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July 18, 2002

FILED⁴

JUL 18 2002

Missouri Public
Service Commission

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

Re: Case No. TR-2001-65

Dear Judge Roberts:

Attached for filing with the Commission is the original and eight (8) copies of AT&T Communications of the Southwest, Inc., TCG Kansas City and TCG St. Louis' Motion for Reconsideration 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,

Rebecca B. DeCook

Attachment

cc: All Parties of Record

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED⁴
JUL 18 2002

Missouri Public
Service Commission

In the Matter of an Investigation of the Actual Costs)
Incurred in Providing Exchange Access Service and)
the Access Rates to be Charged by Competitive Local)
Exchange Telecommunications Companies in the)
State of Missouri)

Case No. TR-2001-65

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

COMES NOW, AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc. and TCG Kansas City, Inc. (collectively named "AT&T") and submits its Motion for Reconsideration of the Commission's Order regarding Protective Order and Regarding Procedural Schedule, issued on July 8, 2002 in the above-captioned proceeding. In the Order, the Commission denies AT&T's Motion and concludes that AT&T has not demonstrated that it would be deprived of due process if the current protective order remained in place and that AT&T has not shown that its in-house experts must be afforded access to the cost study data at issue. As set forth herein, AT&T disagrees and urges the Commission to reconsider this Order.

BACKGROUND

On August 8, 2000, the Missouri Public Service Commission issued an order establishing this case and adopting the Missouri standard protective order.¹ Under that legacy protective order, a party may designate information provided as either "Proprietary" or "Highly Confidential." Information designated as "Proprietary" may

¹ Order Establishing Case and Adopting Protective Order, dated August 8, 2000.

be reviewed by counsel of record and internal and external persons signing a non-disclosure agreement. Information designated as "Highly Confidential" may only be reviewed by counsel of record and outside consultants signing the non-disclosure agreement. Internal cost experts of the receiving company are prohibited from reviewing information designated as "Highly Confidential" by the providing company.

When this case was initially commenced, Staff's consultant proposed that the FCC's Synthesis Model be used to estimate access rates. That model and its inputs are open to the public; which was one of the stated reasons for favoring that model. Because AT&T expected to be able to review any cost information generated through the use of the Synthesis Model, AT&T had no reason to be concerned with the current protective order's limitations. However, several of the incumbent local exchange carriers ("ILECs") in this proceeding opposed the use of the FCC's Synthesis Model and convinced Staff to use their own cost models. AT&T was unaware of this until Staff was preparing the draft results using the ILEC cost models this Spring. Even at that time, Staff indicated to AT&T that the cost data would be public information and that all parties would have access to the results and underlying data. It was not until Staff was ready to release the draft exchange access cost studies that AT&T became aware that Staff intended to designate its analysis as "Highly Confidential" and AT&T's in-house cost experts would not be able to review the cost data of other local exchange carriers. It was not until AT&T actually received the draft studies that AT&T realized its in-house cost experts could not even review data purported to represent AT&T's costs.

AT&T promptly raised its concerns with Staff and was told that Staff was working with the ILECs who provided cost models or cost data to try to obtain access for

all parties to the underlying cost information. After it became apparent those discussions were not going to be fruitful, AT&T began to contact several of the parties to this proceeding. In these discussions, it became clear that the various ILECs wanted to enter into separate and, in some cases, potentially different types of agreements and that a single side agreement addressing access to all parties' information was unlikely. It was at that time that AT&T decided to file a Motion with the Commission seeking a modification to the protective order.

Consistent with the procedural schedule, Staff provided the parties with draft cost studies on April 1, 2002. Those draft studies have been classified as "Highly Confidential" in their entirety meaning that the cost models, the inputs to those cost models, and even the results of those studies are designated as "Highly Confidential." In direct testimony filed by Staff and other parties on July 1, 2002, cost studies, cost data and results were filed that are designated as "Highly Confidential." As a result, AT&T's in-house cost experts are unable to review the cost information that purport to represent AT&T's cost of access and the costs that incumbent local exchange carriers incur in the provision of switched access service.

On July 8, 2002, the Order Regarding Protective Order and Regarding Procedural Schedule was entered by the Commission ("Order"). In that Order, the Commission denied AT&T's Motion and effectively required AT&T to retain an outside consultant in order to review the cost studies, inputs, factors and results which form the central information that is at issue in this proceeding. Without access to this information, the only issues AT&T will be able to address in this proceeding are high-level policy issues and, even for these issues, AT&T will be unable to provide the Commission with any

concrete comparisons of AT&T's recommendations with alternative positions. As a result, if AT&T in-house experts are not permitted access to the Highly Confidential information, it is likely that AT&T will not continue to participate in this proceeding. Accordingly, AT&T urges the Commission to reconsider its Order and to enter the revised protective order proposed by AT&T.

ARGUMENT

At issue before the Commission is whether there is any legitimate basis to maintain the legacy protective order that is currently in place in this case. AT&T has argued in its prior briefing that Missouri is the only state in SWBT's territory where in-house experts are barred from reviewing cost study information and results. AT&T employees have reviewed this same cost information in every other SWBT state under the type of protective provisions that AT&T proposed in its Motion and SWBT has never claimed any impropriety by any AT&T employee. In fact, AT&T's in-house experts have reviewed ILEC cost studies in every state in the United States, except Missouri. It is hard to understand why the two-tiered legacy protective order is required in Missouri, when no other state in the nation has a similar protective order. There is nothing unique about Missouri cost information. The parties that oppose AT&T's request have not presented any reason why the AT&T protective order does not adequately protect their information. In fact, both SWBT and the Small Telephone Companies have indicated a willingness to afford in-house experts access to this information via ad hoc side agreements which would largely resemble the protective order proposed by AT&T here.

Based upon this concession, it is clear that these companies objection to AT&T's Motion lacks substance and may well be driven by self-interest, as Staff suggests.²

Clearly the terms of the protective order proposed by AT&T are sufficient to protect SWBT's interest, while at the same time balancing the interests of other parties and affording the other parties the opportunity to more fully and fairly participate in the proceeding. AT&T's proposed protective order provides more than adequate protection. This proposed protective order contains a single designation of "Confidential Information". Access to "Confidential Information" is limited to counsel of record, regulatory personnel acting at the direction of counsel, and outside consultants employed by the receiving party. Persons afforded access under the attached protective order are prohibited from either using or disclosing such information for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and are also required to keep that information secure. The material designated as "Confidential Information" is protected from misuse by internal experts using the same high standard that applies to outside experts under the legacy Protective Order. Internal experts would be prohibited from divulging or misuse any confidential information.

AT&T has also asserted that the protective order impairs AT&T's ability to fully and fairly participate in this proceeding in violation of AT&T's due process rights. The Due Process Clause prohibits government from taking life, liberty or property without affording due process of law. The Due Process Clause requires that in order to deprive a person of a property interest, the person must receive notice and an opportunity for a

² See Staff's Reply to Southwestern Bell Telephone Company Regarding the Adoption of a Modified

hearing appropriate to the nature of the case. *Larocca v. State Bd. of Registration for Healing Arts*, 897 S.W.2d 37, 43 (Mo. App. E.D. 1995). A litigant must have knowledge of the claims of his opponent and have a full opportunity to be heard and to defend, enforce and protect his rights. *Bever v. State Bd. of Registration for Healing Arts*, 2001 WL 68307 (Mo. App. W.D., January 30, 2001).

Due process requires that administrative hearings be fair and consistent with rudimentary elements of fair play. *State ex rel. Fischer, v. Public Serv. Comm'n of Missouri*, 645 S.W.2d 39, 43 (Mo.App.W.D. 1982).

The Missouri courts have adopted a balancing test to assess violations of due process. This test balances the competing interests of (1) the private interest affected by administrative action, (2) the risk of erroneous deprivation of this interest through the procedures used and the probable value of additional procedural safeguards, and (3) the government's interest, including the function involved and the fiscal and administrative burdens that additional procedural requirements would entail. *Larocca*, 897 S.W.2d at 43. *Belton v. Board of Police Comm'rs*, 708 S.W.2d 131, 137 (Mo. 1986), quoting *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L.Ed. 2d 18, 33 (1976).

The Order fails to adequately address how the current protective order affords AT&T knowledge of the claims of its opponents and a full opportunity to be heard and to defend, enforce and protect its rights. Because AT&T's in-house experts cannot view the "Highly Confidential" information, AT&T lacks knowledge of the claims of its opponents as to AT&T's access costs and the access costs of other local exchange companies in Missouri. This lack of access impairs AT&T's ability to be heard and to

defend, enforce and protect its rights. This problem cannot be cured by using outside consultants. The consultant cannot adequately defend, enforce and protect AT&T's rights if he/she cannot meaningfully consult with his/her client. Under the current protective order, the consultant would essentially have to fly solo. He/she could not share information with AT&T's in-house experts or obtain the client's specific guidance on their concerns, issues and directives regarding the cost assessments conducted by other parties.

The Order also fails to consider the balancing test that has been adopted by the United States Supreme Court and applied by the Missouri courts. Rather, the Commission concludes, without providing any rationale, that because AT&T can retain outside consultant, there is no due process violation. This conclusion is unsupported by the law and the facts.

If the balancing test had been conducted, AT&T's interest in reviewing the cost studies would greatly outweigh any governmental interest. The Commission has established this case "to investigate all of the issues affecting exchange access service, including particularly the actual costs incurred in providing such service. . . ." (Order Establishing Case, August 8, 2001, p. 2). The Commission stated that this case would "take the form of a Commission investigation in order to ensure that the necessary detailed cost information is included in the record." (*Id.*) All certificated providers of basic local exchange telecommunications services in Missouri were made parties to the proceeding. In its Order Adopting Procedural Schedule, Clarifying the Scope of This Proceeding, and Concerning Motion to Waive Service Requirements and Motion to

Reply").

Compel Discovery, dated March 14, 2002, the Commission stated that, at a minimum, the “express purpose of this case is to gather the information necessary to replace the interim rate cap [on CLEC access rates] with a permanent solution.” (Clarification Order, p. 7.) In addition, the Commission set a date for an evidentiary hearing in this matter. (Clarification Order, p. 12.)

Based up Missouri law and these Commission’s Orders, AT&T has a vested and protected property interest in this proceeding. Pursuant to Section 386.420.1, R.S.Mo. 1994, AT&T has a statutorily protected right to “be heard and to introduce evidence”³ – a right that has been significantly impaired by the constraints imposed by the current protective order.

Similarly, the Commission’s Orders make clear that the purpose of this proceeding is, at least, to supplant the current interim rate cap on CLEC access rates with a permanent solution. (Clarification Order, p. 7.) AT&T’s access rates are currently governed by the interim rate cap and, thus, AT&T will be affected by any permanent solution adopted by the Commission in this proceeding. Ironically, if the Commission adopts any of the Staff’s cost results and orders that companies implement those costs as their access rates in the state of Missouri, AT&T would be unable to see the results and, therefore, unable to implement such Commission order. In any event, AT&T has a vested and protected interest in assuring that the quantification of its operating costs to provide access service are accurate and are not understated so that it can adequately

³ In addition, for at least incumbent local exchange carriers costs, this Commission appears to have the ability to conduct the review of their access cost under Section 392.270 R.S.Mo. 1994. Subsection 392.270.2 provides that all “telecommunications companies affected shall be entitled to be heard and to introduce evidence at such hearing or hearings.” AT&T as one of the largest purchasers of access services from incumbent local exchange carriers in Missouri would clearly be affected by any valuation of property used in the provision of access services it purchases from these companies.

recover its operating costs in whatever permanent solution is adopted by the Commission. The Commission acknowledged in its Order Establishing the Proceeding the importance of investigating the actual costs incurred in providing access service. Without AT&T's participation, the Commission's investigation would be seriously hampered and the accuracy of its investigation could be easily questioned.

In addition, AT&T has a liberty interest in determining the manner in which it presents its case in this proceeding. The term "liberty" has been defined to encompass the power of the will to follow the dictates of its unrestricted choice, and to direct the external acts of the individual without restraint, coercion, or control from other persons. *See e.g., Booth v. Illinois*, 184 U.S. 425, 22 S.Ct. 425, 46 L.Ed. 623 (____); *Munn v. Illinois*, 94 U.S. 113, 24 L.Ed. 77 (1876). For example, the term liberty embraces freedom from governmental interference in the exercise of intellect, in formation of opinions, in the expression of them and in action or inaction dictated by judgment. *Zavilla v. Masse*, 147 P.2d 823, 827 (Colo. 1944). In addition, liberty includes the right to engage in a lawful business and to determine the price of one's labor. *State Bd. of Barber Examiners v. Cloud*, 44 N.E 2d 972, 980 (Ind. 1942). Here, the protective order requirements would unfairly limit AT&T's ability to freely present its evidence in this case in the manner that best protects its interests and it impairs AT&T's ability to affect the Commission's determination of the price that it can assess for its access services.

AT&T also has a protected interest in the establishment of the costs for access services of the other parties in this proceeding. While the Commission has not determined how it will modify the access rates of the ILECs, when it does so, it will rely on the investigation of costs conducted in this proceeding. Thus, it is this proceeding

where the incumbent's cost will be litigated and where AT&T can weigh in on the accuracy of the cost analysis performed by Staff for these companies and any claims asserted by the incumbents regarding the Staff cost analysis, as well as any cost assessments offered by the incumbents in this proceeding. As the largest purchaser of access services in Missouri, AT&T has a critical interest in assuring that the cost estimates for the incumbents is not overstated. Therefore, AT&T has a vested interest in assessing the validity of the cost models, including all factors and inputs used in the models, that are used to calculate the cost of access service, as well as the results generated by the models.

With respect to the second prong of the balancing test, the risk of an erroneous deprivation of these interests through the current procedures is very high, given the fact that under the current protective order AT&T cannot access any of the cost studies that have been used to assess either AT&T's cost of access or the cost of access of any other ILECs or competitive local exchange carriers on whose network AT&T will be completing calls. When this denial of access to evidence is compared to the additional procedural safeguards AT&T has proposed, i.e., allowing in-house experts to see highly confidential information under the same nondisclosure obligations as the outside consultants, the balance tips in favor of revising protective order. The conclusion is particularly compelling in view of the fact that no party has asserted that any harm would arise from the change proposed by AT&T, the fact that the objecting companies have said they are willing to provide AT&T access to this information via side agreements that largely mirror the AT&T proposed revised protective order, and the fact that in-house

experts review these cost studies in every other state in the nation, including the other states in which SWBT operates.

Finally, the government interest at stake should weigh in favor of the AT&T's proposed change in the protective order. As the Commission states in its Orders in this proceeding, it seeks to assure that it has an accurate record and that the Commission has the necessary detailed cost information in the record from which to make the proper determination. Nor should there be any additional fiscal or administrative burden for the Commission in the change in procedure proposed by AT&T. The same process would be employed for Highly Confidential information that is currently in place for confidential information.

The Supreme Court's balancing test clearly favors amending the protective order in the manner proposed by AT&T.

The Commission's Order also states that AT&T failed to assert that it was unable to retain suitable outside consultants or that such outside consultants are unable to conduct any meaningful review or analysis of the cost data. (Order, p. 4.) In dismissing AT&T's request, the Commission also states that judging from their silence, other parties have been able to retain outside consultants. (Order, p. 4.) As an initial matter, the Order completely ignores AT&T's arguments that there is no basis to retain the existing protective order. As AT&T stated in its prior filings on this issue, the two-tiered legacy protective order is unique to Missouri. In-house experts see ILEC cost information in every other state, including every other SWBT state. The fact that SWBT and other ILECs are willing to allow in house experts access to cost study information via side agreements underscores the need to change the protective order.

As to the Commission's statement regarding the silence of other parties, there is no factual basis for this conclusion. First, the Commission's own Order acknowledges that Sprint Missouri, Inc. and Sprint Communications, L.P. filed in support of AT&T's request. (Order, p. 3.) In addition, other CLECs have objected to this requirement in Case No. T)-2002-397. Thus, there is no factual basis for the conclusion that other carriers have been silent on this issue. Even for those carriers who have been silent in the exchange of pleadings related to the protective order issue, there is no factual basis to conclude those companies have been able to retain suitable outside consultants for this case. For example, Alltel Missouri, Inc. has not filed any pleadings on the protective order issue, but its factual testimony describes the detrimental impact of the existing protective order on Alltel's internal experts ability to review Alltel's own information or to conduct any type of comparative analysis of costing methodologies or results (TR-2001-65, Direct Testimony of Steve Brandon, pg. 3)

To the extent parties have been silent on this issue, that silence could just as easily be attributed to the fact that parties either support or are at least indifferent about AT&T's request to modify the protective order and are hoping the issue will be resolved without requiring them to spend resources. This is essentially the same conclusion the Staff of the Missouri Public Service ("Staff") reached.⁴ In its Reply, Staff stated that, "[I]f the modified protective order proposed by AT&T would truly pose a threat to the trade secrets of the telecommunications industry, surely more carriers would be offering their opposition to the proposed modification." (Staff Reply, p. 3). AT&T agrees with Staff's assessment.

⁴ Staff's Reply, pgs. 3 - 4

Based upon the Direct Testimony filed in this proceeding, the only entities active in this case that AT&T is aware have retained outside consultants are the Missouri Independent Telephone Company Group ("MITG"), the Small Telephone Company Group ("STCG"), and Holway Telephone Company, KLM Telephone Company, Iamo Telephone Company, and Green Hills Telephone Corporation (referred to as Holway, et al.). The Commission should realize that these companies are rate of return regulated and are virtually guaranteed to recover their regulatory expenses, including outside attorney and consultant fees. Competitive carriers, such as AT&T, have no such guarantee. Absent that type of guarantee, it is especially difficult to financially justify incurring consulting expenses, particularly where a company is already incurring the expense of internal experts who are readily available.

AT&T does not have the authority to retain an outside consultant in this case. When this case was initiated, Staff indicated that it planned to use the FCC's Synthesis Model in its analysis. This model and its inputs are open to public inspection and, under the existing Missouri protective order, AT&T would not have needed to retain an outside consultant to review this model or its inputs. Indeed, this was one reason Staff originally proposed the use of the FCC's cost model. Subsequently, based upon objections largely from the three largest LECs, Staff reconsidered its model selection and agreed to use many of the ILEC's own cost models. Accordingly, AT&T did not anticipate needing outside consultants and has no budget to hire an outside consultant in this case.

The Commission's Order states that it recognizes AT&T's frustration since "large carriers have subject matter experts on payroll." (Order, p. 4.) In an effort to curb regulatory expenses and develop its own knowledge base, AT&T employs in-house

subject matter cost experts. These in-house subject matter experts can only be effective if they can fully and equally participate. AT&T's in-house subject matter experts have reviewed cost studies of incumbent local exchange carriers in every other state in the country. They have reviewed SWBT's cost studies in Missouri and in every other state in which SWBT operates. Missouri's protective order is an anomaly. Rather than focus on why AT&T is unable to retain suitable consultants for Missouri, the Commission should consider why AT&T and other companies seeking to participate in the Missouri regulatory process should be required to retain outside consultants when no other state has a similar requirement.

Even if an outside consultant could adequately defend AT&T's interests in this case, which AT&T does not agree they can, because AT&T has in-house experts who are prepared to participate in this proceeding who have far greater cost expertise and expertise with ILEC cost studies than any consultant AT&T could retain at this point, AT&T simply cannot justify retaining an outside consultant. In addition, given that the Commission has not established if or how it intends to use the cost results from this case to affect any change in the incumbent local exchange companies' access rates, it is difficult to cost justify expending nearly \$100,000 to retain an outside consultant.

Moreover, the Commission cannot ignore the financial state of the telecommunications industry, especially as it relates to competitive local and interexchange companies. AT&T is not unique in this regard as active participation in this case by competitive local exchange carriers has been virtually nil. In fact, at least one competitive local exchange carrier requested to be dismissed from this proceeding because of a lack of resources. The Commission should also take note of the fact not a

single competitive local exchange carrier filed any direct testimony putting forth its own cost studies beyond those presented by Staff.

In addition to financial considerations, the timing of testimony under the current procedural schedule makes it impossible to retain a consultant and have that consultant conduct any meaningful review or analysis.⁵ If AT&T's internal experts are unable to review the information that has been designated as "Highly Confidential," AT&T will be unable to participate in this case.⁶ Beyond AT&T's lack of participation, few parties will be able to conduct any type of comparative analysis to gauge their methodologies and results to other carriers. In short, at this juncture, it is not possible for AT&T to retain suitable outside consultants and even if AT&T were financially able to retain outside consultants, those consultants would be unable to conduct any meaningful review or analysis.

There is further evidence that the current protective order's distinction between in-house employees and outside consultants is completely arbitrary. While AT&T is not questioning the actions or integrity of any of the consultants retained by the small LECs, a comparison of those consultants to AT&T's in-house experts clearly demonstrates the arbitrary nature of the distinction. The consultants retained by the small LECs in this proceeding have testified before this Commission on these companies' behalf for years in numerous proceedings on numerous issues. For example, in his Direct Testimony,

⁵ While some parties may attempt to blame AT&T for the impossibility of a meaningful review because the procedural dates, AT&T has previously stated that it raised the confidentiality issue as soon as it became aware of the problem. Once negotiations became impossible, AT&T filed a request for a modified protective order on May 7, 2002. Subsequently, AT&T filed a request to suspend the proposed procedural schedule on June 12th.

⁶ Even if AT&T's internal experts are afforded the access requested herein, some adjustment to the procedural schedule will be required so that the in-house experts can review and analyze Staff's cost studies and the other filings.

William J. Warinner, appearing on behalf of Holway, et al., identifies ten previous Missouri regulatory proceedings in which he has participated on behalf of many of the same companies he is representing in this proceeding. In his Direct Testimony, Kent Larsen, appearing on behalf of the Missouri Independent Telephone Company Group ("MITG") identifies two previous Missouri cases in which he has recently appeared on behalf of the MITG companies (TR-2001-65, Direct Testimony of Kent Larson, pp. 3 – 4). Robert J. Schoonmaker's previous appearances on behalf of the Small Company Telephone Group before this Commission are too numerous to identify.

In addition to participating in a multitude of regulatory proceedings, these same consultants perform other functions for these very same companies. For example, Mr. Schoonmaker identifies the specific activities he performs for his client companies.

Those activities include

regulatory analysis, consultation on regulatory policy, financial analysis, business planning, rate design and tariff matters, interconnection agreement analysis, and general management consulting. (TR-2001-65, Direct Testimony of Robert J. Schoonmaker, pg. 1)

Mr. Warinner's Direct Testimony similarly lists business planning as one function he performs on behalf of clients (TR-2001-65, Direct Testimony of William J. Warinner, pg. 3.). His vitae specifically states that he "[d]esigned toll resale business cases for independent telephone companies in states of Missouri and Kansas." (Direct Testimony of William J. Warinner, Schedule WJW-1, pg. 2.) .

There is no justification for treating an outside consultant who has been on a company's payroll for years working on numerous regulatory and non-regulatory issues (including business planning and development of business cases) any differently than in-house experts. Both are on the company's payroll, both generally have had a long term

business relationship with the company they represent, and both are bound by the very same non-disclosure requirements that apply whether the in-house experts reviews "Proprietary" information data or the outside consultant reviews "Highly Confidential" information. The consultants work product is not limited exclusively to regulatory issues but includes business planning and even management consulting. On the other hand, the AT&T in-house experts that would be reviewing information in this proceeding do not have any involvement in business planning. Long term consultants performing a variety of job functions and in-house employees would certainly have the same opportunity and incentive to inappropriately disclose Proprietary or Confidential information. However, the non-disclosure requirements of the existing protective order and in AT&T's proposed protective order apply equally to outside consultants and internal employees of the existing protective order and prohibit inappropriate disclosure of Highly Confidential or Proprietary information. There is absolutely no factual basis to conclude that in-house experts would be more likely to violate non-disclosure provisions than outside consultants.

Finally, the Commission's Order concludes that the cost data is designated as "Highly Confidential" because it may well confer a competitive advantage upon a competitor." (Order, p. 5.) AT&T would note that "conferring a competitive advantage upon a competitor" is not one of the five justifications for designating information as "Highly Confidential" under the existing protective order. AT&T believes that cost studies more appropriately constitute, "confidential or private technical, financial or information" and only should be afforded a "Proprietary" designation. This

interpretation is confirmed by the Small Telephone Company Group who has designated its cost information attached to the testimony of Mr. Schoonmaker as "Proprietary."

SWBT has also objected to AT&T's Motion, claiming that AT&T has had the exact same access to SWBT's highly confidential cost information that SWBT has had to the costing information which has been designated highly confidential by other parties participating in the proceeding. This is simply not the case. AT&T and SWBT are not on equal footing. Not only does SWBT have access to its own cost studies, it also has access to AT&T's cost results, as well as the cost results of other CLECs, because Staff's consultant relied upon data or models provided by SWBT to produce these results. Thus, ironically, SWBT can access AT&T cost results, but AT&T cannot see its own results and the models relied upon to develop those results or the results Staff has developed for SWBT. The Staff noted this difference in its May 23, 2002 Reply and stated, "SWBT is able to review its own company specific cost study and respond in order to protect its interests in this case. AT&T, on the other hand, has no study to respond to and, therefore, cannot protect its interests."⁷ Clearly, SWBT's argument fails.

The bottom line is that, to date, AT&T has not been able to review the Staff's draft cost studies and results. It has been unable to file comments on Staff's draft cost studies. It has been unable to analyze those studies to determine whether it needs to file its own cost studies in this proceeding – an analysis that most other parties have been able to conduct as is evidenced by numerous ILEC filings indicating that they intend to rely on their own cost studies. AT&T has not been able to review any of the cost studies relied on by the Staff in this case, Staff's Highly Confidential testimony or the cost studies and

⁷ See Staff's Reply, p. 3.

highly confidential testimony filed by any other party. AT&T cannot even review the cost analysis, cost results and inputs that Staff has performed relating to AT&T's access costs.

The inescapable conclusion is that there is no basis to retain the current two-tier protective order. AT&T's in-house experts have reviewed ILEC cost study information in every other state and the ILECs in this state appear willing to allow in-house experts access to "Highly Confidential" information. Consequently there is every reason for this Commission to modify the current protective order in the manner proposed by AT&T, rather than forcing every party to negotiate side agreements to gain access to this information.

Accordingly, AT&T urges the Commission to quickly address this matter and enter AT&T's proposed protective order. AT&T would note that irrespective of how the Commission rules on this Motion, under the current schedule, AT&T will be unable to fully participate in this proceeding. Therefore, AT&T also requests that the Commission revise the procedural schedule to allow AT&T and other affected parties to conduct a meaningful review of the cost studies, results and inputs submitted by Staff in this proceeding.

WHEREFORE, AT&T respectfully requests that the Missouri Public Service Commission grant this Motion for Reconsideration and enter an order replacing the current protective order with AT&T's Proposed Protective Order and revise the procedural schedule to allow parties the opportunity to review and analyze the cost study information.

Respectfully submitted this 18th day of July, 2002.

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

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing in Docket TO-2001-65 was served upon the parties on the attached service list on this 18th Day of July, 2002 by either hand delivery or placing same in postage paid envelope and depositing in the U.S. Mail.

Rebecca B. DeCook (je)

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1-800-Reconex, Inc.
PO Box 40
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Hubbard, OR 97032

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601 Monroe Street, Ste. 304
Jefferson City, MO 65101

ALLTEL Communications, Inc.
PO Box 2177
Little Rock, AR 72203

Brooks Fiber Communications
701 Brazos, Ste. 600
Austin, TX 78701

Navigator Telecommunications
PO Box 13860
North Little Rock, AR 72113-3860

AccuTel of Texas, Inc.
7900 John W. Carpenter Freeway
Dallas, TX 75247

Allegiance Telecom of Missouri
1950 Stemmons Freeway, Ste. 3026
Dallas, TX 75207-3118

American Communications Svcs.
131 Natl Business Pkwy, Ste. 100
Annapolis Junction, MD 20701

BarTel Communications, Inc.
333 Leffingwell Avenue, Suite 101
Saint Louis, MO 63122-6400

BroadSpan Communications d/b/a
Primary Network Communications
11756 Borman Drive, Ste. 101
St. Louis, MO 63146

Business Telecom, Inc. d/b/a BTI
4300 Six Forks Road, Ste. 400
Raleigh, NC 27609

Buy-Tel Communications, Inc.
PO Box 1170
Colleyville, TX 76034

Central Missouri Telecomm.
PO Box 596
Osage Beach, MO 65065

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Computer Business Sciences, Inc.
80-02 Kew Gardens Rd., Ste. 5000
Kew Gardens, Ny 11415

Cypress Communications, Inc.
15 Piedmont Center, Ste. 100
Atlanta, GA 30305

Digital Broadcast Network Corp.
424 S. Woods Mill Road, Ste. 350
Chesterfield, MO 63017

Digital Teleport, Inc.
8112 Maryland Ave., 4th Flr
St. Louis, MO 63105

Cox Missouri Telecom LLC
PO Box 696
Cathage, MO 64836

CCCMO, Inc. d/b/a Connect!
124 W. Capitol, Ste. 250
Little Rock, AR 72201-3713

Excel Telecom. Systems, Inc.
8750 N. Central Expressway,
Suite 2000
Dallas, TX 75231

Eagle Communications MO., Inc.
60 East 56th Street
New York, NY 10022

Dial & Save of Missouri, Inc.
8750 N. Central Expressway,
Ste. 1500
Dallas, TX 75231

GE Capital Communication
Services d/b/a GE Exchange
6540 Powers Ferry Road
Atlanta, GA 30339

Fidelity Cablevision, Inc.
60 North Clark
Sullivan, MO 63080

Fidelity Communications Services
III, Inc.
60 North Clark
Sullivan, MO 63080

Local Line America, Inc.
PO Box 4551
Akron, OH 44310

HJN Telecom, Inc.
3235 Satellite Blvd. Building 400,
Suite 300
Duluth, GA 30096

Kansas City Fiber Network, LP
1111 Main Street, Ste. 300
Kansas City, MO 64105

Focal Communications Corporation
of Missouri
200 North LaSalle Street, Ste. 800
Chicago, IL 60601

Group Long Distance, Inc.
400 E. Atlantic Blvd.
Pompano Beach, FL 33060-6200

Fidelity Communications Services
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60 North Clark
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LDM Systems, Inc.
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New York, NY 10022

Maxcess, Inc.
100 West Lucerne Plaza, Ste. 500
Orlando, FL 32801

JATO Operating Corporation
303 East 17th Avenue, Suite 930
Denver, CO 80203-1262

MVX.com Communications, Inc.
100 Rowland Way, Ste. 145
Novato, CA 94945

Onsite Access Local, LLC
1372 Broadway, Second Floor
New York, NY 10018

Payroll Advance, Inc.
808 South Baker
Mountain Home, AR 72643

Rocky Mountain Internet
7100 East Bellevue Avenue, #201
Greenwood Village, CO 80111-
1635

Tel-Save Incorporated of
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6805 Route 202
New Hope, PA 18938

Trans National Telecommunications
8626 Tesoro Drive, Ste. 400
San Antonio, TX 78217

Metro Connection d/b/a
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209 East University
Danton, TX 76201

Supra Telecommunications and
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2620 SW 27th Ave.
Miami, FL 33133

Pathnet, Inc.
11720 Sunrise Valley Drive
Reston, VA 20191

Universal Access, Inc.
233 S. Wacker Drive, Ste. 600
Chicago, IL 60606

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St. Louis, MO 63102

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601 South Harbour Island Blvd.,
Ste. 220
Tampa, FL 33602

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