

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

DA 97-1496

In the Matter of)	
)	
Southwestern Bell Telephone)	
Company)	
)	Transmittal No. 2646
Tariff F.C.C. No. 73)	

ORDER

Adopted: July 16, 1997

Released: July 16, 1997

By the Chief, Competitive Pricing Division, Common Carrier Bureau

1. On July 14, 1997, Southwestern Bell Telephone Company (SWBT) filed Transmittal No. 2646, which proposes to restructure its Frame Relay Service (FRS) offering through modifications to FCC Tariff No. 73.¹ In this Order, we grant in part and deny in part SWBT's request for confidential treatment of cost data filed in support of the transmittal. Such data will be made publicly available subject to a protective order, as described below.

2. SWBT states that the purpose of Transmittal No. 2646 is to make modifications to its FRS in response to requests by customers and to clarify certain portions of the tariff.² SWBT proposes the following modifications to its FRS: (1) expand the availability of FRS to include all SWBT's wire centers located in each LATA; (2) remove the Link Extension and Network Link rate elements; (3) modify the Inter-PMA Additive rate element and rename it the Inter-Network Additive; (4) clarify that regulations, rates, and charges for the Special Access Multiplexed Service connection to a FRS Multiplexed Services Connection will apply in addition to the rates and charges associated with FRS; (5) modify the regulation which prohibits FRS-Term Pricing Plan (TPP) to be used in conjunction with a Special Access High Capacity TPP or Optional Payment Plan; (6) expand its customers' Committed Information Rate options; (7) remove the rate regulation that applies nonrecurring charges to service provided on a FRS TPP; and (8) introduce the Reduction of Current Network Services section to FCC Tariff No. 73, which SWBT alleges will provide its customers an opportunity to negotiate changes in their existing FRS.³ SWBT requests confidential treatment of the cost

¹ SWBT Transmittal No. 2646, *Description and Justification* at 1-1.

² *Description and Justification* at 1-1.

³ *Description and Justification* at 1-2 to 1-3.

data filed in support of its transmittal, contending that public disclosure of the data would harm its competitive position.⁴

3. Sections 0.453(j) and 0.455(b)(11) of the Commissions Rules, 47 C.F.R. §§ 0.453(j), 0.455(b)(11), provide that materials filed in support of tariff revisions are to be publicly available. SWBT has filed a request that its cost support data not be made publicly available pursuant to sections 0.457 and 0.459 of our rules. 47 C.F.R. §§ 0.457, 0.459. In this Order, we grant in part and deny in part SWBT's request for confidential treatment of cost support data filed with Transmittal No. 2646, by requiring limited disclosure of these data under the terms of a protective order. We previously have granted requests for confidential treatment of tariff support material where good cause had been shown for confidential treatment by waiving the requirement that materials filed in support of tariff revisions be publicly available.⁵ We do not find that good cause exists to waive these rules. We now believe that the better approach, in circumstances where the party demonstrates that the support data should be afforded confidential treatment, is to allow disclosure of the support data subject to a protective order that will guard against improper dissemination or use of the data. The Commission recently adopted this approach for treatment of confidential data submitted in streamlined tariff proceedings in accordance with section 402(b) of the Telecommunications Act of 1996.⁶ While the instant filing is made pursuant to the 45 days' notice requirements,⁷ and therefore is not subject to the streamlined tariff procedures, imposing a protective order will ensure uniform treatment of confidential data, regardless of which tariff filing procedure a carrier elects.

4. As the Commission found in the *Streamlined Tariff Filing Order*, protective orders have been used in other proceedings "to protect competitively sensitive material from public disclosure while allowing interested parties to have access to potentially decisional documents."⁸ In reaching this decision, the Commission quoted from a prior Common Carrier Bureau letter ruling as follows:

[T]he competitive threat posed by widespread disclosure under FOIA [Freedom of Information Act] may outweigh the public benefit in disclosure. In such instances, disclosure under a

⁴ Letter from Marjorie Morris Weisman to William F. Caton, July 14, 1997, at 4.

⁵ Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, provides that the Commission may, on its own motion, waive any provisions of its rules if good cause is shown.

⁶ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, §402(b). See also *In re Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order, 12 FCC Rcd 2170, Appendix B (1997) (*Streamlined Tariff Filing Order*).

⁷ 47 C.F.R. § 61.58.

⁸ *Streamlined Tariff Filing Order*, 12 FCC Rcd 2170 at ¶ 91.

protective order or agreement may serve the dual purpose of protecting competitively valuable information while still permitting limited disclosure for a specific public purpose.⁹

Specifically, the Commission found that the use of protective orders "will prevent the unlimited disclosure of sensitive financial data, and will thereby protect the competitive interests of the filing party."¹⁰

5. We find that SWBT has demonstrated that widespread disclosure of its cost support data filed with Transmittal No. 2646 may cause it competitive harm. We also find, however, that making these data available for inspection subject to a protective order will guard against such harm while furthering the goals of public disclosure. For these purposes, we adopt the Standard Protective Order and Declaration in Section 402(b) Streamlined LEC Tariff Proceedings, attached hereto as Appendix A.¹¹ Any party wishing to view SWBT's information must first sign the declaration contained in Appendix A, thereby agreeing to the terms of this protective order. For purposes of SWBT's Transmittal No. 2646, we deem SWBT's identification of the confidential information to be in compliance with Paragraph 3 of the Standard Protective Order.¹²

6. Accordingly, IT IS ORDERED that, pursuant to section 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.291, for the purposes of this proceeding, Southwestern Bell Telephone Company's Request for Confidential Treatment IS GRANTED in part and DENIED in part.

⁹ Letter from Kathleen M. H. Wallman to Jonathan E. Canis, et al., FOIA Control Nos. 94-310, 325, 328, 9 FCC Rcd 6495 (1994), *app. rev. pending*; Letter from Kathleen M. H. Wallman to John L. McGrew, et al., FOIA Control No. 95-223, 10 FCC Rcd 10574 (Com. Car. Bur., 1995), *app. rev. pending*.

¹⁰ Streamlined Tariff Filing Order at ¶ 92.

¹¹ See Streamlined Tariff Filing Order, 12 FCC Rcd 2170, Appendix B.

¹² We will also consider SWBT to be defined as the "Submitting Party" pursuant to Paragraph 1(f) of the Standard Protective Order.

7. IT IS FURTHER ORDERED that the Standard Protective Order and Declaration attached herein as Appendix A, be imposed in this matter, pursuant to the terms contained in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Patricia Donovan for

James D. Schlichting
Chief, Competitive Pricing Division
Common Carrier Bureau