seeks information pertaining to overall cost studies for a loop, which SWBT contends is beyond the scope of this arbitration.

Covad takes issue with this objection. Covad addressed this Data Request to all loop types because Covad does not believe the requested analysis would be done for ISDN and/or xDSL loops in isolation. Therefore, it is necessary to phrase the request to include overall cost studies. If the appropriate response is that SWBT did not consider ISDN and/or xDSL loops as a part of a combined cost study results for recurring and non-recurring costs, then SWBT should so state. Otherwise, this request is directly relevant to the price issues in this arbitration. Therefore, Covad asks that SWBT reconsider its objection to this Data Request and produce the requested information.

Data Request Nos. 31 and 32:

31. Is SWBT currently analyzing the possibility or does it have any plans regarding expanding the variety of xDSL service types it will make available on a retail basis? If so, please provide a copy of all documentation relating to SWBT's planning effort.

32. Is SWBT currently analyzing the possibility or does it have any plans to expand the range of customers it can reach with its retail DSL service types offerings? If so, please provide a copy of all documentation relating to SWBT's planning effort.

SWBT objected to Data Request Nos. 31 and 32 as irrelevant as they seek information pertaining to SWBT's retail services. Further, SWBT objected because the information is sensitive marketing information and as such, any production would be prejudicial.

Once again, as SWBT well knows, the disparity between SWBT's retail and wholesale offerings were of great importance in the Texas arbitration. For the same reasons discussed above in Covad's response to SWBT's objections to Data Request Nos. 1, 13, 14 and 16, which are incorporated herein by reference, SWBT's irrelevancy argument based on retail operations is improper. Further, Covad believes it is also relevant for the Commission to know if SWBT is imposing conditions that make it financially and technically difficult or impossible for Covad to provide its services to outlying customers while, at the same time, SWBT is developing plans to expand its own retail or its affiliates' services to cover those customers. This type of discrimination between wholesale and retail was also an issue considered by the arbitrators in Texas in connection with conditioning charges.

With respect to SWBT's objection relating to the sensitive nature of the material requested, Covad incorporates herein by reference its discussion of the Protective Order issued in this case in Covad's response to SWBT's objections to Data Request No. 1. Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request Nos. 48-50:

48. Please provide a detailed description of how each of the following costs are treated in SWBT's recurring cost study of the unbundled loop. Please include in each description confirmation of whether or not SWBT included each cost in the recurring loop cost and the basis for developing each cost.

- a) The cross-connection between the drop and the end user's NID.
- b) The cross-connection between SWBT distribution network and the end-user's drop.
- c) The cross-connection between SWBT feeder and distribution facilities.
- d) The connection from SWBT's feeder facilities and its MDF.

49. In SWBT's study of the unbundled loop element, what criteria does SWBT use to determine when fiber and Digital Loop Carrier ("DLC") feeder systems would be used instead of

Katherine Swaller, Esq.
Page 8
December 13, 1999

copper feeder? Please provide whatever supporting analysis SWBT relies on to support its analysis.

50. Please provide a detailed description of the overall plant design that is assumed in SWBT's recurring UNE loop study for loops serviced by fiber feeder and DLC systems (e.g., describe the specific type of DLC (manufacturer and model) the study assumed, the sizing and design of associated fiber, any additional assumptions regarding materials and labor used to connect the DLC system to copper distribution, etc.).

SWBT objected to these requests as irrelevant or overbroad, stating that Covad is improperly using this discovery to obtain sensitive market information from SWBT. Further, SWBT stated that it is contractually prohibited from providing this information. Covad strongly disagrees.

First, these questions are seeking information that is necessary to understand how SWBT developed the recurring costs that are the bases for the recurring rates that Covad will pay. Without such information about what is included in the recurring rates, it is impossible to reach any factual conclusion regarding whether SWBT's non-recurring cost analysis is appropriate. For example, it is impossible to verify if costs that SWBT claims as a part of a non-recurring conditioning element are already included in its recurring loop costs. Without question, the Commission will allow Covad to have access to this type of information. Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

With respect to SWBT's objection relating to the sensitive nature of the material requested, Covad incorporates herein by reference its discussion of the Protective Order issued in this case in Covad's response to SWBT's objections to Data Request No. 1. Further, SWBT's claim of inability to produce based on contractual provisions fails. As mentioned previously, the Protective Order in this case was requested by SWBT. In making the request, SWBT stated that the protection afforded under the governing Protective Order was necessary to protect its commercially sensitive information. When SWBT argued for the Commission to enter the governing Protective Order, SWBT had Covad's Data Requests, specifically mentioning contracts. SWBT in no way suggested that additional protections would be necessary in this case.

If SWBT has contracts or other documents within this request that contain provisions that prohibit their release, then SWBT needs to produce copies of those provisions. Please send them via facsimile to me immediately so that they can be addressed in a motion to compel.

Data Request No. 54:

Please provide complete supporting detail for the specific input cost(s) used in SWBT's unbundled loop study for the electronics described in the previous response. Please include a copy of SWBT's source contract, catalog or other similar document.

SWBT objected to this request as irrelevant and overbroad to the extent it seeks information concerning contracts, catalogs or other similar documents, and accused Covad of improperly attempting to use the discovery process to obtain sensitive marketing information. Covad disagrees.

Covad is entitled to look at supporting documentation for the inputs to cost studies allegedly supporting SWBT proposed charges. This information allows Covad to verify the claimed cost associated with the inputs. If the costs are consistent with the documentation, then SWBT should have no concerns about releasing this information. It is highly unlikely that this Commission will require Covad to rely on SWBT's word to verify the inputs.

Further, SWBT's claim of inability to produce based on contractual provisions fails. Covad strongly disagrees with SWBT's objections for the same reasons stated in response to SWBT's objections to Data Request Nos. 48-50, which is incorporated herein by reference. Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request No. 55:

Please provide the most recent price that SWBT actually paid for the specific electronics described in the previous response. Please include a copy of SWBT's source purchase order or other similar document.

SWBT objected to this request as irrelevant, burdensome and unlikely to lead to the discovery of admissible evidence because the source contracts, catalogues and similar documents are substantially more detailed than is relevant to the issues in this arbitration. Further, SWBT claimed that its is contractually obligated to its vendors not to produce purchase orders or other similar documents.

Covad strongly disagrees with SWBT's objections for the same reasons stated in response to SWBT's objections to Data Request Nos. 48-50, which is incorporated herein by reference. Additionally, Covad's specific request for SWBT's pricing is a legitimate attempt to verify if SWBT reasonably accounted in its study for the pronounced downward trend in the cost of electronics equipment. As the cost of electronics is a substantial component of SWBT's cost study, Covad is entitled to this information. Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request No. 56:

For each type of line card/electronics that SWBT has deployed within the last 10 years to provision ISDN services over fiber feeder facilities, please identify the average cost per line of ISDN-BRI service provisioned in each year (i.e., show the cost per line trend of the electronics that SWBT uses to provide ISDN-BRI by showing the cost of that equipment on a per line basis in each of the last 10 years or as far back as data is available).

SWBT objected to the above request as irrelevant because it seeks information about SWBT's retail ISDN services. Covad does not agree.

For the same reasons discussed above in Covad's response to SWBT's objections to Data Request Nos. 1, 13, 14 and 16, which are incorporated herein by reference, SWBT's irrelevancy argument based on retail operations is improper. Additionally, Covad's specific request for average cost per line is a legitimate attempt to verify if SWBT reasonably accounted in its study for the pronounced downward trend in the cost of electronics equipment. As the cost of electronics is a substantial component of SWBT's cost study, Covad is entitled to this information. Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request No. 57:

Please describe the specific feeder electronics that SWBT assumes for digital (ISDN-BRI) loops in its cost unbundled loops that are served by copper feeder (if any). Please ensure that SWBT's description includes the manufacturer, product name, capacity and any other significant features of the electronics.

SWBT objected to this request as irrelevant, burdensome and unlikely to lead to the discovery of admissible evidence because the source contracts, catalogues and similar documents are substantially more detailed than is relevant to the issues in this arbitration. Further, SWBT stated that it is contractually prohibited from releasing the requested information.

Covad strongly disagrees with SWBT's objections for the same reasons stated in response to SWBT's objections to Data Request Nos. 48-50, which are incorporated herein by reference. In addition, ISDN pricing is an issue in this arbitration. This request is directed to a factor that may contribute to the substantial increment in pricing between ISDN loops and basic loops. Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request No. 58:

Please provide complete supporting detail for the specific input cost(s) used in SWBT's unbundled loop study for the electronics described in the previous response. Please include a copy of SWBT's source contract, catalog or other similar document.

SWBT objected to this request as irrelevant, burdensome and unlikely to lead to the discovery of admissible evidence because the source contracts, catalogues and similar documents are substantially more detailed than is relevant to the issues in this arbitration. Further, SWBT stated that it is contractually prohibited from releasing the requested information.

Covad strongly disagrees with SWBT's objections for the same reasons stated in response to SWBT's objections to Data Request Nos. 48-50, which are incorporated herein by reference. In addition, ISDN pricing is an issue in this arbitration. This request is directed to a factor that may contribute to the substantial increment in pricing between ISDN loops and basic loops. Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request No. 59:

Please provide the most recent price that SWBT actually paid for the specific electronics described in the previous response. Please include a copy of SWBT's source purchase order or other similar document.

SWBT objected to this request, stating that it is overbroad, irrelevant and an improper attempt to get market sensitive information. Further, SWBT stated that it is contractually prohibited from releasing the requested information.

Covad strongly disagrees with SWBT's objections for the same reasons stated in response to SWBT's objections to Data Request Nos. 48-50, which are incorporated herein by reference. In addition, ISDN pricing is an issue in this arbitration. This request is directed to a factor that may contribute to the substantial increment in pricing between ISDN loops and basic loops. Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request Nos. 60-62:

60. Please describe the specific feeder electronics that SWBT actually deploys in its network today (if necessary) in order to deliver ISDN-BRI to a customer served by a long copper feeder. Please ensure that SWBT's description includes the manufacturer, product name, capacity and any other significant features of the electronics.

61. Please provide a complete supporting detail for the specific input cost(s) used in SWBT's unbundled loop study for the electronics described in the previous response. Please include a copy of SWBT's source contract, catalog or other similar document

62. Please provide the most recent price that SWBT actually paid for the specific electronics described in the previous response. Please include a copy of SWBT's source purchase order or other similar document.

SWBT objected to these requests, stating that they are overbroad, irrelevant and an improper attempt to get market sensitive information. Further, SWBT stated that it is contractually prohibited from releasing the requested information.

Covad strongly disagrees with SWBT's objections for the same reasons stated in response to SWBT's objections to Data Request Nos. 48-50, which are incorporated herein by reference. . In addition, ISDN pricing is an issue in this arbitration. This request is directed to a factor that may contribute to the substantial increment in pricing between ISDN loops and basic loops. Therefore, Covad asks that SWBT reconsider its objections to these Data Requests and produce the requested information.

Data Request No. 63:

For each type of electronics that SWBT has deployed within the last 10 years to provision ISDN services over long copper feeder facilities, please identify the average cost per line of ISDN-BRI service provisioned in each year (i.e., show the cost per line trend of the electronics that SWBT uses to provide ISDN-BRI by showing the cost of that equipment on a per line basis in each of the last 10 years or as far back as data is available).

SWBT objected to this request because the network to be unbundled is the network in place today and recent acquisitions would not reflect on that work in place today. While that may be SWBT's legal position, it does not relieve SWBT of its obligation to provide the requested information. For the reasons previously discussed, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request No. 66:

Please provide a complete copy of all internal documentation related to plans to mechanize any portion of SWBT's systems and processes to qualify loops for its retail ADSL service(s).

SWBT objected to this request as irrelevant because it seeks information about plans to mechanize the loop qualification process and SWBT's obligation is to unbundle its current network.

Covad strongly disagrees that this request relating to future plans is irrelevant, and incorporates herein by reference its response to SWBT's objections to Data Request Nos. 1 and 2. Therefore, Covad asks that SWBT reconsider its objections to this Data Request and produce the requested information.

Data Request Nos. 74-79:

74. Please provide a detailed description of generally how and in what specific accounts SWBT records costs associated with maintaining its current databases and OSS. Please provide the total dollars reported for SWBT's regulated state operations in each such account for each of the last 5 years.

75. Please provide a detailed description of how costs associated with maintaining its current databases and OSS are treated in SWBT's study of the recurring cost of unbundled elements. Please ensure that, at a minimum, SWBT's reply identifies the specific source of the cost input data used in its study, and includes a discussion of any adjustment made to that input data and a detailed description regarding how those costs are assigned to specific unbundled elements.

76. Please provide a detailed description of generally how and in what specific accounts SWBT records costs associated with maintaining the accuracy of records in its current databases and OSS. Please provide the total dollars reported for SWBT's regulated state operations in each such account for each of the last 5 years.

77. Please provide a detailed description of how costs associated with maintaining the accuracy of records in SWBT's current databases and OSS are treated in its study of the recurring cost of unbundled elements. Please ensure that, at a minimum, SWBT's reply identifies the specific source of the cost input data used in its study, and includes a discussion of any adjustment made to that input data and a detailed description regarding how those costs are assigned to specific unbundled elements.

78. Please provide a detailed description of generally how and in what specific accounts SWBT records costs associated with expanding/improving/updating its current databases and OSS. Please provide the total dollars reported for SWBT's regulated state operations in each such account for each of the last 5 years.

79. Please provide a detailed description of how costs associated with expanding/improving/updating SWBT's current databases and OSS are treated in its study of the recurring cost of unbundled element. Please ensure that, at a minimum, SWBT's reply identifies the specific source of the cost input data used in its study, and includes a discussion of any

adjustment made to that input data and a detailed description regarding how those costs are assigned to specific unbundled elements.

SWBT objected to Data Request Nos. 74-79 as irrelevant, burdensome and unlikely to lead to the discovery of admissible evidence. SWBT claimed that detailed information about the cost of SWBT's OSS are irrelevant, as is any request that goes to plans to modify its network. Further, SWBT claimed that Data Request Nos. 75, 77 and 79 seek information about unbundled elements not at issue in this arbitration.

Covad takes issue with these objections. With respect to Covad's position that information pertaining to future plans is relevant to this proceeding, Covad incorporates herein by reference its response to SWBT's objections to Data Request Nos. 1 and 2. With respect to the other objections, Covad states this information is necessary to allow Covad to determine if double-counting is occurring between the recurring and non-recurring costs. The ability to determine this is at the core of this arbitration. Therefore, Covad asks that SWBT reconsider its objections to these Data Requests and produce the requested information.

Data Request Nos. 85-86:

85. Since August 1, 1999, how many xDSL loops has SWBT provisioned for its own retail services?

86. Since August 1, 1999, how many ISDN loops has SWBT provisioned for its own retail services?

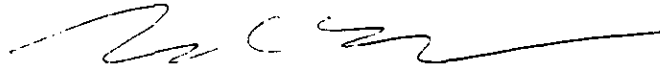
SWBT objected to Data Request Nos. 85-86 as irrelevant since future initiatives have no bearing on issues in this proceeding. Further, SWBT contends that such information is market sensitive and any release of it would be prejudicial to SWBT's retail operations.

Covad disagrees. First, with respect to SWBT's objection relating to the sensitive nature of the material requested, Covad incorporates herein by reference its discussion of the Protective Order issued in this case in Covad's response to SWBT's objections to Data Request No. 1. Second, as stated in Covad's responses to several other objections by SWBT, how SWBT provisions its retail service is highly relevant to how it should treat its wholesale customers. The extent to which SWBT had provisioned loops for its retail services is directly relevant to the provisioning intervals issue. This information directly relates to the ability to determine if there is parity between how SWBT treats itself versus its wholesale customers. Therefore, Covad asks that SWBT reconsider its objections to these Data Requests and produce the requested information.

Katherine Swaller, Esq.
Page 15
December 13, 1999

As mentioned previously, I am asking that you respond to this letter by close of business on Thursday, December 16, 1999. If we are unable to reach an agreement on these issues, Covad intends to file a motion to compel.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Lisa C. Creighton', with a long horizontal flourish extending to the right.

Lisa C. Creighton

LCC:cmw



December 21, 1999

VIA FACSIMILE

Ms. Lisa C. Creighton
4520 Main Street, Suite 1100
Kansas City, Missouri 64111

Dear Ms. Creighton:

Re: Covad's Response to SWBT's Objections to First Set of Data Requests

I am in receipt of your letter of December 13, 1999 (faxed after 5 p.m.) containing Covad's response to SWBT's objections to Covad's First Set of Data Request. You have demanded a response in just three days to Covad's concerns about SWBT's objections, which have been in Covad's hands for three weeks. I will do the best I can, but if this matter goes to pleadings, SWBT may have additional information in our response, which could not be contained in this letter given the very brief time allowed.

Let me reiterate that the Commission's arbitration procedures (a copy of which I provided to you in early November) do not contemplate discovery. Notwithstanding those procedures, SWBT agreed to respond to reasonable discovery during the brief time frames allowed under the Act for arbitrations. Each of the objections SWBT made were made in our good faith belief that Covad's requests exceed any reasonable bounds of discovery in this case. This is not litigation in a court. This is an arbitration under the Act where the Commission procedures and time frames apply. Covad sent SWBT its first set of DR's, which consisted of 90 very broad requests for information. In response to those requests, SWBT has already provided over 36 inches of documents and continues to supplement those responses. Additionally, SWBT made numerous volumes of highly confidential information available for your review in Kansas City where your firm's offices are located. In the meantime, we are already reviewing Covad's second set of DRs, received last week, bringing the total number of data requests to 97. Of all of those DRs, SWBT has objected to only those which seek information clearly beyond the scope of this docket including such areas as SWBT's retail operations, SWBT's future plans and information from time frames well before the Act.

In contrast to the discovery Covad has pursued, SWBT sent Covad only 10 DRs. Covad objected to all but four of those DRs and provided non-answers to all of the other requests. SWBT believes its response to Covad's discovery has been more than fair and would ask Covad to review its non-responsive reply to SWBT's discovery before alleging that SWBT has failed to produce relevant information.

DR 1 – DR 3

Your letter argues that information with regard to Project Pronto is relevant to this case and should be produced because Project Pronto will involve future changes to SWBT's network. SWBT's requirement under the Act is to unbundle the existing network. At this time new cost studies do not exist based on future changes to the network and the cost methodology SWBT has used is that required by the Commission in T0-97-40. Those are the relevant costs. Because conditioning is an option solely within the CLEC's discretion, no future changes will affect conditioning costs, only whether or not a CLEC will need to incur those costs. Finally, with regard to the 8db loop, Covad has already accepted the rates determined in the AT&T arbitration. It is improper for Covad to attempt to arbitrate those rates through the back-door via arbitration of conditioning rates.

DR 13 – DR 14

SWBT stands by its objection to DR 13 and 14 which seek information about the conditioning charges to retail customers and SWBT's cost recovery plans with regard to the conditioning costs. SWBT's retail charges, including the circumstances under which those charges apply, are contained in its FCC tariff already available to Covad. Additionally, the fact that SWBT will no longer have a retail offering is highly relevant to this DR because the SBC affiliate will be offered the same rates applicable to Covad or any other interconnector. Cost recovery will not be a SWBT issue since SWBT will be permitted to charge only the rates set by the individual state commissions. Thus there is no legitimate issue for which Covad requires this information.

DR 16

SWBT stands by its objection to DR 16 which seeks information concerning how SWBT books its outside plant rearrangements. SWBT's internal booking procedures are not relevant to any issue in this case.

DR 17

SWBT stands by its objection to DR 17(b), which seeks information concerning costs for all unbundled elements over the past five years. The only costs at issue in this case are conditioning costs and DSL conditioning has only occurred during the past year. Clearly information on other elements and prior to DSL conditioning activities is irrelevant.

DR 31 – DR 32

SWBT stands by its objection to DRs, 31 and 32 which seeks information about SWBT's future retail marketing plans. Such plans clearly are irrelevant to the arbitration.

As with many other DRs, you reference the Texas arbitrator's award. My reading of that award, which has no bearing on this case, does not suggest that SWBT's future marketing plans were relevant to that case or the one at issue here in Missouri.

DR 48 - DR 49

SWBT stands by its objection to DR 48. SWBT offered to make its cost studies available for Covad's review as early as December 3, 1999. Per Covad's request, that review will occur on Thursday of this week. Though the information sought by Covad is overbroad since it seeks information about loops that are not at issue in this case, SWBT's cost studies will show how particular costs are treated within the loop and cross connect studies.

SWBT stands by its objection to DR 49. Information on SWBT's future engineering plans is not relevant to the issue in this case. As Covad is aware, SWBT is obligated to unbundle the existing network and Covad will only pay for the conditioning that it orders, thus SWBT's future engineering plans are not relevant to the issues in this case.

DRs 50, 54, 55, 57 - 62

SWBT stands by its objections to DR 50, 54, 55, 57, 58, 59, 60, 61, 62 which seek documentation about particular procurement activities. The exact name and manufacturer of pieces of equipment, receipts and contracts, are irrelevant, overbroad and unduly burdensome. Covad is not entitled to do an audit in order to pursue its arbitration. It appears that the information is being sought for Covad's own procurement activities and not this case.

DR 56 - DR 63

SWBT stands by its objections to DRs 56 and 63, which seek 10 years of information on SWBT's retail ISDN service. The Act was passed in 1996 and set new costing procedures for unbundled elements. Information concerning SWBT's retail costing practices for the past 10 years is clearly irrelevant to this arbitration.

DR 66

SWBT stands by its objection to DR 66, which seeks information about future network plans. SWBT is obligated to unbundle its existing network. Subject to that, SWBT has already provided Covad with a price for a partially mechanized loop qualification process, which is not yet in place. Additionally, in response to other DRs, SWBT has provided extensive information about the partially mechanized process upon which the price was based.

DR 74 – DR 79

SWBT stands by its objections to DRs 74 through 79, which seek broad ranging information about SWBT's OSS systems. Such systems are not the subject of this arbitration. Consistent with the determination of the 8th Circuit Court of Appeals regarding FCC 96-98, the Missouri Commission (in the BroadSpan and Sprint arbitrations) determined that SWBT need only unbundle the network in place today, including its OSS systems used for ordering and qualifying DSL capable loops. Covad's only OSS issue (other than qualification for which information has already been provided) relates to provisioning time intervals, not prices. Clearly the requested information goes well beyond the scope of Covad's arbitration.

DR 85 – DR 86

SWBT stands by its objection to DR's 85 and 86 as overbroad, burdensome and irrelevant. Detailed information about SWBT's retail offerings is not relevant to the provision of unbundled DSL loops to Covad.

Southwestern Bell stands ready to continue to discuss discovery issues with Covad, but at that time would expect Covad to examine its own discovery practices and explain why it has provided no substantive response to the few DRs SWBT sent.

Sincerely,

A handwritten signature in black ink, appearing to read "J. H. Hall", is written below the word "Sincerely,".



Commissioners

KARL ZOBRIST
Chair

KENNETH McCLURE

DUNCAN E. KINCHELOE

HAROLD CRUMPTON

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
573-526-5695 (TT)

DAVID L. RAUCH
Executive Secretary

SAM GOLDAMMER
Director, Utility Operations

GORDON L. PERSINGER
Director, Policy & Planning

KENNETH J. RADEMAN
Director, Utility Services

DANIEL S. ROSS
Director, Administration

CECIL L. WRIGHT
Chief Administrative Law Judge

ROBERT J. HACK
General Counsel

June 17, 1996

To Whom It May Concern:

The Commission has adopted procedures for the arbitration of interconnection agreements under the federal Telecommunications Act of 1996. These procedures are enclosed for your information. The procedures will provide companies negotiating interconnection agreements the information necessary to request arbitration with the Missouri Public Service Commission, and information on how the arbitration process will be conducted. The Commission has reserved some of the specific issues, such as intervention and discovery, until it has a specific case situation in which to address those questions.

If any person has questions concerning these procedures, feel free to contact the Chief Administrative Law Judge, Cecil Wright, at (573) 751-7497.

Very truly yours,

A handwritten signature in cursive script that reads "David L. Rauch".

David L. Rauch
Executive Secretary

DLR:CIW:jp

Enclosure



Commissioners

KARL ZOBRIST
Chair

KENNETH McCLURE

DUNCAN E. KINCHELOE

HAROLD CRUMPTON

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
573-526-5695 (TT)

DAVID L. RAUCH
Executive Secretary

SAM GOLDAMMER
Director, Utility Operations

GORDON L. PERSINGER
Director, Policy & Planning

KENNETH J. RADEMAN
Director, Utility Services

DANIEL S. ROSS
Director, Administration

CECIL L. WRIGHT
Chief Administrative Law Judge

ROBERT J. HACK
General Counsel

Arbitration Procedures

Under the Telecommunications Act of 1996 ("the Act"), Section 252, the Missouri Public Service Commission ("the Commission") is authorized to arbitrate disputes between companies concerning interconnection agreements, services and network elements. The Commission also has authority to arbitrate controversies between regulated utilities under Missouri law. Section 386.230, RSMo 1994. The Act provides for the resolution of issues through compulsory arbitration. Between the 135th and 160th day after negotiations begin between the parties, either party may petition the Commission to arbitrate the remaining unresolved issues. The arbitration described here pertains to the arbitration of interconnection agreements, services and network elements, as required by the Act.

The arbitration process is initiated by a party by filing a petition for arbitration with the Commission. The petitioning party should attach to its petition:

- (1) relevant documentation concerning the unresolved issues;
- (2) relevant documentation concerning the position of each of the parties with respect to the unresolved issues;
- (3) relevant documentation concerning any other issue discussed and resolved by the parties; and
- (4) any other information the petitioning party believes the Commission may require in making its decision.

Copies of all petitions and documents are to be served on the nonpetitioning party and the Office of the Public Counsel (OPC) on the same day they are filed with the Commission. The Commission Staff and OPC are bound by the provisions of Section 386.480, RSMo 1994, with regard to the information obtained through this arbitration process.

When an arbitration petition is received, the Commission will assign the petition a case number, and will send notice to the nonpetitioning party that arbitration has been requested. The nonpetitioning party has 25 days from the date on which the Commission receives the petition to file a response to the petition and to file whatever additional information it wishes. Confidential information should be filed pursuant to the Commission's standard protective order, which will be adopted for the case.

Although the Commission has the authority under the Act to request whatever information it deems necessary for it to make its decision, parties are encouraged to err on the side of providing too much information rather than too little. Because there is a very short time within which the Commission must render a decision, requests for information to the parties from the Commission will include a response date. If parties fail to respond in a timely manner, the Commission will, under the Act, be forced to decide the issues upon the best information available to it from whatever source derived.

The arbitration will be conducted by an ALJ under procedures similar to current contested case procedures. Whether additional discovery or intervention is allowed will be determined on a case-by-case basis. A scheduling conference will be held for the purpose of establishing a procedural schedule. The procedural schedule will include dates for: (1) parties' filing of additional information; (2) the ALJ's or Commissioners' request(s) for additional information; (3) responses to the ALJs' and Commissioners' data requests; (4) a hearing; (5) briefing if necessary; and (6) the order to be issued.

Since this process must be completed by the 270th day after negotiations are requested, the hearing date will be set no later than the 210th day. The parties will be served with a copy of the written decision by the 270th day. If the parties accept the Commission decision, they will incorporate the decision into an interconnection agreement to be filed with the Commission. If a party does not agree with the decision, it may appeal to an appropriate federal district court.

The Commission will transcribe the arbitration hearing. Commission Staff will be utilized in an advisory role to the Commission and will not participate as a party in the arbitration. Those Staff members who act as advisors to the Commission in an arbitration proceeding will be subject to the same *ex parte* restrictions as Commissioners and ALJs.

Dated at Jefferson City, Missouri,
on this 17th day of June, 1996.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 9th
day of August, 1996.

In the matter of AT&T Communications of the Southwest,)
Inc.'s Petition for Arbitration Pursuant to Section 252(b))
of the Telecommunications Act of 1996 to Establish an)
Interconnection Agreement With Southwestern Bell Telephone)
Company.)
)

Case No. TO-97-40

ORDER ADDRESSING MOTION TO ESTABLISH PROCEDURAL SCHEDULE
AND ADOPT PROTECTIVE ORDER

On July 29, 1996, AT&T Communications of the Southwest, Inc. (AT&T) filed a petition requesting arbitration by the Missouri Public Service Commission (Commission) of an interconnection agreement with Southwestern Bell Telephone Company (SWB). With its petition, AT&T filed a proposed procedural schedule and requested the Commission adopt its standard protective order for this case with one modification. The Commission gave notice of AT&T's petition and request, and adopted its standard protective order pending a decision on the proposed modification. On August 2, 1996, SWB filed a response to AT&T's proposed procedural schedule and request for modification of the protective order.

There are two aspects to AT&T's proposed procedural schedule. First is the schedule for filing of prefiled testimony and issuance of a Commission decision. The proposed schedule contemplates that the Commission will issue a preliminary decision on November 15, 1996, and AT&T and SWB will respond to that decision, with a Report And Order issued December 4, 1996, and the interconnection agreement filed December 13, 1996. SWB does not address this part of the proposed schedule in its response except as it concerns discovery.

The Commission appreciates AT&T's thorough preparation for the filing of the petition for arbitration. The proposed procedural schedule, though, does not allow sufficient time for Commission consideration of the issues. Based upon the March 14, 1996 date on which AT&T formally commenced the negotiation process, the Commission must issue a decision on the arbitration by December 14, 1996. The Commission procedures set out in its June 17, 1996 letter contemplate the Commission utilizing the full time period in reaching its decision, especially in cases of this magnitude. The Commission finds that issuing a preliminary order and then allowing responses is not practical when the Commission is faced with the number of issues to be addressed in the arbitration procedure.

The dates proposed by AT&T for prefiling testimony appear reasonable and will be adopted. The Commission will, though, modify the schedule to include the Office of the Public Counsel (OPC) and to allow all parties an opportunity to file rebuttal testimony. SWB and OPC will be allowed cross-rebuttal. The hearing dates will also be adopted, with the recognition that October 14, 1996, is a state holiday. The Commission procedures indicate that a hearing should be held by the 210th day after March 14. This would be October 10, 1996. AT&T's proposed hearing dates of October 7 through 18, 1996, as necessary, meet that schedule. The Commission will then issue a decision as soon as possible after the hearing but at least by December 14, 1996. Either AT&T or SWB may then file the interconnection agreement for approval, or they may negotiate further.

The second part of AT&T's proposed procedural schedule involves discovery. AT&T proposes that the Commission's usual discovery procedures be modified with certain time limits, service procedures, and discovery methods. AT&T requests that all pleadings be delivered by hand, fax, overnight carrier, or electronically, rather than by the mail. AT&T requests that answers to data requests (DRs) be required within ten days of receipt and written objections required within five days of receipt. AT&T also requests that discovery

depositions should begin no earlier than August 20, 1996, and no later than September 12, 1996.

SWB opposes most of AT&T's request. SWB points out that its response to AT&T's petition is due August 23, 1996, and under AT&T's schedule, SWB's pre-filed testimony is due September 16, 1996. The discovery procedures proposed by AT&T would not allow SWB witnesses time to prepare their testimony if they were also being deposed during this period. SWB also objects to the use of discovery in arbitration proceedings. SWB argues that discovery is not contemplated by the Telecommunications Act of 1996 (Act) or the Commission's arbitration procedures. SWB states that only requests for information by the state commission are permissible under the Act.

The Commission had considered whether to allow discovery between the parties in an arbitration proceeding. As stated in the arbitration procedures, the issue of discovery will be looked at on a case-by-case basis. In this case the Commission generally agrees with SWB. There is not enough time to allow for extensive discovery when the time frame for filing testimony and the hearing is so short. Each party may present its case and the Commission will decide the appropriate result. If a party fails to support its case, then it accepts the risk of not prevailing. In addition, many of the costing issues must be considered in light of the decision by the Federal Communications Commission (FCC) in CC Docket 96-98. The Commission will therefore not authorize discovery during the arbitration process. The prefiled testimony should provide sufficient information for each party to understand the other party's position. The Commission will allow parties to file a pleading with the Commission after direct testimony is filed indicating what additional information the party believes it needs, and the Commission will issue an order addressing those requests. Since there is no dispute, the Commission will adopt AT&T's proposal for filing

pleadings, including prefiled testimony, by fax, by hand-delivery, by overnight mail, or electronically.

The final issue is the proposed modification of the protective order. AT&T proposes to include in the paragraph describing Highly Confidential (HC) information a paragraph which prohibits classification of cost studies and associated data as HC. The addition would require SWB to file any cost studies and related documents as Proprietary (P) rather than HC. SWB opposes AT&T's proposed modification. SWB argues that, as a competitor, AT&T should not be given access to all of SWB's cost data, and that the Act does not contemplate such an exchange.

The Commission has considered AT&T's request and finds that no change needs to be made to the protective order at this time. Information concerning total element long run incremental cost studies will be apparently required, as prescribed by the FCC, and the Commission will be asking for this information. That information will then be shared with the parties, subject to the restrictions of the protective order, which the Commission considers appropriate. The Commission will decide at that time whether the cost information should be classified as HC or P.

IT IS THEREFORE ORDERED:

1. That the following procedural schedule is established for this case:

Scheduling conference	August 30, 1996 10:00 a.m.
Commission data requests	August 30, 1996
AT&T prefiled direct testimony	September 6, 1996 3:00 p.m.
SWB and OPC data request pleadings	September 9, 1996
SWB and OPC prefiled direct testimony	September 16, 1996 3:00 p.m.

AT&T data request pleading	September 20, 1996
AT&T prefiled rebuttal testimony	September 26, 1996 3:00 p.m.
SWB and OPC prefiled cross-rebuttal testimony	September 26, 1996 3:00 p.m.
Hearing	October 7-11, 1996, and October 15-18, 1996, if necessary, at 10:00 a.m. (first day)
Commission decision	December 14, 1996

The scheduling conference and hearing will be held in the Commission's hearing room on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone with special needs as addressed by the Americans With Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the conference or hearing at one of the following numbers: Consumer Services Hotline -- 1-800-392-4211, or TDD Hotline -- 1-800-829-7541.

2. That AT&T Communications of the Southwest, Inc.'s Motion To Establish Procedural Schedule And Adopt Protective Order is hereby granted in part and denied in part as described in this order.

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

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

Zobrist, Chm., McClure, Kincheloe,
Crumpton and Drainer, CC., concur.

ALJ: Wright

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

**I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 9 day of AUGUST, 1996.**



**David L. Rauch
Executive Secretary**

At a session of the Public Service Commission held at its office in Jefferson City on the 4th day of September, 1996.

ORDER GRANTING IN PART AND DENYING IN PART
MOTION FOR RECONSIDERATION

On August 9, 1996, the Commission issued an order in which it denied AT&T Communications of the Southwest, Inc.'s (AT&T's) request to conduct full discovery, postponed a decision on whether cost studies produced by Southwestern Bell Telephone Company (SWB) would be deemed highly confidential, and adopted a procedural schedule. On August 16, 1996, AT&T filed for reconsideration of the order. Specifically, AT&T requests the Commission modify the procedural schedule in certain respects to permit SWB to produce its cost studies, to allow AT&T to conduct limited discovery on issues raised in the cost studies, and to delay commencement of the hearing to October 15, 1996, to continue through October 21, 1996.

On August 22, 1996, SWB filed a response to AT&T's motion. SWB argues that AT&T has failed to provide any new facts to warrant reconsideration of the Commission's order. SWB contends that its actions are consistent with the Telecommunications Act of 1996 (Act), and that AT&T received the procedural schedule requested. SWB also indicates that it plans to file total element long run

incremental cost (TELRIC) studies with its direct case, and so should not be required to file these cost studies prior to that time.

On August 22, 1996, the Office of the Public Counsel (OPC) filed a response to AT&T's motion supporting AT&T's motion for expedited discovery and that SWB be required to disclose its cost studies. OPC argues that the requirement of a full and factual record requires full discovery.

The Commission has reviewed AT&T's motion and will grant the request to modify the procedural schedule. The Commission finds that simultaneous filings of direct and rebuttal testimony by the parties is consistent with the procedural schedule the Commission adopted in TO-97-21 and TO-97-23. The Commission will grant the motion for simultaneous filing of direct testimony on September 6, 1996, and rebuttal testimony on September 26, 1996. The Commission will modify AT&T's proposal for the date by which the parties shall file data request (DR) pleadings. The Commission will set a date of September 10, 1996, to allow parties an opportunity to review each other's testimony before filing their DRs. The Commission will also modify the date by which it must file its DRs by eliminating a specific date. The Commission finds that it should not be prohibited from requesting additional information at any time during the proceeding.

With regard to the request for discovery and production of the TELRIC cost studies, the Commission will deny the motion. There is insufficient time for depositions, and SWB has been required to respond to the petition and file testimony to support its position. To allow more discovery would unnecessarily impede SWB's preparation of its case. In addition, the Federal Communications Commission (FCC) has set the standards for many of the issues, including the TELRIC cost studies. The Commission will have access to these studies as well as OPC, and AT&T may have access to them under the terms of the protective order.

This access for AT&T is granted exclusively through its outside experts, which the Commission finds consistent with a balancing of AT&T's need for the information for the arbitration proceeding and SWB's interest in protecting such sensitive information from a competitor. The Commission does not believe that the Act requires public disclosure or even disclosure to in-house experts of a competitor of the costing methodology and data behind the TELRIC. Access through outside experts will meet the requirements of the Act.

The Commission will also deny AT&T's request to move the hearing dates. With arbitration proceedings now scheduled or to be scheduled every week in October, the Commission's schedule will not allow for a delay in the hearings. The Commission does expect AT&T and SWB to negotiate the less controversial aspects of the interconnection agreement and to limit the issues in the hearing only to those four or five that are truly in dispute. This process would allow the Commission to hear this case from October 15-18, 1996, and still retain sufficient time to render a decision by December 13, 1996.

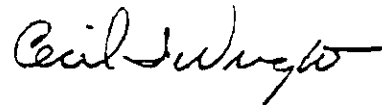
IT IS THEREFORE ORDERED:

1. That AT&T Communications of the Southwest, Inc.'s motion is hereby granted in part and denied in part.
2. That the procedural schedule in this case is hereby modified as follows:

Simultaneous direct testimony of AT&T, SWB and OPC	September 16, 1996 3:00 p.m.
Data request pleadings for direct	September 18, 1996
Simultaneous rebuttal testimony of AT&T, SWB and OPC	September 30, 1996 3:00 p.m.
Data request pleadings for rebuttal	October 4, 1996

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

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., McClure, Kincheloe,
Crumpton and Drainer, CC., concur.

ALJ: Roberts


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

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 4 day of SEPTEMBER, 1996.


**Cecil I. Wright
Executive Secretary**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by Airborne Express and by e-mail on December 30, 1999.



Paul G. Lane

WILLIAM HAAS
MISSOURI PUBLIC SERVICE COMMISSISON
301 WEST HIGH STREET, SUITE 530
JEFFERSON CITY, MO 65102

LISA C. CREIGHTON
MARK P. JOHNSON
SONNENSCHN, NATH & ROSENTHAL
4520 MAIN STREET, SUITE 1100
KANSAS CITY, MO 64111