

November 10, 2004

**FILED THROUGH ELECTRONIC TARIFF FILING SYSTEM**

Ms. Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, DC 20554

RE: Southwestern Bell Telephone Company Confidential Documents; Tariff FCC No. 73,  
Transmittal No. 3015 Request for Confidential Treatment

Dear Ms. Dortch:

SBC Communications Inc., on behalf of Southwestern Bell Telephone Company (SWBT), hereby submits a request for confidential treatment of cost support data filed in conjunction with Transmittal No. 3015. In this tariff filing, SWBT offers SBC Federal Access Solution Transport Program (FAST) , a specialized federal government service.

**Statement pursuant to 47 C.F.R. 0.459(b)**

**(1) Identification of the specific information for which confidential treatment is sought.**

SWBT requests that the pages marked "Proprietary Information" be treated on a confidential basis, pursuant to the Commission's decision in Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55 (FCC 98-184) (rel. Aug. 4, 1998) (Confidential Information Order).

The attached document for which confidential treatment is being requested contains commercially sensitive information including labor rates and other expenses.

**(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.**

Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 3015

**(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.**

The detailed cost information provided by SWBT displays the breakdown of operating expenses (including labor costs).

**(4) Explanation of the degree to which the information concerns a service that is subject to competition; and**

SWBT's services are subject to competition by numerous competitive carriers. These competitors could use SWBT's cost information in an effort to become more cost efficient, thereby giving them a competitive advantage over SWBT.

**(5) Explanation of how disclosure of the information could result in substantial competitive harm.**

A firm will be harmed if detailed cost information about its production processes is made public. Such detailed cost information is not generally made available to competitors, customers, industry analysts, academicians, and the general public by U.S. industries. Indeed, it is considered an anti-competitive practice for such firms to trade price information in many instances, particularly in situations requiring sealed bids from several competitors vying for a specific customer contract.

The detailed cost information (labor expenses [including benefit costs factors] and other network related expenses) SWBT provides in this filing would enable SWBT's competitors to significantly undermine SWBT's ability to effectively compete in the marketplace. For example, SWBT's competitors could use the cost information to determine SWBT's annual cost factor for central office circuit equipment. This factor is particularly commercially sensitive because it is used not only for the services in this filing, but is also used to produce cost studies for other competitive services such as DS1 and DS3 services.

Importantly, SWBT's cost data can quickly reveal to a competitor if it is more or less cost efficient than SWBT in a particular market. If SWBT is the most efficient provider, potential competitors know immediately that they will be more likely to maximize profits if they are geared toward satisfying some specific niche demand. This clearly benefits SWBT's competitors as they design marketing strategies aimed at capturing as much of SWBT's business as possible.

**(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure; and**

**(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.**

This information has been maintained on a confidential basis within SWBT and would not ordinarily be disclosed to parties outside the company.

**(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.**

The material must be held from public disclosure for an indefinite period. Confidential treatment must be afforded the materials as long as the costs in question would provide a basis for competitors to gain insight into SWBT's pricing decisions. SWBT cannot determine at this time any date on which these costs would become "stale" for such a purpose.

**(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.**

Under applicable Commission and Court rulings, the subject material must be kept free from public disclosure. Exemption 4 of the Freedom of Information Act shields information which is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. See Washington Post Co. v. U.S. Department of Health and Human Services, 690 F.2d 252 (D.C. Cir. 1982). The attached information clearly satisfies the first two elements of that test.

With respect to the third element of the above test, information is considered to be “confidential” if disclosure is likely to (1) impair the government’s ability to obtain necessary information in the future, or (2) harm substantially the competitive position of the person from which the information was obtained. National Parks and Conservation Ass’n. v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974) (National Parks I.)

The Commission has specifically held that disclosure of data gathered by the Commission under its audit authority would be likely to impair the government’s future ability to obtain such data, notwithstanding the statutory authority to compel production. See, In the Matter of Martha H. Platt on Request for Inspection of Records, FOIA Controls Nos. 90-63 (October 3, 1990).

The Commission has recognized that competitive harm can result from the disclosure of confidential business information that gives competitors insight into a company’s costs, pricing plans, market strategies, and customer identities. See, In re Pan American Satellite Corporation, FOIA Control Nos. 85-219, 86-38, 86-41, (May 2, 1986).<sup>1</sup>

**Protective Order Requested**

SWBT requests that the cost support information be placed under the Protective Order designated under CC docket No. 96-187, Report and Order (F.C.C. 97-32, released January 31, 1997 (Streamlining Order) and the Order on Review released October 14, 1997, in the matter of Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Transmittal Nos. 2646, 2647, 2649 and 2656.

SWBT acknowledges that the Bureau is directed by the Commission’s Confidential Information Order, at paras. 35-42, to routinely employ the standard protective order detailed in the Confidential Information Order for materials submitted under a request for confidential treatment unless complete confidentiality is requested. If any person (other than an agency

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<sup>1</sup> Further, the Commission has ruled that not only should such data be protected but also that information must be protected through which the competitively sensitive information can be determined. Allnet Communications Services, Inc. Freedom of Information Act Request, FOIA Control No. 92-149, Memorandum Opinion and Order (released August 17, 1993) at p. 3. The Commission’s decision was upheld in a memorandum opinion of the U.S. Court of Appeals for the D.C. Circuit, which affirmed a U.S. District Court decision protecting the information. Allnet Communications Services, Inc. v. FCC, Case No. 92-5351 (memorandum opinion issued May 27, 1994, D.C. Cir.).

employee working directly on the matter in connection with which these documents are submitted) requests an inspection or requests a copy of the documents or any portion of them other than under the terms of an appropriate protective order, please give me sufficient advance notice prior to any such disclosure to allow SWBT to pursue appropriate remedies to preserve the confidentiality of the information.

Any confidential information required to be produced under the terms of an appropriate order shall be maintained and made available for inspection at the following locations:

Southwestern Bell Telephone Company

Debra L. Clemens  
1401 I Street, N.W.  
Suite 1100  
Washington, D.C. 20005

A. Alex Vega  
Four SBC Plaza  
Suite 1970.04  
Dallas, Texas 75202

Very truly yours,

/s/ Davida M. Grant

Davida M. Grant  
Senior Counsel