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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 19, 1995

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Attorney

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Tariff Division
Common Carrier Bureau
Federal Communications Commission
1919 "M" Street, N.W.
Room 518
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Virtual Collocation Tariff Proceeding
CC Docket No. 94-97

Dear Ms. Friedman:

This letter is written by Southwestern Bell Telephone Company ("Southwestern Bell") in response to the letter of Time Warner Communications Holdings, Inc. ("TWComm") regarding the proposed protective order ("Proposed Order").

1. Applicability to TWComm: The Proposed Order should also govern TWComm's access to the same documentation, and thus should be reflected in Paragraph 1.

2. Definition of "Confidential Information": As to TWComm's suggestion on the addition to the end of Section 3, Southwestern Bell does not object to the inclusion of that paragraph with two exceptions. The first sentence should end with ". . . the public files of the Federal Communications Commission." Otherwise, the definition is redundant and possibly circular -- if the information is in the public files, then it is obviously subject to disclosure under the Communications Act and the Commission's Rules. If not, the information is not subject to such disclosure.

Second, at the end of the second sentence, the phrase "in violation of this Order" should be replaced with "in violation of any obligation to maintain its confidentiality." No one should benefit from the violation of any Commission protective order (including this one), any State commission protective

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order, any court order, or any binding confidentiality agreement.

3. Bifurcated Treatment of Confidential Information: TWComm's objections to the "Confidential"/"Highly Confidential" categories under the Protective Order are not well taken. Having varied degrees of protection within a protective order is a widespread practice with both State regulatory commissions and federal and state courts to address information of particular sensitivity. The practice is thus demonstrably reasonable and necessary.

The practice is especially appropriate in this situation where the data of third parties will be revealed. The prices charged by equipment vendors to Southwestern Bell for interconnector-designated equipment ("IDE") will be revealed under the Proposed Order. Those prices are subject to confidentiality agreements, and are extremely sensitive to both the vendor and Southwestern Bell. From our perspective, those prices are a substantial component of the cost of a competitive service. The vendor's interest is just as great in that the vendor is seeking to sell the same equipment to those reviewing the data. Widespread availability within the organizations of other purchasers could directly harm those vendors as they negotiate equipment prices with Southwestern Bell's competitors. That economic harm could rebound to Southwestern Bell as it finds vendors less willing to negotiate prices due to concerns over disclosure to other potential purchasers. The "Highly Confidential" classification is reasonable and necessary to address those very legitimate concerns of Southwestern Bell and its equipment vendors.

However, to the extent that TWComm argues for only one proprietary category, it should be the proposed "Highly Confidential" designation in order to ensure appropriate protection for highly sensitive, competitive information that would otherwise be available only to the Commission, and not Southwestern Bell's competitors. In contrast, Southwestern Bell is denied any similar ability to review any cost justification for any rates of TWComm's services offered in competition with Southwestern Bell's.

Furthermore, although TWComm has participated in a state docket under a protective order with a

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substantially similar "Highly Confidential" category, no evidence was offered that such an order proved unworkable.

TWComm's implication that Southwestern Bell would abuse the "Highly Confidential" category is speculative at the very least. The Commission will undoubtedly be reviewing each "Highly Confidential" classification made by Southwestern Bell, and TWComm will have recourse to the Commission over any disputed classification.

Finally, TWComm unsuccessfully attempts to create an argument based upon what it considers to be "unenforceable" provisions regarding note taking. Although Southwestern Bell expects that everyone bound by the Proposed Order will comply with it (including attorneys), Southwestern Bell reserves the right to review the notes taken. Southwestern Bell's viewing of those notes will not damage TWComm, whereas dissemination of "Highly Confidential" data would damage Southwestern Bell. To the extent attorneys review the "Highly Confidential" information and decide to take notes during the review, those notes would be subject to the Proposed Order. Any implication that the attorney work product privilege places that material outside of the scope of the Proposed Order is simply wrong. If a reviewing attorney wishes to claim attorney work product for his or her notes to avoid their review by Southwestern Bell, the Commission would need to review the notes to ensure no attempted violation by that attorney. Should violations of a Commission protective order occur, Southwestern Bell trusts the Commission to levy appropriate sanctions on the individual and the entity which he or she represents.

4. Restriction of Access to Confidential Information to Five Persons: Contrary to the claims of TWComm, limiting the number of persons that have access to Southwestern Bell's proprietary information reflects the legitimate need of Southwestern Bell to prevent its competitors from becoming overly familiar with Southwestern Bell's cost structures. Notwithstanding the existence of a protective order, once Confidential Information is known by Southwestern Bell's competitors, it is unlikely to be forgotten. By limiting that dissemination within competitors like TWComm, the opportunity for inappropriate use, no

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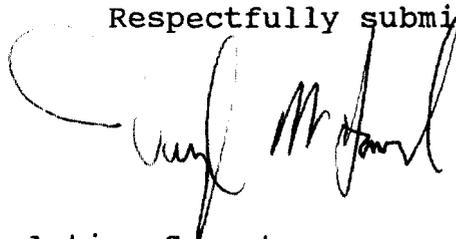
matter inadvertent, is drastically reduced.

Moreover, TWComm provides absolutely no reason why it needs more than five persons to review Southwestern Bell's costs. Surely an unlimited number of persons are not needed to perform that review, yet that is the freedom TWComm argues for. The Commission should note that Southwestern Bell has not requested that any particular employee of its competitors be prohibited from viewing Southwestern Bell's Confidential Information -- just that the number be reasonably limited to five. A very searching and thorough review can easily be accomplished by no more than five people and, where those doing the reviewing are Southwestern Bell's competitors, the need for the limit is imminently reasonable and justifiable.

5. Two Hundred Page Limit: TWComm's suggestions on voluminous material are acceptable to Southwestern Bell.

Please do not hesitate to call me at 314-235-2513 should you have any questions.

Respectfully submitted,



cc: William Caton, Acting Secretary
(original & 2 copies)
Kathryn Corley, Records Management Division
John L. McGrew, TWComm