

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

In the Matter of a Commission Inquiry into)	
the Possibility of Impairment without)	Case No. TO-2004-0207
Unbundled Local Circuit Switching When)	
Serving the Mass Market.)	

**SBC MISSOURI'S RESPONSE TO SPRINT'S
MOTION TO MODIFY PROTECTIVE ORDER**

SBC Missouri¹ respectfully opposes Sprint's November 17, 2003, Motion To Modify the Protective Order the Missouri Public Service Commission ("Commission") previously issued in this case. The Commission on numerous occasions has previously rejected similar attempts to modify its Standard Protective Order and should do so again here.

1. The Standard Protective Order issued in this Case. In an Order issued November 6, 2003, the Commission adopted its Standard Protective Order for this case. There, the Commission indicated that the material that would be sought in discovery and filed in this case is likely to be Proprietary and Highly Confidential, and that issuance of the Commission's Standard Protective Order "would allow the parties to provide Highly Confidential and Proprietary information to the Commission and appropriate parties with the assurance that it will be treated according to the terms of the protective order."²

2. Sprint's Motion. On November 17, 2003, Sprint Missouri, Inc. and Sprint Communications Company, L.P. ("Sprint") filed a Motion requesting the Commission to modify the Standard Protective Order it previously issued, complaining that it prevents

¹ Southwestern Bell Telephone Company, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri."

² See, Order Establishing Protective Order, Case No. TO-2004-0207, issued November 6, 2003.

internal experts from reviewing Highly Confidential material. Sprint suggested the Commission should instead follow the protective order utilized at the Public Utility Commission of Texas and allow internal experts access to all information on the same terms as outside consultants. Sprint claims requiring a party to retain outside experts “violates due process and has no legitimate justification.”³

3. Background on the Commission’s Standard Protective Order. Sprint argues that the Commission needs to “strike a balance” between limiting access to private, highly confidential business information and allowing effective participation in the proceeding.⁴ The Commission, however, has already struck that balance, and that balance is represented in the Commission’s Standard Protective Order.

4. As the Commission is aware, parties from the various utility fields that practice before it have employed the general form of the Standard Protective Order in thousands of cases over the years to ensure that information can be disclosed in regulatory proceedings in ways that protect the legitimate business interests of a party and allow the Commission to make appropriate decisions.

5. The availability of separate “Highly Confidential” and “Proprietary” designations contained in the Standard Protective Order was adopted by the Commission based on the input of diverse parties in Case Nos. TC-89-14, et al., and has been utilized successfully in numerous costing proceedings since then. In Case Nos. TC-89-14, et al., the Commission initially established a Protective Order with only one category of “confidential” information.⁵ Just three months after adopting its initial Protective Order,

³ Sprint Motion to Modify, pp. 1-2, 4.

⁴ Sprint Motion to Modify, pp. 3, 6.

⁵ Order Modifying Protective Order and Granting Late Filed Intervention, Case Nos. TC-89-14, TC-89-21, TO-89-29, and TO-89-10, p. 2 (issued November 8, 1988).

however, the Commission found the single classification of “confidential” to be unworkable, and adopted a modified Protective Order containing two separate classifications of confidential information, “HIGHLY CONFIDENTIAL” and “PROPRIETARY.”⁶

6. The purpose of the Standard Protective Order, and the limitations placed on the access of parties to highly confidential information, stand on a firm foundation. The Commission is regularly called upon to review matters which involve highly confidential information, including market analyses, employee and market-specific information, reports, workpapers and similar documents, as well as documents concerning strategies and similar matters. Companies regulated by the Commission regularly provide such information in regulatory proceedings in reliance upon the protections afforded by the Standard Protective Order. If those protections are not accorded, and if employees of a company’s competitors are given access to highly confidential information, the number of discovery disputes which this Commission will be asked to resolve will be substantially increased. It is the existence of the Standard Protective Order, and the heightened protection given to highly confidential information, that permits the regulatory process to function as the statute contemplates.

7. The Commission has consistently rejected similar modifications. On numerous occasions, various parties have sought similar modifications to the Commission’s Standard Protective Order and on each occasion, the Commission rejected the attempts.⁷ For example, on August 20, 2001, IP Communications of the Southwest

⁶ Id., p. 8.

⁷ See, e.g., Case No. TO-97-40, Order Addressing Motion to Establish Procedural Schedule and Adopt Protective Order, issued August 9, 1996 at p. 4; Case No. TO-2000-322, Order Regarding Arbitration, issued November 29, 1999 at p. 3.

("IP") in Case No. TO-2001-440 filed a Motion similar to Sprint's to modify the Standard Protective Order to allow an internal company expert witness access to other parties' highly confidential material produced in that case.⁸ The Commission heard oral argument on this Motion on August 21, 2001. Based on that argument, Judge Ruth issued an Order from the bench denying IP's Motion.

8. In a written Motion filed August 23, 2001, IP sought reconsideration of Judge Ruth's ruling in Case No. TO-2001-440, claiming that its internal company witness should be permitted access to highly confidential material. IP complained that it would be very expensive to hire an outside expert witness and that its internal employee expert had had access to similar materials in various proceedings in Texas.⁹

9. In an Order issued October 9, 2001, the Commission denied IP's request for reconsideration determining that IP had not provided good cause for modifying the Standard Protective Order to allow such access.¹⁰

10. And most recently, the Commission denied a similar request in Case No. TO-2002-397 stating:

The Commission has also reviewed IP's Motion for a non-standard Protective Order, along with the numerous responses. The Commission is well aware that some parties are dissatisfied with the current standard protective order. The Commission is currently using the administrative rule making process to consider changes to the protections that it offers to confidential information. However, the Commission is not willing to use this case, in advance of the information provided through the rulemaking process, to make any such changes. The use of the standard Protective Order will not deny IP its right to due process. IP may employ an outside expert to evaluate any information it may obtain from its competitors. Requiring IP to hire an outside expert may increase IP's costs and it may

⁸ See, IP's Motion for Clarification of, or in the Alternative, Motion to Modify the Protective Order, Case No. TO-2001-440, filed August 20, 2001.

⁹ See, IP's Motion for Reconsideration, Case No. TO-2001-440, filed August 23, 2001.

¹⁰ Case No. TO-2001-440, Order Regarding Motion for Reconsideration, issued October 9, 2001 at p. 4.

be inconvenient, but it is the current policy and it does ensure that confidential information is protected.¹¹

11. The Law Protects Private Business Information. Both the federal and state law recognize the important property interests in maintaining the confidentiality of a party's private business data. U.S. Const. Amend. XIV; Ruckelshaus v. Monsanto, 467 US 986, 81 LEd.2d 815, 831 (1989); see also, Mo. Const. Article I, Section 10. In Missouri, the Commission has traditionally employed its standard Protective Order to balance a party's property interest in its private business data against the need for the disclosure and use of that information during regulatory proceedings. It ensures reasonable access to highly sensitive company information to competitors who would not otherwise have a right to review such material, but under conditions which protect the legitimate competitive interests of the producing party. This or very similar protective orders have been used by the Commission in every case in which a party has expressed a concern about protecting the proprietary nature of its internal business information.

12. Conclusion. Like it has on several other occasions, the Commission should again reject this attempt at modifying the Standard Protective Order. Compliance with the Commission's Standard Protective Order is critical to the proper functioning of the Commission, as the parties before the Commission will not willingly part with highly confidential information if they are not assured that the heightened protections the Commission has recognized in its Standard Protective Order will be followed. As the Commission has previously recognized, there is a true need to protect companies' confidential information and the issuance of its Standard Protective Order has minimized such disputes in past cases.¹²

¹¹ See, Order Regarding Protective Order, Case No. TO-2002-397, issued April 15, 2003.

¹² Case No. TO-2001-440, Order Adopting Protective Order, issued April 5, 2001 at p. 1.

WHEREFORE, Southwestern Bell respectfully requests the Commission to deny Sprint's Motion to modify the Standard Protective Order previously adopted by the Commission in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document was served to all parties by e-mail or first-class, postage prepaid, U.S. Mail on November 19, 2003.



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