

dependent on the jurisdiction of the call. MCI and AT&T have noted that both parties requested that interconnection be available by unbundled network transmission elements, which includes both dedicated and common transport.

B. Issue No. 16: Access to Poles, Conduits and Rights-of-Way:

SWBT has contended that it may be a violation of state law for SWBT to bring a condemnation action on behalf of a LSP. The Commission's requirement on this issue is that SWBT would do so if, and only if, it is necessary and if it is provided for by state law. According to the response of AT&T and MCI, in an agreement entered into in Texas, SWBT has already agreed to act as AT&T's agent at AT&T's expense in any condemnation proceedings to the extent such a proceeding is required and consistent with any applicable state statute. Similarly, the Commission would expect that SWBT would do likewise in Missouri and that SWBT would act as the agent and at the requesting party's expense in any condemnation proceeding where SWBT's actions on behalf of the local service provider are required and so long as they are consistent with the applicable state statute.

C. Issue No. 22. Operational Support Systems:

The Arbitration Order required SWBT to provide electronic access to its operations support systems (OSS) pursuant to conditions and time lines established in the Commission's order. That order directed SWBT to provide real-time interfaces that allow LSPs to perform preordering, ordering, provisioning, maintenance and repair, and billing for resold services and unbundled network elements.

However, the Commission finds that the necessary standards have not yet been developed for electronic bonding as required to implement real-time ordering interfaces. Therefore, SWBT cannot provide such real-

time interfaces. The Commission finds that SWBT shall utilize the EDI interface ordering, and shall implement a real-time interface as soon as standards for electronic bonding are developed.

D. Issue No. 23: How Should Network Elements be Priced?

(1) (e) Fill Factors:

The Commission notes that the Arbitration Order incorrectly stated that the fill factor for distribution cable was 50 percent. The Commission, in fact, utilized a fill factor of 40 percent in calculating the cost of distribution cable in the preparation of its arbitration report. The Commission hereby corrects the Arbitration Order, *nunc pro tunc*, so that the fill factor shall read 40 percent instead of 50 percent.

(2) (g) Bad Debt Expense:

SWBT argues in its Motion that it was inappropriate for the Commission to remove bad debt as cost of the local loop. In support of this argument SWBT has stated that its cost studies did not include any costs for bad debt. Inasmuch as the Commission is establishing interim rates and not final rates, and considering the fact that it was unclear as to whether or not bad debt was included in the original figures, the Commission will modify the figures to include the \$0.45, plus appropriate common cost, which was originally removed as bad debt. (See Attachment A)

E. Issue 36. Pricing Resale Services

The Commission initially ordered a resale discount rate of 21.61 percent. After further reviewing the record and the other information available to it, the Commission has determined that a lower resale discount rate is more appropriate. Specifically, the Commission finds that the discount rate of 20.32 percent, which was arrived at by using the FCC's recommended methodology, is the more appropriate interim

discount rate for resold services.

In its Arbitration Order the Commission applied the FCC methodology to Missouri data and arrived at the 20.32 percent figure, but decided to adjust the uncollectible factor. In reconsidering that decision, the Commission has determined that it would be more appropriate to adopt the FCC methodology and the 20.32 percent on an interim basis without adjustment. There may well be other factors in the FCC methodology that need to be adjusted to arrive at a satisfactory permanent rate, but the data to make those adjustments is not available to the Commission at this time. Without more data and the time and opportunity to examine the FCC's methodology and underlying assumptions in detail, the Commission is not in a position to adjust the percentage of one isolated factor. It is more appropriate to establish the 20.32 percent on an interim basis, and then pursue the information necessary to obtain accurate data, determine appropriate levels of avoided costs and arrive at a permanent discount rate. (See Attachment B)

F. Issue No. 37. Local Service Customer Change Charge:

Similarly, the Commission's Arbitration Order set out a service order charge in Issue 37 which would be applied to orders for unbundled elements. The Commission hereby corrects this issue, *nunc pro tunc*, to indicate that the service charge applies once per order and not once per each element ordered.

IV. Schedule for Development of Permanent Rates

This arbitration was conducted under the ninety-day time constraint imposed by the Act which did not permit the detailed analysis the Commission considers necessary for establishing permanent rates for unbundled elements and resale. Accordingly, the Commission has determined

that the rates established in this arbitration shall be interim rates only and that further proceedings shall be conducted to establish permanent rates.

In order to implement permanent rates, the Staff in its capacity as advisor to the Commission is instructed to conduct a sixteen-week investigation beginning February 10, 1997, with a special focus on identifying the critical inputs and analyzing the costing models. Two to three days each week the Commission's advisory Staff, SWBT personnel and a representative of OPC shall meet in SWBT offices in St. Louis where software, data and subject matter experts responsible for critical input values will be readily available. Similarly, Staff shall meet with AT&T and MCI during this 16-week period at a mutually agreed upon location to identify critical inputs and to analyze costing models which AT&T and MCI endorse. SWBT will not participate in these meetings. Because SWBT will perhaps be required to disclose extraordinarily confidential information, including trade secret and other proprietary matter, AT&T and MCI will not participate in these meetings. Because of its status under Missouri law, OPC will be allowed to participate in these meetings. See § 386.710, R.S. Mo. (1994). In addition, OPC has no capacity to profit from using such confidential data in the competitive marketplace. This process will allow the parties the opportunity to work with the Commission's advisory Staff to explain in a thorough, detailed and analytical fashion their costing models and final costing inputs.

After reviewing Staff's analysis, the Commission will announce proposed permanent rates and ask all parties to comment. If deemed necessary by the Commission, prior to setting permanent rates the Commission

will conduct an on-the-record proceeding to allow statements from the parties and questions by Commissioners.

The parties are expected to provide full cooperation with Commission Staff in this effort, including providing necessary training of Staff, documentation for all inputs and calculations, and access to each of its cost models. The parties shall allow the Staff to analyze the models using various inputs and assumptions and make available all necessary data including data it considers to be proprietary. The analysis shall proceed on the following schedule, unless otherwise ordered by the Commission:

Beginning February 10, 1997:

Weeks 1-4 SWBT, AT&T and MCI shall develop a preliminary flow chart identifying each cost model component, input source, input value and output value, including sequential analysis, inter-related model segments and background analysis and data source for inputs.
Feb 10 through Mar 7

Overview of costing analysis via flow chart. Identification of critical paths and input values. Identification of critical inputs by SMEs. Analysis of certain common inputs such as depreciation rates, cost of capital, bad debt, inflation, income tax, common cost allocator and productivity factor. State-specific ARMIS data by subaccount will be developed for resale cost studies.

Weeks 5-7 Review of local loop and cross-connect model segments, inputs, process and output, including basis for geographic deaveraging, costing of poles and conduits as well as fill factors. Review resale cost study accounts.
Mar 10 through Mar 28

Weeks 8-9 Review of ports and local and tandem switching segments, inputs, process and output.
Mar 31 through Apr 11

Weeks 10-11 Review of dedicated and common transport, recurring charges
Apr 14 and segments, inputs, process and output.
through
Apr 25

Weeks 12-14 Run costing models with specific inputs identifying varying
Apr 28 sensitivity to differing inputs, order of inputs and network
through assumptions. Include analysis of miscellaneous cost studies
May 16 such as dark fiber.

Weeks 15-16 Prepare report of results of analysis and output to
May 19 Commission recommending permanent prices for unbundled
through network element and a permanent discount on resale services.
May 30

May 30, 1997 Commission announces proposed permanent rates.

June 30, 1997 Commission issues order setting permanent prices.

V. Ordered Paragraphs

IT IS THEREFORE ORDERED:

1. That the Motion to Identify and Produce Information filed by Southwestern Bell Telephone Company on December 20, 1996, is hereby denied.

2. That the motions for rehearing as filed by Southwestern Bell Telephone Company, and also jointly filed by MCI Telecommunications Corporation and AT&T Communications of the Southwest, Inc., are hereby denied.

3. That the motion to strike the reply of Southwestern Bell Telephone Company, as jointly filed by AT&T Communications of the Southwest, Inc. and MCI Telecommunications Corporation is denied.

4. That the Applications for Clarification as filed by MCI Telecommunications Corporation, Southwestern Bell Telephone Company and

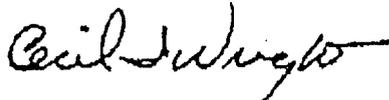
AT&T Communications of the Southwest, Inc., are hereby granted as set forth within this order.

5. That the Arbitration Order issued on December 11, 1996, shall remain in full force and effect except as specifically modified by this order.

6. That the parties shall comply with the schedule for the development of permanent rates set out in this order.

7. That this order shall become effective on February 4, 1997.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., McClure, Kincheloe,
and Drainer, CC., Concur.
Crumpton, C., Concurs, with
concurring opinion to follow.

ALJ: Roberts

PSC Modified Monthly Loop Costs

Based upon PSC Modifications to Cost Study Data
Submitted by Southwestern Bell Telephone

	Geographic Zone 1	Geographic Zone 2	Geographic Zone 3	Weighted Avg. Rate
<u>Unbundled Loops</u>				
8db Loop	\$10.50	\$16.92	\$27.63	\$13.60
ISDN-BRI Loop	\$29.36	\$38.56	\$55.76	\$33.96
DS-1 Loop	\$87.87	\$97.35	\$105.16	\$91.77

Resale Cost Study for SWBT

Costs:	Total Missouri		SWBT	
	Regulated	% Avoided		
	(\$000)		Avoided	
Direct:				
6611	Product Management	6908	90%	6217
6612	Sales	25950	90%	23355
6613	Product Advertising	9725	90%	8753
6621	Call Completion services	12297	100%	12297
6622	Number Services	34450	100%	34450
6623	Customer Services	85212	90%	76691
Indirect:				
5301	Uncollectible Revenue	11845	20.45%	2423
6112	Motor Vehicle Exp.	1069	0%	0
6113	Aircraft Exp.	0	0%	0
6114	Spec Purpose Vehicle	0	0%	0
6115	Garage Work Equipment	19	0%	0
6116	Other Work Equipment	141	0%	0
6121	Land & Build Exp.	-3149	20.45%	-644
6122	Furniture & Artwork	-2035	20.45%	-416
6123	Office Exp.	762	20.45%	156
6124	Gen Purpose Computers	-20131	20.45%	-4117
6211	Analog Electronic Exp.	15625	0%	0
6212	Digital Electronic Exp.	32248	0%	0
6215	Electro-mech Exp.	144	0%	0
6220	Operators Exp.	1834	0%	0
6231	Radio System Exp.	545	0%	0
6232	Circuit System Exp.	22007	0%	0
6311	Station Apparatus Exp.	4	0%	0
6341	Lg PBX /Exp.	409	0%	0
6351	Public Tel Term Eq Exp.	4572	0%	0
6362	Other Terminal Eq Exp.	19182	0%	0
6411	Poles Exp.	1486	0%	0
6421	Aerial Cable Exp.	42237	0%	0
6422	Underground Cable Exp.	7156	0%	0
6423	Buried Cable Exp.	61801	0%	0
6424	Submarine Cable Exp.	4	0%	0
6425	Deep Sea Cable Exp.	0	0%	0
6428	Intrabuilding Network Cable Exp.	14	0%	0
6431	Aerial Wire Exp.	272	0%	0
6441	Conduit Systems Exp.	773	0%	0
6511	Telecomm Use Exp.	0	0%	0
6512	Provisioning Exp.	327	0%	0
6531	Power Exp.	4757	0%	0
6532	Network Admin Exp.	12318	0%	0
6533	Testing Exp.	38549	0%	0
6534	Plant Operations Admin	28091	0%	0
6535	Engineering Exp.	21020	0%	0
6540	Access Exp.	49094	0%	0
6561	Depreciation Telecom plant in Service	307092	0%	0
6562	Depreciation Future Telecom Use Plant	0	0%	0
6563	Amortization Exp. - Tangible	787	0%	0
6564	Amortization Exp. - Intangible	0	0%	0
6565	Amortization Exp. - Other	5288	0%	0
6711	Executive	8667	20.45%	1773
6712	Planning	1575	20.45%	322
6721	Accounting & Finance	10420	20.45%	2131
6722	External Relations	17029	20.45%	3483
6723	Human Resources	15295	20.45%	3128
6724	Information Management	31858	20.45%	6516
6725	Legal	3485	20.45%	713
6726	Procurement	3884	20.45%	794
6727	Research and Development	8591	20.45%	1348
6728	Other Gen & Admin	27961	20.45%	5719
	Total	1140004		185089.9

Revenues:

	Missouri:
Local Service	752251
Toll Network Service	158725
Network Access Service	426855
Miscellaneous	44575
Total	1382206

Resale Percentage Discount on Revenue:

% of Resold Services Revenue	20.32%
(Local & Toll Network Service)	

1

CURTIS, OETTING, HEINZ, GARRETT & SOULE, P. C.
ATTORNEYS AT LAW

130 SOUTH BEMISTON, SUITE 200
ST. LOUIS, MISSOURI 63105
(314) 725-8788
FACSIMILE (314) 725-8789

CARL J. LUMLEY

February 3, 1997

Cecil Wright, Executive Secretary
Missouri Public Service Commission
Truman State Office Building, 5th Floor
301 West High Street
Jefferson City, Missouri 65101-1517

Re: Case No. TO-97-40, et al.

Dear Mr. Wright:

Enclosed for filing in the above-referenced matter please find an original and nine(9) copies of MCI Telecommunications Corporation and its Affiliates including MCImetro Access Transmission Services, Inc. (MCI), and AT&T Communications of the Southwest, Inc. (AT&T) Joint Application for Rehearing. Please file stamp the extra copy and return to the undersigned. If you have any questions, please contact us. Thank you.

Very truly yours,



Carl J. Lumley

CJL:dn
Enclosures
cc. SWBT
Public Counsel
AT&T

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of AT&T Communications of the)
Southwest, Inc.'s Petition for Arbitration Pursuant)
to Section 252(b) of the Telecommunications) Case No. TO-97-40
Act of 1996 to Establish an Interconnection)
Agreement with Southwestern Bell Telephone)
Company.)

Petition of MCI Telecommunications Corporation)
and its Affiliates, Including MCImetro Access)
Transmission Services, Inc., for Arbitration) Case No. TO-97-67
and Mediation Under the Federal)
Telecommunications Act of 1996 of Unresolved)
Interconnection Issues with Southwestern)
Bell Telephone Company.)

JOINT APPLICATION FOR REHEARING
OF MCI TELECOMMUNICATIONS CORPORATION
AND ITS AFFILIATES INCLUDING MCImetro ACCESS
TRANSMISSION SERVICES, INC. (MCI) AND
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC. (AT&T)

COME NOW MCI Telecommunications Corporation and its affiliates including MCImetro Access Transmission Services, Inc., (MCI) and AT&T Communications of the Southwest, Inc. (AT&T), and for their Joint Application for Rehearing state to the Commission:

1. MCI and AT&T welcome the opportunity to afford the Commission, through its Staff, and Public Counsel additional information regarding the Hatfield Model. In particular, it will be beneficial for Staff and Public Counsel to examine in depth Hatfield Release 3 (just now being completed) outside the confines of the hearing room. MCI and AT&T are confident that the Staff and Public Counsel will recognize the merits of the Hatfield Model and have no qualms about meeting with them to discuss the model, as well as inputs and results.

2. MCI and AT&T suggest that the Commission, by directing the Staff to meet privately with the parties, is introducing Staff as a party to the proceedings. Staff cannot engage in such private

meetings as a delegate of the Commission (nor could the Commission itself) without violating prohibitions against ex parte contact and the other due process rights of all the parties.¹ On the other hand, Staff can engage in such private meetings as a party, as it has previously done in a variety of cases.

3. Consequently, MCI and AT&T strongly urge the Commission to reconsider the last three steps of its proposed "permanent" price proceedings² as follows:

- (a) Once the Staff and OPC have concluded their investigation into the cost models of the other parties, the Commission should commence a standard hearing schedule, with the Staff, OPC and other parties presenting information on the record and the Commission making a decision. To avoid a subsequent procedural dispute, the Commission could allow Sprint and other interested parties to participate as well.
- (b) To eliminate the inherent inefficiencies of the current plan to have separate investigations for SWBT and GTE on identical schedules, the Commission should consolidate such investigations. MCI and AT&T

¹Even if not directly controlling, the principles of the Federal Arbitration Act certainly shed light on the rules applicable to these proceedings. Under 9 U.S.C. 10 (a)(3), awards are to be set aside when, *inter alia*, the arbitrators are "guilty of misconduct ... in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced." Parties to an arbitration are entitled to a full and fair hearing on the merits, and the courts will not hesitate to overturn an arbitration when such rights are violated. See, e.g., Korikar Maritime Enterprise SA v. Compagnie Belge D'Affretement, 668 F.Supp. 267 (S.D. N.Y. 1987); Petrol Corp. v. Groupement D'Achat Des Carbuents, 84 F.Supp. 446 (D.C. N.Y. 1949). Ex parte contact between the arbitrators and a party regarding the merits constitutes misconduct for which an award must be overturned. See, e.g., Totem Marine Tug & Barge, Inc. v. North American Towing, Inc., 607 F.2d 649 (CA La. 1979). Evidence in the hands of one party must be made available to the other. See, e.g., Chevron Transport Corp. v. Astro Venceder Companese Navien, 300 F.Supp. 179 (D.C. N.Y. 1969).

Similarly, under the Commission's procedures, parties are entitled to be heard (386.420 R.S.Mo.) and ex parte contacts are prohibited (4 CSR 240-4.020 and June 17, 1996, arbitration procedures under the Telecommunications Act of 1996).

²Likewise, the Commission should adhere to due process in any other ongoing investigations, such as those suggested by Commission Crumpton in his Second Concurring Opinion of January 30, 1997.

will be presenting to the Staff and Public Counsel the same costing models regarding both SWBT and GTE. Further, the Commission should adopt only one cost model for both SWBT and GTE (subject to any unavoidable company-specific modifications). Inputs and outputs for both companies can easily be examined together. Indeed, the ability to compare and contrast such inputs and outputs should prove useful in evaluating the proposed models.

- (c) The Commission has chastised the parties for not meeting and discussing the issues more openly (December 11, 1996, Award, p. 47-48). Yet, such problems will be exacerbated by the Commission's adoption of a new blanket prohibition on access to supposedly confidential cost information. The Commission should allow much greater access to the information to be used in setting "permanent" rates than has been traditionally allowed. The same information is being reviewed in Texas already pursuant to a protective order which is much less restrictive than that put in place by this Commission.³ At the very least, the Commission should simply adhere to its established protective order procedures and not totally ban access by other parties to information which is critical to resolution of these proceedings. Denying the parties access to evidence in the hands of other parties violates due process. See supra note 1.

4. The Commission should establish a deadline for submission of SWBT/MCI and SWBT/AT&T interconnection agreements. Particularly in light of SWBT's strong objections to the Commission's Arbitration Award and in light of the proposed "permanent" price process, SWBT has no incentive to enter into an agreement with MCI or AT&T until after such "permanent" price proceeding (if even then) unless the Commission orders it to complete negotiations by a date certain. The Commission recognized the need for a deadline in both the AT&T/GTE arbitration (Case No. TO-97-63) and the Sprint/GTE arbitration (Case No. TO-97-124). It should likewise establish a deadline in this matter of March 17, 1997. Otherwise, the Commission's extensive work and orders regarding "interim" prices will be rendered superfluous by SWBT's continuing strategy of delay.

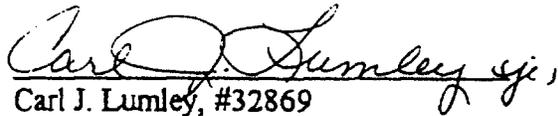
³See attached Exhibit A.

WHEREFORE, MCI and AT&T request the Commission to issue an order granting MCI's and AT&T's Joint Application for Rehearing by:

1. Revising the procedures regarding "permanent" prices to comport with the requirements of due process, including restrictions against ex parte contact with the Commission;
2. Revising the procedures regarding "permanent" prices by consolidating the SWBT and GTE investigations;
3. Revising the procedures regarding "permanent" prices by allowing greater access to "confidential" evidence;
4. Setting a deadline of March 17, 1997, for submission of SWBT/MCI and SWBT/AT&T interconnection agreements; and
5. Granting such other and further relief as to the Commission seems meet and proper in the premises.

Respectfully Submitted,

CURTIS, OETTING, HEINZ,
GARRETT & SOULE, P.C.


Carl J. Lumley, #32869

Leland B. Curtis, #20550
130 S. Berniston, Suite 200
Clayton, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)

MCI TELECOMMUNICATIONS CORP.

Stephen F. Morris (jr)

Stephen F. Morris, Texas Bar #14501600
701 Brazos, Suite 600
Austin, Texas 78701
(512) 495-6727
(512) 477-3845 (FAX)

Attorneys for MCI Telecommunications Corporation and
its Affiliates including MCI metro Access Transmission
Services, Inc.

LATHROP & GAGE, L.C.

Paul S. DeFord (jr)

Paul S. DeFord, #29509
2345 Grand Boulevard
Kansas City, Missouri 64108-2684
(816) 292-2000
(816) 292-2001 (FAX)

Attorneys for AT&T Communications of the
Southwest, Inc.

Certificate of Service

A true and correct copy of the foregoing was mailed this 3rd day of February, 1997, to the persons listed on the attached list by U.S. Mail, postage paid.

Carl J. Humley (jr)

Paul G. Lane
Diana J. Harter
Leo Bub
Southwestern Bell Telephone Co.
100 N. Tucker Blvd., Room 630
St. Louis, MO 63101

Michael F. Dandino
Senior Public Counsel
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Attached hereto is a revised Protective Order which should govern the procedures for handling confidential materials in the above styled dockets. This Protective Order replaces in all respects the Protective Order previously signed in these proceedings. The terms of this Protective Order shall apply to all pending and future discovery requests.

SIGNED AT AUSTIN, TEXAS the 6th day of November 1996.

PUBLIC UTILITY COMMISSION OF TEXAS



KATHLEEN S. HAMILTON
ADMINISTRATIVE LAW JUDGE

Protective Order covering such documents and information should be entered to facilitate timely submission of information in these petitions and in any discovery conducted in these proceedings. This revised Protective Order supersedes the Protective Order No. 3 issued on August 14, 1998, and controls all discovery to date, and shall control the on-going production of information and documents in these proceedings until such time as this Protective Order is modified by subsequent order of the Administrative Law Judge (ALJ), the Commission, or a court of competent jurisdiction. In the event the Commission assigns a new project number(s) to the review of the costing information developed in connection with the above styled and numbered causes, it is the intent of the Parties that the terms of this Protective Order would also apply to any such subsequent proceedings.

Definition

1. The term "party" as used in this Protective Order means either the petitioner or the Incumbent LEC (ILEC) involved in a Public Utility Commission proceeding in connection with an application for arbitration related to a request for interconnection, services or network elements under Telecommunications Act of 1998, and made pursuant to 16 Tex. Admin. Code §§ 22.301-.310 (the "Proceeding").
2. The term "Confidential Information" refers to portions of petition and all documents, data, information, studies, cost study information and other materials furnished pursuant to requests for information or other modes of discovery, including but not limited to depositions, that are claimed to be trade secrets, confidential business information and information subject to an evidentiary privilege or exempt from public disclosure under the Open Records Act. "Confidential Information" shall not include information contained in the public files of any federal or state agency that is subject to disclosure under the Open Records Act or a similar statute, nor shall it include information that, at the time it is provided through discovery in these proceedings or prior thereto, is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Order. "Confidential Information" shall not include information

found by the ALJ, the Commission or a court of competent jurisdiction not to merit the protection afforded Confidential Information under the terms of this Order.

Confidential Information

(A) **General.** In the discovery or other proceeding or filings to be conducted in connection with the arbitration proceeding, a party may designate certain material produced by such party as "Confidential Information." Copies of the material shall be delivered to the Filing Clerk of the Commission and to the arbitrators in a sealed envelope that is clearly marked on the outside, in letters at least 1" tall, as containing "Confidential Information." Each page of the material submitted under seal shall be consecutively numbered and the envelope shall clearly specify the number of pages contained therein. The party designating the material as Confidential Information shall clearly identify each portion of the material alleged to be Confidential Information, and provide a written explanation of the claimed exemption. Such explanation may be accompanied by affidavits providing appropriate factual support for any claimed exemption. The claim of exemption shall also indicate:

- (1) any and all exemptions to the Open Records Act claimed to be applicable to the alleged Confidential Information;
- (2) the reasons supporting the party's claim that the information is exempt from public disclosure under the Open Records Act and subject to treatment as Confidential Information; and
- (3) that counsel for the party has reviewed the information sufficiently to state in good faith that the information merits the confidential designation and is exempt from public disclosure under the Open Records Act. Each party will have an additional level of review to insure that the information determined to be confidential is reasonably classified as confidential. There is a rebuttable presumption that all

Information is non-confidential and the burden of establishing confidentiality will be on the party proposing confidential treatment.

- (4) In the event that any party questions whether an item has been inadvertently classified as confidential, then the party shall bring the matter to the producing parties attention prior to taking any action at either the Commission or elsewhere.

(B) Exemption from Disclosure. Material received by the Commission in accordance with this procedure shall be treated as exempt from public disclosure until and unless such Confidential Information is determined to be public information as the result of an Open Records Decision by the Attorney General, or pursuant to an order of the presiding officer entered after notice to the parties and hearing, or pursuant to an order of a court having jurisdiction.

(C) Material Provided to Parties. Material claimed to be Confidential Information must be provided to the other parties to the arbitration hearing provided they agree in writing to treat the material as Confidential Information. One copy of the material shall be provided to each party. The receiving party shall be entitled to make copies of the Confidential Information, provided that no more than one copy of the Confidential Information shall be made for each individual authorized to review the information and the receiving party and such individuals shall keep the Confidential Information properly secured during all times when the documents are not being reviewed by a person authorized to do so. FAXes shall be permitted and any FAXed documents shall be treated as copies of the original material; provided that it shall be the responsibility of the party transmitting documents by FAX to insure that the documents are only received by individuals authorized to receive the applicable information.

(D) Review by Parties. Each receiving party may designate specific individuals associated with the party who will be allowed access to the Confidential Information. The

Individuals who may have access to the Confidential Information shall be limited to the receiving party's counsel of record, regulatory personnel acting at the direction of counsel, and outside consultants employed by the receiving party who are under the direction of either counsel or said regulatory personnel. These individuals may use the Confidential Information only for the purpose of presenting or responding to matters raised in the arbitration hearing during the course of that proceeding, and shall not disclose the Confidential Information to any person who is not authorized under this section to view this information.

Prior to giving access to Confidential Information as contemplated above to any party authorized to be given access pursuant to this Order, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to such persons, and prior to disclosure, such persons shall affirmatively state that the individual has personally reviewed the Order, and will observe the limitations upon the use and disclosure of Confidential Information, in the form of Exhibit A, attached hereto. By signing such statements, a party may not be deemed to have acquiesced in the designation of the material as Confidential Information or to have waived any rights to contest such designation or to seek further disclosure of the Confidential Information. Said counsel shall, at the time of the review of such Confidential Information, or as soon thereafter as practicable, deliver to counsel for the party that produced the Confidential Information a copy of Exhibit A as executed, which shall show each signatory's full name, permanent address and employer, and the party with whom the signatory is associated.

Counsel of record for the persons authorized hereunder who requested the copies shall sign a statement in the form of Exhibit B, attached hereto, verifying that the sealed envelope clearly marked as containing Confidential Information has been received and designating the name and address of the individual into whose custody the copies shall be delivered. Access to said copies shall be limited to those persons specified in this Order. Additionally, for every copy of the Confidential Information that is made, counsel for the party seeking review of the Confidential Information shall deliver an Exhibit C,

attached hereto, identifying what Confidential Information has been copied and delivered to each person who is authorized to review said Confidential Information. To the extent possible and practical, Exhibits B and C shall be supplemented, and it shall not be required that a separate Exhibit B be signed for each separate set of Confidential Information that is received nor shall a separate Exhibit C be required for each copy. It is the intent of the parties to streamline the record-keeping process, so long as a complete record is maintained for purposes of review.

Open Records Act Requests

If the Secretary of the Commission, ALJ, or Commission's Staff receive an Open Records Act request for disclosure of information claimed to be Confidential Information (or any notes reflecting such information) produced pursuant to this Order, then the Secretary, ALJ, or Commission's Staff shall, as promptly as is reasonably feasible (preferably no later than two (2) business days following receipt of that request), notify the responding party that a request for disclosure has been made pursuant to the Open Records Act. The recipient of that request for disclosure shall timely request an Attorney General's opinion as to whether the information falls within any of the exemptions identified in the Public Information Act. Specifically, pursuant to §§ 552.301-552.308 of the Open Records Act, the recipient of that request for disclosure shall request that the applicable agency decline to release the requested information, in order to request an Attorney General opinion. As provided for in §§ 552.304 and 552.305(b), the party seeking non-disclosure may submit in writing to the Attorney General that party's reason for withholding the information. The recipient of the request for disclosure may contest the responding party's claim of exemption pursuant to Open Records Act § 552.305(c) in a separate communication to the Attorney General. If an Attorney General opinion is issued regarding the claim of confidentiality, the Commission shall, as promptly as is reasonably feasible (preferably within two (2) business days following the issuance of the opinion), provide a copy of that opinion to the responding party. If an Attorney General opinion recommends disclosure of Confidential Information, either in whole or in part, then the Commission shall