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June 20, 2002

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65101

Re: Case No. TC-2002-194

Dear Judge Roberts:

Attached for filing with the Commission is the original and eight (8) copies of AT&T Communications of the Southwest, Inc.'s Reply to Southwestern Bell Telephone Company's Reply in the above referenced docket.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

A handwritten signature in cursive script that reads "Rebecca B. DeCook (jr)".

Rebecca B. DeCook

Attachment

cc: All Parties of Record

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

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

**AT&T REPLY TO SOUTHWESTERN BELL TELEPHONE COMPANY'S  
REPLY TO AT&T**

COMES NOW, AT&T Communications of the Southwest, Inc., ("AT&T") and submits its Response to Southwestern Bell Telephone Company's ("SWBT") Reply to AT&T. At issue is whether the Missouri Public Service Commission ("Commission") should modify the standard protective order issued in this proceeding by adopting the Modified Protective Order proposed by AT&T.

1. On April 25, 2002, the Petitioners filed a motion requesting the Commission issue its standard protective order. On May 9, 2002, AT&T filed a Motion opposing the issuance of the standard protective and requested a modified protective order. Since May 9, 2002, there have been numerous pleadings filed by AT&T, SWBT, and the Staff of the Commission (Staff") on the issue of modifying the standard protective order, in numerous proceedings. The most recent pleadings on the issue in this proceeding were filed on or about June 11, 2002. In its recent filing, the Staff indicated that it agreed with AT&T's interpretation of the standard protective order and supported

AT&T's request for an alternate protective order. On or about that same date, SWBT filed a Reply to AT&T's Response ("Reply") addressing the protective order issue and the allegations of SWBT's violation of the Interconnection Agreement between AT&T and SWBT. AT&T provides its Reply to the numerous fallacious claims and statements made by SWBT in its Reply.

**A. Response to Southwestern Bell's Position on the Protective Order**

2. As AT&T stated in its initial response on the issue of the appropriate protective order for this proceeding, the "standard" protective order prohibits AT&T's internal experts from reviewing information designated by another party as Highly Confidential ("HC"). A simple, straightforward reading of the "standard" protective order makes that clear. Despite SWBT's rationalizations, SWBT's own pleadings concede that the standard protective order would prohibit internal experts from reviewing HC information and has requested relief from the Commission in Case No. TC-2002-190 to allow its internal experts access to HC information. As indicated above, Staff also agrees with AT&T's interpretation and, for that reason, recommends AT&T's proposed protective order be adopted.

3. In its latest pleading, SWBT seems to be arguing that its internal experts should be able to see the transiting data at issue in the Mid-Missouri case (Case TC-2002-190) and that the Commission should carve out an exception in the standard protective order in that case that would permit such access. SWBT also claims that AT&T is entitled to see what it refers to as the "originating carrier data" in this proceeding where AT&T is the originating carrier and that SWBT would have no objection to AT&T having access to that "originating carrier data." However, by SWBT's own admission,

the existing protective order would prevent AT&T and SWBT from seeing this data because it has been marked HC by the carriers producing the data<sup>1</sup>. To the extent SWBT, or any other party, produces such information in this proceeding as highly confidential, the clear and unambiguous terms of the existing standard protective order would prohibit access to this information by internal experts and a modification to the standard protective order would be required to allow such access. AT&T agrees with SWBT on this point. Where the parties differ is that SWBT argues that these issues should be handled through an exception process on a negotiated case-by-case basis subject to the discretion of the company providing the HC data, while AT&T contends that this approach is not justified, unfairly increases the cost of litigation, and will delay access to information that is critical to the a party's full and fair participation in the proceeding, depriving them of due process. The current standard protective order allows SWBT and other companies to designate virtually every piece of information produced in a proceeding as HC, without making any showing that the information warrants the protections afforded HC information. While that was clearly not the intent of the Commission when it adopted the standard protective order, SWBT has clearly abused the process. Given this abuse and the fact that every other state in which SWBT operates has adopted the modified protective order proposed by AT&T, this Commission should revise the standard protective order in the manner proposed by AT&T.

4. A second area where SWBT and AT&T differ is that SWBT improperly assumes that AT&T's "originating carrier data" is the only information AT&T seeks

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<sup>1</sup> Case No. TC-2002-190, Mid-Missouri Telephone Company, Petitioner vs. Southwestern Bell Telephone Company, Respondent, Southwestern Bell's Motion for Access to Data, To Suspend the Procedural Schedule and Refer the Case to a Staff-Supervised Investigation, March 18, 2002, pg. 3.

access to in this proceeding. That is not the case. As AT&T stated in its initial Response, the basis of this complaint is "SWBT Transiting Usage Summary Reports" that SWBT provided to the Petitioners. SWBT personnel have admitted to AT&T that these reports are inaccurate. In order to demonstrate these inaccuracies in this proceeding, it will be necessary for AT&T's internal experts to review all supporting information gathered and compiled by SWBT, including records of SWBT and potentially other company's, to determine the source of the inaccuracies. AT&T will also need to have its internal experts review the methods and procedures employed by SWBT, and possibly other LECs, for gathering and compiling the type of information reported in the SWBT Transiting Usage Summary Reports. AT&T's internal experts may also need to review customer records to determine the customer's intraLATA toll carrier selection and which intraLATA toll carrier is actually carrying the calls. AT&T anticipates that much of this information will be classified as highly confidential. This information would not be addressed by SWBT's "exception" to the standard protective, yet access to this information is clearly critical to AT&T's ability to adequately participate in the proceeding and mount a defense to the Petitioner's Complaint.

5. Finally, SWBT has never asserted that the adoption of AT&T's proposed protective order would cause any harm to SWBT. In fact, under the views espoused in SWBT's Reply, if AT&T can already see data labeled by SWBT as HC, what harm can come from a protective order that explicitly allows AT&T's internal experts to see data that SWBT classified as HC? The answer is there is no harm because adequate protections are afforded under AT&T's proposed protective order. These are the same

protections that are in-place in the other states where SWBT operates and there is no reason AT&T and others should have more limited access to data in Missouri.

6. In its Reply, SWBT also claims that it has already provided AT&T with the information it needs to verify the accuracy of Southwestern Bell Telephone's Transiting Usage Summary Report, which is the source of this complaint. AT&T has no record of ever receiving such records for Missouri. Based upon AT&T's investigation, SWBT has not provided AT&T with the Category 92 records for Missouri UNE-P traffic as it claims.

7. Even if SWBT had provided these records to AT&T, these records would have been provided under the terms of the Interconnection Agreement ("ICA") between AT&T and SWBT and AT&T would not be able to use that information for purposes of this proceeding. Specifically, the confidentiality provisions of the AT&T/SWBT ICA require the recipient of Confidential Information to:

- use it only for the purpose of performing under this Agreement;
- hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement; and
- safeguard it from unauthorized use of or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third-party agent or consultant, such disclosure must be agreed to in writing by Discloser.<sup>2</sup>

8. Because SWBT generally designates such records as Confidential, under the ICA, AT&T's internal experts are limited to reviewing data classified by SWBT as

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<sup>2</sup> Interconnection Agreement between AT&T/SWBT and TCG/SWBT, General Terms and Conditions, Section 6.4, p. 8.

Confidential for the purposes of implementing the agreement. That does not mean that AT&T may use or review that information for purposes of this complaint or other regulatory proceedings, as those are beyond the uses permitted under the ICA. Thus, even if SWBT's claim that it had provided AT&T the detail behind the Transit Usage Summary Report were correct, AT&T would still not be able to utilize that information in this proceeding. AT&T must obtain that information in this proceeding.

9. As AT&T has previously stated, access to SWBT's, and other LEC's, HC data is critical to the resolution of this complaint and AT&T's due process rights. For these reasons, AT&T urges the Commission to adopt AT&T's proposed protective order.

**B. The Alleged Violation of the AT&T/SWBT Interconnection Agreements.**

10. In AT&T's May 30, 2002, Response, AT&T stated that SWBT's disclosure of the data contained in the Transit Usage Summary Report violated the confidentiality provisions of the ICAs between AT&T and SWBT. In its Reply, SWBT acknowledges that it provided third parties with the number of message and minutes originated by AT&T when AT&T serves a customer using the unbundled network element platform (UNE-P) purchased from SWBT.<sup>3</sup>

12. SWBT does not deny that this information is the Confidential Information under the terms of the AT&T/SWBT ICAs. Instead, SWBT makes a number of unfounded and unsupported arguments that its breach is justified and should be excused.

13. First, SWBT claims that it is justified in providing downstream companies with AT&T usage data and that the provision of this information does not violate the

ICAs. SWBT cites no authority to support this assertion. This information is clearly Confidential Information under Section 6 of the ICAs and there is no other provision of the ICAs that permit SWBT to disclose this information to a third party. The provisions of the ICAs are clear. Under the ICAs, SWBT may not disclose any AT&T Confidential Information without AT&T's written permission. SWBT did not even seek AT&T's permission, much less obtain it. SWBT has clearly violated those provisions.

14. The fact that SWBT claims they provided "high-level summary information" is irrelevant and does not excuse the breach committed by SWBT.<sup>4</sup> If the information is Confidential Information under the ICAs, SWBT may not disclose it. Indeed, the confidential provisions of the ICAs would be rendered meaningless if SWBT could unilaterally determine which data can be disclosed and which data cannot be disclosed? Clearly if the shoe were on the other foot and AT&T made the unilateral determination that SWBT's HC data was not really confidential at all, SWBT would be at the Commission's door claiming that AT&T had violated the ICAs or the protective order.

15. Next, SWBT mischaracterizes AT&T's obligations under the ICAs and then claims that if AT&T had fulfilled those misconstrued requirements, "Southwestern Bell would not have needed to create or provide Transiting Usage Summary Reports to carriers downstream, nor would this complaint against AT&T/TCG have arisen."<sup>5</sup> Putting aside the substance of this assertion, which AT&T vehemently denies, this claim cannot justify SWBT's breach of the Agreement and disclosure of confidential AT&T

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<sup>3</sup> SWBT Reply, p. 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*, p. 4.



business information. If SWBT believed AT&T was not performing under the agreement, the ICAs provide the appropriate remedy. SWBT's recourse was to pursue such contractual remedies, not to engage in vigilante tactics by disclosing AT&T confidential business information to third parties.

16. As justification for its actions, SWBT states, without any citation, that its provision of this information to a co-carrier involved in terminating AT&T traffic does not violate the ICAs. In fact, there is no provision in the ICAs that allow SWBT to provide this information to third parties and the confidentiality provisions of the ICAs do not allow SWBT to do so.

17. Second, SWBT states that AT&T is required to provide this information to all carriers on the call path, citing Section 13.3 of Attachment 12: Reciprocal Compensation and provides a partial and erroneous recitation of that section. In its Reply, SWBT provides the following partial and incorrect cite, stating that AT&T is required to:

transmit the summarized originating minutes of usage within fifteen (15) business days following the prior month's close of business for the traffic designated in Section 3.6.2 (i.e. intraLATA toll and/or transit, as applicable) via the 92-type record process to the transiting and/or terminating party for subsequent monthly intercompany settlement billing.<sup>6</sup>

18. SWBT claims this section requires AT&T to provide summarized usage records to all parties on the call path, including third parties not a party to the ICAs. To reach SWBT's desired conclusion, SWBT selectively omitted key words and failed to capitalize another key word. The complete and correct citation to Section 13.3 states:

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<sup>6</sup> SWBT Reply, p. 4.

**Each Party** will transmit the summarized originating minutes of usage within fifteen (15) business days following the prior month's close of business for the traffic designated in Section 3.6.2 (i.e. intraLATA toll and/or transit, as applicable) via the 92-type record process to the transiting and/or terminating **Party** for subsequent monthly inter-company settlement billing.

"Party" is a defined term in the ICAs and refers exclusively to AT&T or SWBT. Under 53.1 of the General Terms and Conditions, "A defined word intended to convey special meaning is capitalized when used." The term "Parties" is defined on page 1 of the General Terms and Conditions section of the ICAs and includes only AT&T or TCG and SWBT. Thus, the clear and unambiguous meaning of this section of the ICAs when the entire section is provided and analyzed in the context of the ICAs, as a whole, is that this section applies only to AT&T/TCG and SWBT and does not impose any requirement on AT&T/TCG to provide call information to third parties.

19. As a result, SWBT has completely mischaracterized the meaning of this section of the ICAs in an effort to justify its inappropriate actions.

20. SWBT next argues that AT&T raises the issue of SWBT's violation of the ICAs in an attempt to avoid paying access charges and to inappropriately focus attention on SWBT. Such a slanderous allegation is untrue and is belied by AT&T pursuing this issue in at least two other proceedings. AT&T is opposed to SWBT's inappropriate use of AT&T's Confidential Information because it is not permitted under the ICAs.

21. In its Reply, SWBT implies that the minutes and messages identified on the Transit Summary Usage Report are intraLATA toll traffic by AT&T UNE-P customers.<sup>7</sup> During the course of this proceeding, AT&T previously asked SWBT's

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<sup>7</sup> SWBT Reply, p. 4.

undersigned counsel to identify the jurisdiction of the messages and minutes included on SWBT's Transit Usage Summary Report. SWBT's counsel was unable to do so when asked but promised to provide an answer at a later date. SWBT's counsel has yet to respond to this request.

22. However, AT&T has learned from SWBT's account organization that there are a number of issues that affect the integrity of the data being reported on the SWBT Transit Usage Summary Reports. For example, when AT&T places a UNE-P order, AT&T instructs SWBT to populate the LPIC field to ensure that AT&T is reflected as the underlying intraLATA toll carrier. If SWBT were following AT&T's instructions, this UNE-P toll traffic would be routed to AT&T's toll network and terminated to third parties via AT&T's equal access Feature Group D trunks, where the terminating carrier is able to bill and receive payment for the appropriate access charges. Accordingly, this UNE-P toll traffic should never transit SWBT's network. If SWBT is fulfilling AT&T's request, the only messages and minutes on the report should be local and EAS, since all intraLATA toll calls should be routed through AT&T's network, not SWBT's network<sup>8</sup>. Therefore, if there is AT&T UNE-P toll traffic reflected in SWBT's report, SWBT is either improperly categorizing local and EAS traffic as toll usage or SWBT has effectively slammed the AT&T UNE-P customer by disregarding their selection of AT&T as their toll carrier and instead completing the customer's toll calls as if it were a SWBT intraLATA toll customer.

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<sup>8</sup> In addition to only applying to the Parties to the ICA, Section 13.3 of Attachment 12: Reciprocal Compensation cited by SWBT only applies to IntraLATA toll traffic terminating to SWBT or transiting SWBT's network. It does not apply to local traffic or traffic routed to and carried by AT&T's own interexchange facilities. The section of the ICA that SWBT misconstrued to support is inappropriate disclosure does not even apply to local traffic, which should be the only AT&T UNE-P traffic appearing on the report.

23. Also, in Texas where SWBT has produced the same report, SWBT also informed AT&T's representatives that their "point" tables were erroneously recording local calls as intraLATA toll. This SWBT error has resulted in toll usage records being incorrectly generated by SWBT for local calls. AT&T has no reason to believe that similar errors are not occurring in Missouri as well.

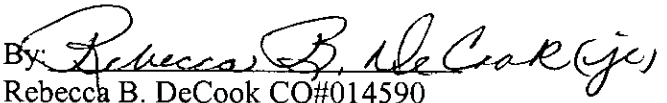
24. When AT&T raised this issue with SWBT, SWBT's account representatives indicated that the traffic on the report was 99% local. SWBT's account team also advised AT&T that SWBT is correcting any routing errors that would cause AT&T/TCG intraLATA toll traffic to transit SWBT's network.

25. Because of these errors, which SWBT has acknowledged, AT&T requested SWBT to discontinue the publication of the Transit Usage Summary Report. SWBT has refused to do so.

26. While SWBT has tried to impugn AT&T's motives for raising these issues, it is obvious that it is SWBT that is trying to divert attention away from its actions. Not only has SWBT inappropriately disclosed AT&T confidential information, it has knowingly disclosed inaccurate information to third parties – information that the third parties have relied upon, at SWBT's instigation, to file a complaint against AT&T and other CLECs. SWBT's efforts to detract from the central issues raised by AT&T should be stripped of their rhetoric and examined for what they truly are – an attempt by SWBT to hide accuracy issues surrounding its report and to maintain an unwieldy, unnecessary protective order that no other SWBT state condones and that disadvantages other parties to the proceeding while benefiting SWBT. It is telling that SWBT is the only party that supports the continued use of the existing protective order.

**WHEREFORE**, for all the reasons set forth herein and in its prior filings on this matter, AT&T respectfully requests that the Missouri Public Service Commission enter an order replacing the current protective order with AT&T's Proposed Protective Order.

**AT&T COMMUNICATIONS OF  
THE SOUTHWEST, INC., TCG ST.  
LOUIS, INC. AND TCG KANSAS CITY,  
INC.**

By:  (jc)

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing in Docket TC-2002-194 was served upon the parties on the following service list on this 20<sup>th</sup> Day of June, 2002 by either hand delivery or placing same in postage paid envelope and depositing in the U.S. Mail.



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