BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-Region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996.	))))))	Case No. TO-99-227

SBC MISSOURI'S REPLY TO WORLDCOM'S REPLY AND AT&T'S RESPONSE TO SBC MISSOURI'S RESPONSE TO STAFF'S REPORT AND RECOMMENDATION ON THE PUBLIC UTILITY COMMISSION OF TEXAS' ORDERS NOS. 45 AND 46 APPROVING MODIFICATIONS TO PERFORMANCE REMEDY PLAN AND PERFORMANCE MEASUREMENTS

COMES NOW Southwestern Bell Telephone L.P., d/b/a SBC Missouri (SBC Missouri), and for its Reply to WorldCom's[1] Reply and AT&T's[2] Response to SBC Missouri's Response to Staff's Report and Recommendation on the Public Utility Commission of Texas' Orders Nos. 45 and 46 Approving Modifications to Performance Remedy Plan and Performance Measurements (Report and Recommendation), states to the Missouri Public Service Commission (Commission) as follows:

1. In its November 22, 2002, Report and Recommendation, Staff reported that the Public Utility Commission of Texas (Texas PUC) had recently issued two orders (Orders Nos. 45 and 46) in Project 20400, in which the Texas PUC directed modifications to Version 2.0 of the Performance Remedy Plan included in Attachment 17 of the Texas 271 agreement (T2A).[3] These modifications resulted from the most recent six-month performance measurements review conducted by the Texas PUC. In its Report and Recommendation, Staff indicated that it had

[1] "WorldCom" refers to MCI WorldCom Communications, Inc., MCI WorldCom Network Services, Inc., MCImetro Access Transmission Services, LLC, and Brooks Fiber Communications of Missouri, Inc., collectively.
[2] "AT&T" refers to AT&T Communications of the Southwest, Inc.
[3] Report and Recommendation, para. 3.

reviewed the Texas PUC's Orders Nos. 45 and 46, and SBC Texas' compliance filing relating thereto.[4] Staff also stated that "[B]ased on its review, the Staff is unaware of any reason why the decisions made by the Texas Commission would be inappropriate if applied in Missouri."[5] Staff also attached copies of the Texas PUC's Orders Nos. 45 and 46, as well as Southwestern Bell's compliance filing, to its Report and Recommendation.

2. In its Response to Staff's Report and Recommendation, SBC Missouri explained in detail why it would be inappropriate, as well as unlawful and inconsistent with the express terms of Section 6.4 of Attachment 17 of the Missouri 271 Agreement (M2A), for the Commission to simply "apply" the results of the Texas PUC's Orders Nos. 45 and 46 to change the Performance Remedy Plan SBC Missouri agreed to in Missouri, which was included in the M2A approved by the Commission in March, 2001. In addition, SBC Missouri explained that since Staff had not attached a copy of (or even referenced) SBC Texas' Motion for Reconsideration and Clarification of Texas PUC Order No. 45 in its Report and Recommendation, it was unclear whether Staff had given appropriate consideration to SBC Texas' Motion for Reconsideration and Clarification.[6] Therefore, SBC Missouri attached a copy of SBC Texas' Motion for Reconsideration and Clarification to its December 2, 2002, Response to Staff's Report and Recommendation.

3. As SBC Missouri described in its Response to Staff's Report and Recommendation, any potential changes to the performance measures and the Performance Remedy Plan contained in the M2A resulting from the regular six-month review processes are governed by Section 6.4 of Attachment 17 of the M2A, which provides as follows:

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[4] Report and Recommendation, para. 4.
[5] Id.
[6] In its Motion for Reconsideration and Clarification, SBC Texas explained that the modifications to Version 2.0 of the Texas Performance Remedy Plan and certain performance measurements were clearly not appropriate and were otherwise inconsistent with the provisions contained in the Plan.

> 6.4 Every six months, CLEC may participate with SWBT, other CLECs, and Commission representatives to review the performance measures to determine whether measurements should be added, deleted, or modified; whether that applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measure to High, Medium, Low, Diagnostic, Tier 1 or Tier 2. The criterion for reclassification of a measure shall be whether the actual volume of data points was lesser or greater than anticipated. Criteria for review of performance measures, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement. Performance measures for 911 may be examined at any six month review to determine whether they should be reclassified. The first six-month period will begin when an interconnection agreement including this remedy plan is adopted by a CLEC and approved by the Commission. Any changes to existing performance measures and this remedy plan shall be by mutual agreement of the parties and, if necessary, with respect to new measures and their appropriate classification, by arbitration. The current measurements and benchmarks will be in effect until modified hereunder or expiration of the interconnection agreement. (emphasis added)

Section 6.4 of Attachment 17 of the M2A expressly governs the circumstances under which changes to the Performance Remedy Plan or existing performance measures can be made, or new measures added. Changes to existing performance measures or the plan itself can only be made by *mutual agreement* of the parties. New performance measures and their appropriate classification, to the extent they are not mutually agreeable to the parties, can be imposed only after an arbitration proceeding conducted by the Commission.

4. In its Reply to SBC Missouri's Response, WorldCom implies that in the proceedings leading up to the Commission's approval of the M2A, SBC Missouri somehow committed to include any future changes resulting from any six month review conducted by the Texas PUC into the M2A.[7] AT&T makes a similar argument.[8] There is simply no factual basis for these claims. These arguments are directly refuted by the express language of Section 6.4 of Attachment 17, described above. Section 6.4 is unambiguous and leaves no room for

[7] See, WorldCom Reply, para. 2.
[8] See, AT&T Response, paras. 4-5.

"interpretation" as to its meaning. Prior to the Commission approving the M2A, SBC Missouri agreed that it would accept the most recent version (Version 1.7) of the Performance Remedy Plan in the M2A, containing the changes SBC Missouri agreed to resulting from the first six-month review conducted by the Texas PUC. SBC Missouri did so prior to the Commission approving the M2A, which included the language from Section 6.4 of Attachment 17 to the M2A described above. SBC Missouri's commitment with respect to future six-month reviews, and any changes or additions to performance measurements relating thereto, was clearly stated in Section 6.4 of Attachment 17 of the M2A approved by the Commission. Neither AT&T nor WorldCom can point to any provision -- because none exists -- where SBC Missouri agreed that any time the Texas PUC ordered changes to the Performance Remedy Plan contained in the T2A, the M2A would be automatically be changed as well, notwithstanding lack of agreement by SBC Missouri.

5. AT&T also argues that the six-month review process itself constituted the arbitration proceeding contemplated by Section 6.4 of Attachment 17 of the M2A. AT&T argues that without such an interpretation, there is little incentive for a CLEC to participate in the six-month review process, especially if the CLEC must arbitrate any performance measurement change that SWBT does not agree to.[9] AT&T complains that such a process would be nothing more than a "Staff-supervised negotiation."[10]

6. AT&T's arguments should be rejected. SWBT would first point out that AT&T made the same argument to the Texas PUC last year in connection with the proposed implementation of special access performance measures resulting from an earlier six month review. The Texas PUC, however, directed the matter to a separate arbitration proceeding. The

[9] AT&T Response, paras. 6-7.
[10] Id.

Commission should not equate the results of a six-month review process conducted by the Texas PUC to the arbitration proceeding required under Section 6.4 of Attachment 17 of the M2A, where the Texas PUC has already declined to do so. Furthermore, AT&T's veiled threat that it may sit out future six-month reviews holds no water. AT&T previously made the same threats in Texas, but then participated vigorously in subsequent six-month reviews.

7. Section 6.4 is clear that the purpose of the six-month review process is to provide an opportunity for all interested parties to regularly meet and discuss existing performance measurements and the Performance Remedy Plan, to ensure that they are operating in a meaningful manner, and for parties to propose modifications to existing measures (or the Plan) and new measurements. Section 6.4 is equally clear that no change to existing performance measures and the Performance Remedy Plan can be implemented unless there is mutual agreement, and for new measures and their appropriate classification where there is no mutual agreement, by arbitration. If the parties had intended the six-month review process to also constitute the "arbitration" required by Section 6.4 of Attachment 17, the language "and, if necessary, with regard to new measures and their appropriate classification, by arbitration" would be meaningless. The Commission should not adopt an "interpretation" of unambiguous language that would result in related provisions being rendered meaningless.

8. SBC Missouri remains fully committed to the six-month review process as it has developed in Texas, and as it was defined in the M2A. SBC Missouri agrees that pursuant to Section 6.4 of Attachment 17 to the M2A, the Missouri Performance Remedy Plan and related performance measurements described in Attachment 17 to the M2A need not be "static." As required by Section 6.4, to the extent the parties agree during a six-month review process that changes need to be made, SBC Missouri agrees that any such changes should be implemented by

the Commission. However, SBC Missouri did not agree in the M2A that the Missouri Performance Remedy Plan or the related performance measurements could be changed without SBC Missouri's agreement. Nor did SBC Missouri agree that any changes to the Texas Performance Remedy Plan resulting from the Texas PUC's decisions regarding Attachment 17 of the T2A would be automatically inserted into the M2A, a process which would substitute the judgment and jurisdiction of the Texas PUC for that of the Commission, and deprive SBC Missouri of due process with respect to changes to the M2A.

9. AT&T's and WorldCom's arguments should be rejected. The language contained in Section 6.4 of Attachment 17 of the M2A is plain and unambiguous. This language requires that all parties -- including SBC Missouri -- must agree to any changes to performance measurements or the Performance Remedy Plan contained in Attachment 17 to the M2A. Any proposed new measurements (and their appropriate classifications) that are not mutually agreeable must be resolved through an arbitration proceeding conducted by the Commission utilizing recognized due process protections. Nor can the Commission simply cede its jurisdiction and authority over the M2A to a regulatory agency from any other state, including Texas.

WHEREFORE, SBC Missouri respectfully requests that the Commission approve the modifications to the M2A and Attachment 17 which were included as an attachment to SBC Missouri's December 2, 2002 Response to Staff's Report and Recommendation, which reflect the agreed-to modifications resulting from the second and third six-month reviews conducted by the Texas PUC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by electronic mail and/or U.S. mail on December 23 2002.

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