



March 17, 2005

FILED THROUGH ELECTRONIC TARIFF FILING SYSTEM

Ms. Marlene Dortch
Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: The Nevada Bell Telephone Company (NBTC) Tariff FCC No.1, Transmittal No. 100;
Request for Confidential Treatment

Dear Ms. Dortch:

SBC Communications Inc. (SBC), on behalf of Nevada Bell Telephone Company (NBTC) hereby submits a request for confidential treatment of cost support data filed in conjunction with Transmittal No. 100, which involves NBTC's tariff filing for intermodal Service Provider Number Portability (SPNP).

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

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

SBC and NBTC request that the pages marked "Confidential" 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 pages for which confidential treatment is being requested contains commercially sensitive information including labor rates, depreciation, cost of money, income taxes, maintenance and support assets and miscellaneous expense.

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

NBTC 's Tariff FCC No. 1 Transmittal No. 100.

- (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 NBTC displays all necessary equipment, labor and other expenses associated with providing intermodal local number portability. This information would tell competitors what it costs NBTC to provide the service and would enable competitors to set their prices accordingly.

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

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

If competitors were provided all of this information, it would permit the determination of the total investment to NBTC for the equipment used in providing intermodal LNP. If NBTC's cost data is made public, any competitor could use NBTC's cost data to derive the cost of equipment NBTC purchases from its vendors.

The detailed cost information (cost factors, miscellaneous, expenses, income tax, maintenance, and support assets costs) is as confidential as the investment data in that any one factor could divulge NBTC 's cost relationship to the vendor cost. The pieces of cost detail, if provided on the public record, would allow NBTC's competitors to set their prices below NBTC's prices once they have developed a close estimate NBTC's factor.

Obviously, if NBTC's costs become public information, all firms seeking to compete with NBTC would have a clear target for pricing their own services. NBTC's cost data can quickly reveal to a competitor if it is more or less cost efficient than NBTC in a particular market. If NBTC 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 NBTC 's competitors as they design marketing strategies aimed at capturing as much of NBTC's business as possible.

If NBTC's cost information were publicly available, customers requesting bids would strive to obtain prices as close to NBTC's incremental costs as possible. NBTC might eventually be forced to choose between losing its largest customer accounts to competitors or retaining these customers by pricing the services without any contribution toward recovery of NBTC's common and overhead costs. Of course, if a firm's largest customers contribute nothing toward overhead cost recovery, prices charged to smaller customers must increase to permit the recovery of its total cost.

- (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 NBTC and would not ordinarily be disclosed to parties outside the company. Company practices instruct employees not to disclose outside the company cost information such as that involved in this confidentiality request.

- (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 NBTC's pricing decisions. NBTC 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 "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).¹

Protective Order Requested

SBC and NBTC acknowledge 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 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 SBC and NBTC 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:

SBC/ NBTC

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

A. Alex Vega
Four Bell Plaza
Room 1970.04
Dallas, Texas 75202

Very truly yours,

Davida M. Grant
Senior Counsel

¹ 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.).