

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

REPLY OF SOUTHWESTERN BELL TELEPHONE COMPANY

COMES NOW Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company (SWBT), and for its Reply to the Response of the Staff (Staff) of the Missouri Public Service Commission (Commission), the Response of AT&T Communications of the Southwest, Inc. (AT&T), and the Comments of IP Communications of the Southwest and NuVox Communications of Missouri, Inc. (IP/NuVox), all relating to SWBT's Motion to Update Attachment 17 of the Missouri 271 Interconnection Agreement (M2A), states to the Commission as follows:

I. BACKGROUND

1. On March 18, 2002, SWBT filed its Motion to Update Attachment 17 of the M2A, relating to modifications to the M2A performance remedy plan and performance measurements which resulted from the Six-Month Performance Measurements (PM) Review. As Staff noted in its Response, the updated versions of Attachment 17 and Version 2.0 of the Business Rules which SWBT submitted with its Motion to Update Attachment 17 of the M2A are identical to the corresponding Performance Remedy Plan and Version 2.0 of the Business Rules "as most currently ordered by the Public Utility Commission of Texas."¹

¹ Staff's Response, p. 1.

2. As SWBT pointed out in its Motion to Update Attachment 17 of the M2A, SWBT is committed to the Six-Month Review called for in both the Texas 271 Interconnection Agreement (T2A) and the M2A, and believes that its collaborative tone and substance are effective, appropriate and productive.² As a result, to the extent that the most recent Six-Month Review conducted by the Texas PUC resulted in performance measurement business rule changes that are agreeable to SWBT (as required by Section 6.4 of Attachment 17 of the M2A), SWBT has proposed that such changes be incorporated in the M2A. No party argues that the revisions proposed by SWBT, contained in the attachments to SWBT's Motion to Update Attachment 17 of the M2A, do not accurately reflect the mutually agreed-upon changes to the performance measurements and business rules which resulted from the most recent Six-Month Review conducted by the Texas PUC.

3. As SWBT also described in its Motion to Update Attachment 17 of the M2A, however, and as Staff noted in its Response, the Six-Month Review also resulted in the Texas PUC having concluded that changes to three areas of performance measurements are appropriate. These three areas include new measurements that would assess SWBT's performance under its interstate and intrastate tariffs for the provisioning of Special Access services, the appropriate method to determine payments relating to performance measure (PM) 13, and the appropriate manner to implement PM 1.2 (regarding loop make-up information). SWBT did not agree to these changes during the Six-Month Review in Texas.

4. Staff, AT&T and IP/NuVox argue that SWBT must accept and incorporate into the M2A all findings of the Texas PUC resulting from the Six-Month Review

² SWBT's Motion to Update, p. 3.

process, including changes to performance measures or new measures that SWBT does not agree are appropriate. These parties' arguments are answered by the express terms of the Performance Remedy Plan contained in the M2A previously approved by the Commission. Section 6.4 of the plan provides that "[a]ny changes to existing performance measurements 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." Accordingly, under the express terms of the Performance Measurement and Remedy Plan approved by the Commission, changes to any performance measurement must be agreed to between SWBT and the Competitive Local Exchange Carriers (CLECs) and, if necessary, with respect to new measures, as a result of a final, nonmodifiable and nonappealable Missouri arbitration proceeding.

5. In addition, future revisions to the Performance Remedy Plan contained in the M2A should likewise remain consistent with Section 6.4 of Attachment 17 of the M2A. Thus, SWBT does not object to incorporating the final results of any future Six-Month Review conducted by the Texas PUC, so long as such revisions to Version 2.0 of the performance measurements have been mutually agreed to by the parties, or in the case of new measurements on which no agreement has been reached, have become final, nonmodifiable and nonappealable in a Missouri-specific arbitration proceeding.

II. HISTORY

6. The Texas PUC's second Six-Month PM Review extended the benefits of its first review by ensuring, once again, that SWBT's measurements would evolve so as

to “reflect changes in the telecommunications industry and in the Texas market.”³

Specifically, in 2001, the Texas PUC conducted its second⁴ Six-Month Review to examine potential additions, modifications and deletions to performance measurements.⁵

The Texas PUC issued its *2001 Performance Measurements Modifications Order* on June 1, 2001, and directed SWBT to file Version 2.0 performance measurements by June 15.

Pursuant to this Order, 20 measures were eliminated, 4 new performance measurements were added, and 42 existing measurements were modified. On June 15, 2001, SWBT filed a complete copy of Version 2.0 of the performance measurements business rules reflecting these changes with the Texas PUC.⁶ SWBT neither sought a petition for rehearing with the Texas PUC, nor sought any judicial relief regarding any of these

³ Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region InterLATA Services in Texas, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000) (“SBC Texas Order”), ¶ 425.

⁴ The Texas PUC conducted the first Post-271 Six-Month Review process to examine potential additions, modifications and deletions regarding the performance measurements. The staff for the Texas PUC held 12 days of collaborative workshops between April 12 and June 26, 2000. On July 19, 2000, the Texas Commission’s *Performance Measurements Modifications Order* directed the elimination of 30 measures, the addition of 17 new performance measurements, and modifications to 84 existing measures. After the Texas PUC issued its *Performance Measurements Modifications Reconsideration Order*, SWBT filed with the Texas PUC a complete copy of Version 1.7 of the Performance Measurement Business Rules reflecting all of the rule changes directed by both of the Texas PUC’s orders. SWBT neither sought a petition for rehearing with the Texas Commission nor sought any judicial relief relative to these orders. This Commission approved Version 1.7 of the Performance Measurement Business Rules with the M2A in March, 2001.

⁵ The Texas PUC staff held 2 days of collaborative workshops on April 4 and 5, 2001. This two-day session contrasted with the twelve-day session held the year earlier in that the 2001 session was preceded by multiple discussions and exchanges of issues matrices among SWBT and various CLECs (as well as the Texas PUC Staff) in order to provide for a more efficient and productive session. Workshop participants included AT&T, WorldCom, Time Warner Telecom, McLeodUSA, Birch Telecom, XO Communications, IP Communications, Rhythms and SWBT. The Commission Staff, as well as the staffs of the Arkansas Public Service Commission, the Kansas Corporation Commission and the Oklahoma Corporation Commission also were represented at the Texas PUC 2001 Six-Month Review workshops.

⁶ Likewise, in Arkansas, the Arkansas PSC has approved Version 2.0. In the Matter of the Application of Southwestern Bell Telephone Company for Authorization to Provide In-Region InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996 and For Approval of the Arkansas 271 Agreement (Arkansas 271 Docket), Order No. 19, entered September 18, 2001. Thus, on October 18, 2001, SWBT filed the same material with the Arkansas PSC as it had filed with the Texas PUC on June 15, 2001.

changes. SWBT did, however, move for rehearing and clarification on three limited aspects of the *2001 Performance Measurements Modifications Order*.⁷

7. In particular, and as more fully discussed in SWBT's Motion to Update Attachment 17 of the M2A filed on March 18, 2002, SWBT sought reconsideration and clarification with respect to the Texas PUC's finding that to the extent a CLEC orders special access in lieu of UNEs, SWBT's performance shall be measured as another level of disaggregation in all UNE measures. Second, SWBT contested the Texas PUC's order regarding PM 1.2 (Accuracy of Actual Loop Makeup Information Provided for DSL Orders), in which the Texas PUC found, among other things, that SWBT and CLECs should develop a methodology to periodically sample SWBT's database. Third, SWBT sought clarification of the portion of the order that appeared to alter and make retroactive the measurement type (i.e., payment level) for PM 13 (Order Process Percent Flow Through).

III. DISCUSSION

A. SWBT should only be required to file those Performance Measurement revisions for which there is mutual agreement between the parties.

8. Pursuant to the express language contained in Section 6.4 of Attachment 17 of the M2A, the Commission should update the M2A to reflect any changes to existing performance measurements or new performance measurements which result from the Six-Month Review process where there is mutual agreement between all parties

⁷ Southwestern Bell Telephone Company's Motion for Rehearing and Clarification, Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas, Public Utility Commission of Texas, Project No. 20400 (filed July 2, 2001).

-- including SWBT -- that any such changes or new measures are appropriate. However, pursuant to Section 6.4 of Attachment 17 to the M2A, where SWBT does not agree to a change to an existing measurement which results from the Six-Month Review, or a new measurement does not result from a state-specific arbitration, such change cannot be included in the M2A. SWBT's position in this proceeding is based squarely on the language contained in the "X2As" approved by the state commissions in all SWBT states (including the M2A in Missouri), and by the Federal Communications Commission (FCC) in approving SWBT's Missouri, Arkansas, Kansas, Oklahoma and Texas Section 271 applications. Moreover, contrary to AT&T's and IP's/NuVox's claims, SWBT is not advocating either a "pick and choose" or "all or nothing" approach to adoption of the results from the Texas PUC's Six-Month Review.⁸ In fact, these parties generally neglect to point out that SWBT reached mutual agreement with CLECs and implemented all of the changes resulting from the Texas PUC's first Six-Month Review, and then implemented virtually all of the changes resulting from the second Six-Month Review.

9. Here, SWBT requests that the Commission approve the same Version 2.0 performance measurements that SWBT has filed with commissions in Texas, Kansas and Arkansas. Consistent with the express terms of the M2A, SWBT agrees that these changes should be incorporated into the M2A.⁹ These changes should be approved without regard to the objections SWBT has taken to certain aspects of the Texas PUC's *2001 Performance Measurements Modifications Order*.

10. The Commission surely should not adopt those portions of the Texas PUC's order directed to (a) instituting a workshop to develop special access performance

⁸ AT&T Response, p. 3; Comments of IP/NuVox, pp. 2-3.

⁹ See, M2A, Attachment 17, Section 6.4.

measures, and (b) PM 13.¹⁰ Special access performance measures are arbitrable in Missouri, since such measures would be regarded as “new” measures under Section 6.4 of Attachment 17 of the M2A. As a result, the Commission should not address them until a Missouri-specific arbitration proceeding is held, with appropriate contested case procedures, including a right of appeal. The issue regarding PM 13, although not “new,” is likewise not the subject of “mutual agreement” by SWBT and CLECs and, therefore, cannot be summarily implemented by the Missouri Commission. SWBT also requests that the Commission recognize SWBT’s due process right to separately challenge in Missouri any revisions to its performance measurements to which it has not agreed (and, in the case of new measurements, have not been submitted to arbitration) and, if necessary, to seek a separate stay in Missouri of the effective date of those same performance measurements and revisions thereto regardless of any action taken by the Texas PUC.

11. AT&T suggests that Section 6.4 of Attachment 17 recognizes that the performance measurements are “subject to” addition, deletion or modification at the Six-Month Review.¹¹ However, the actual language contained in Section 6.4 of Attachment 17 speaks to a forum in which the various parties may “participate” in a “review” of the measurements. Moreover, AT&T ignores the specific language in the same paragraph that sets forth the contracting parties’ duties and obligations. In particular, Section 6.4 of Attachment 17 expressly provides that “[a]ny changes to existing performance measurements 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

¹⁰ The matter of PM 1.2 is discussed in more detail below.

¹¹ Response of AT&T, pp. 3-4.

arbitration.” (Emphasis added). AT&T cannot reasonably explain how its argument can be consistent with the very specific language contained in Section 6.4 of Attachment 17. Accordingly, any changes to an existing performance measurement *must* be agreed to between SWBT and the CLECs and, if necessary, with respect to new measures, result from a state-specific arbitration.

12. As a practical matter, SWBT has reached agreement with CLECs and implemented nearly all of the changes resulting from two Six-Month Reviews that have occurred to date. Accordingly, the record over the last two years reflects that: (1) SWBT has consistently and cooperatively participated in the Six-Month Review process in accordance with the requirements of the T2A and M2A; (2) SWBT and CLECs have been able to reach “mutual agreement” on nearly all Performance Measurement and Remedy Plan changes that were proposed during the Six-Month Reviews; and (3) SWBT remains committed to the Six-Month Review process.

13. AT&T also suggests that the Texas PUC’s Six-Month Review constituted an “arbitration” as required by Section 6.4 of Attachment 17 to the M2A.¹² Such an assertion is simply incorrect. Under Section 6.4 of Attachment 17, the Six-Month Review is a collaborative session held among parties, including various commission representatives, to “participate” in a “review” of performance measurements. Actual “changes to existing performance measures and this remedy plan,” as well as “new measures,” are addressed later in the same section. Moreover, the fact that Section 6.4 expressly provides that such a review can be followed by a separate arbitration with respect to new measures and their appropriate classification completely refutes AT&T’s

¹² Response of AT&T, p. 4.

view that the “review” is itself an arbitration.¹³ The Texas PUC has correctly determined that a separate arbitration proceeding is necessary to consider potential special access performance measurements.¹⁴ Obviously, if the Texas PUC believed that the Six-Month Review was an “industry-wide arbitration” it would not have permitted a separate arbitration to proceed. This Commission should likewise reject any notion that the Texas PUC’s Six-Month Review was anything other than what the language of Section 6.4 permits: a collaborative proceeding aimed at facilitating an industry-wide agreement with respect to modifications to SWBT’s Performance Remedy Plan and performance measurements.

New Performance Measurements Related to Special Access

14. As SWBT described in its Motion to Update Attachment 17 of the M2A, SWBT opposes the implementation of new measurements that would assess its performance under the interstate and intrastate tariffs for the provisioning of special access services. Special access services are provided only as a consequence of and in accordance with tariffs, which contain their own remedies. More importantly, institution of special access measurements in this proceeding would be contrary to law, because these services are not part of the M2A and are not elements of interconnection, UNEs or resold services pursuant to sections 251 and 252 of the federal Telecommunications Act of 1996 (Act).¹⁵

15. As the FCC has previously recognized, the fact that SWBT is subject to performance monitoring and enforcement mechanisms (as provided in the Performance

¹³ See, M2A, Attachment 17, Section 6.4.

¹⁴ On September 19, 2001, at its open meeting, the Texas PUC voted to allow the issue of special access to be developed as a separate arbitration in Docket No. 24515.

¹⁵ See, 47 U.S.C. 251, 252.

Remedy Plan already contained in the M2A) provides additional assurance that SWBT will continue to meet its federal checklist obligations in Missouri on a post-271 entry basis.¹⁶ Those checklist obligations have to do with the provision of wholesale services to CLECs, including for example, the provision of DS1 loops to CLECs. These obligations have nothing to do, however, with the provision of tariffed special access services. It is of no consequence that some carriers may choose to utilize special access services for providing local exchange service, instead of wholesale UNEs. The checklist does not address special access services, and the FCC -- in no less than three orders -- has concluded that performance relative to provisioning of special access services is not relevant to checklist compliance.¹⁷ No party disputes, much less seeks to distinguish, the application of these FCC orders to this Missouri 271 proceeding.

16. Moreover, CLECs' urging of special access measurements comes at a time when forward-looking regulatory policy seeks to "streamline" measures, not add to them. FCC Chairman Powell could not have been clearer in making this point, when he addressed competition policy as it relates to performance measurements:

The Commission will attempt to streamline the essential performance measures used for making judgments about compliance with the local competition obligations. We believe a dozen or so measures can truly reflect the essentials for a meaningful opportunity to compete. Moreover, a clearer and more concise list will allow the Commission and the States

¹⁶ Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, 16 FCC Rcd 6237 (2001) ("SBC Kansas/Oklahoma Order"), ¶ 269 ("[T]he fact that a BOC will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest.")

¹⁷ Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, released April 16, 2001 n. 489 ("As we held in the *SWBT Texas* and *Bell Atlantic New York Order*, 15 FCC Rcd at 4126-27, para. 340.")

to more effectively enforce these obligations. Success will give incumbents a clearer understanding of their obligations and a surer path to compliance, and entrants will gain greater confidence that they will get what they need to viably compete in the market. This effort will try to limit regulatory burdens on carriers and not add to them.¹⁸

17. The policy of which Chairman Powell spoke has direct application, of course, to the performance measurements already in place and used in Missouri today to assess SWBT's checklist compliance. In any case, given that special access services are entirely unrelated to SWBT's checklist obligations, such services should not be subjected to performance measurements or to the provisions of the Performance Remedy Plan.

18. Finally, the Commission need not attempt to resolve an issue which has recently become the subject of a rulemaking proceeding initiated by the FCC. In November, 2001, the FCC issued a Notice of Proposed Rulemaking seeking comment on whether it should adopt performance measurements and standards for evaluating incumbent local exchange carrier (ILEC) performance in the provisioning of special access services.¹⁹ In this industry-wide proceeding, parties have filed initial and reply comments. Given the FCC's open rulemaking applicable to all ILECs, SWBT urges the Commission to not expend additional resources on the subject at this time.

PM 1.2

19. PM 1.2 captures the percentage of accurate DSL actual loop makeup information provided to CLECs. As explained below, issues regarding SWBT's going-forward implementation of PM 1.2 were raised by IP at the second Six-Month Review held last year. While these issues were not resolved by SWBT and IP during the Six-

¹⁸ Chairman Powell's Opening Remarks from October 23, 2001 Press Conference, "Digital Broadband Migration" Part II (www.fcc.gov).

¹⁹ In the Matter of Performance Measurements and Standards for Interstate Special Access Services, CC Docket No. 01-321, Notice of Proposed Rulemaking, FCC 01-339, released November 19, 2001.

Month Review, SWBT and IP have recently reached a settlement agreement addressing the going-forward implementation of PM 1.2 in Texas.²⁰

20. There are several aspects relating to the going-forward implementation of PM 1.2, as described in the settlement agreement between SWBT and IP, which the Commission should consider as it decides whether to implement the same provisions in Missouri. Briefly stated, the Texas implementation of PM 1.2 requires physical testing of end users' lines, so that the loop makeup information obtained from the testing can be compared to the information in SWBT's existing records on a monthly basis. This testing would involve a statistically valid sample of customers in SWBT's five states whose commissions approve the going-forward implementation of PM 1.2 as described in the agreement between IP and SWBT for Texas.

21. While the testing will only be conducted in instances where the customer approves, the testing will create an out-of-service condition for the customer. The actual time that the test will occur, as well as the length of time necessary to complete the test, can differ depending upon certain circumstances over which SWBT has little or no control. These circumstances, and others, could lead to customer calls to repair centers or to complaints filed with the Commission.

22. PM 1.2 was initially adopted by the Texas PUC in its first Six-Month Review in the spring of 2000. At that time, SWBT objected to implementing the

²⁰ The agreed to implementation of PM 1.2 in Texas resulted from a negotiated settlement with SWBT reserving its right that it does not believe that the proposed change is required by the Federal Communications Commission ("FCC") rules governing access to loop qualification make-up information. In its Kansas/Oklahoma 271 Order, the FCC addressed IP's claims that actual loop make-up information might be inaccurate. The FCC stated that "any inaccuracies in SWBT's database, because they affect SWBT in the same fashion as competing carriers, are not discriminatory." See, Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, 16 FCC Rcd 6237, ¶ 126 (2001).

measurement. However, following SWBT's meeting with the Texas PUC Staff on October 25, 2000, the Texas PUC Staff agreed that SWBT's proposed method of capturing and reporting data was acceptable. SWBT's implementation of PM 1.2 (under Version 1.7 of SWBT's performance measurements) thus proceeded on the basis of this agreement.

23. During the second Six-Month Review in the spring of 2001, IP questioned whether SWBT's implementation of PM 1.2 was sufficient. On June 1, 2001, when the Texas PUC issued its order adopting Version 2.0 performance measurements, it also required SWBT and CLECs to develop a methodology to periodically sample SWBT's database in an effort to determine accuracy and demonstrate progressive improvement to the accuracy of SWBT's database.²¹ SWBT objected to the change in the implementation of PM 1.2, and many months of briefing and other developments ensued.²² During this period, and through February, 2002, SWBT and IP (the only CLEC displaying any interest in the matter) explored various alternatives for implementing PM 1.2.

24. On March 21, 2002, the Texas PUC voted to adopt a settlement agreement that was reached between IP and SWBT as the final resolution to PM 1.2 (though it has not as yet issued an order). The settlement agreement, a copy of which was attached to

²¹ The Texas PUC also ordered that 95% benchmark apply to PM 1.2, and it eliminated the application of the Critical-Z value to the measurement.

²² SWBT filed a Motion for Rehearing and Clarification with the Texas PUC on July 2, 2001, arguing (as it had the year prior) that SWBT was not required to provide CLECs loop make-up information superior to that available for its or its data affiliate's own use. SWBT and IP responded positively to the Staff's (and Commissioners') strong encouragement to negotiate the dispute, but ultimately submitted certain unresolved issues to the Texas PUC for resolution. At its October 31, 2001, Open Meeting, the Texas PUC considered SWBT's Motion for Rehearing and Clarification and ordered SWBT 1) to use seven criteria in measuring loop make-up database accuracy, 2) not to exclude loops under 12,000 feet, 3) not to exclude loops just because Pronto has been deployed in the area, 4) not to record partial credit if some loop make-up data is returned correctly, and 5) to implement a monthly sampling process that requires a form of testing that is not intrusive or obtain customer consent prior to any outage. On December 14, SWBT filed a Motion for Reconsideration and Stay, requesting that the Texas PUC reconsider its Open Meeting ruling.

Staff's Response as Attachment D, provides that the measurement shall be diagnostic for the first twelve months in which performance data for the months from April, 2002 through March, 2003 will be captured and reported. In light of the agreement, the matter of PM 1.2 will not be a subject at the upcoming third Six-Month Review.

25. SWBT's implementation of PM 1.2 in Texas requires that SWBT conduct physical tests on a statistically valid sample of loop qualification makeup information responses, and then validate the results against existing information. Several steps are required of SWBT, as follows:

First Phase – Make Customer Contact

- Determine and extract the number of samples required to yield a statistically valid result with an 85% confidence level, and extract an additional number of samples to account for the prospect that some customers will not consent to testing.²³
- Contact each customer in the sample, inform the customer of the nature of the test (including the amount of time the test is to consume, and that the line will be out of service during the testing procedure--currently projected to be about 30 minutes), and request consent to perform the test on the customer's line.

Second Phase – Actual Testing Conducted by Technician

- Inspect the customer's plant run, and determine whether it is copper-only or a copper/fiber combination (most likely would be performed by an administrator using manual plant records)
- Inspect any remote terminal location to determine Pronto capability (most likely would be performed by an administrator using manual plant records)
- Travel to the serving terminal location
- Isolate the pair by calling central office and requesting removal of protector coils
- Lift the service drop at the serving terminal
- Drive to the Service Area Interface ("SAI") and remove cross connect
- Test pair: (1) from SAI to serving terminal for length and bridge tap;

On December 21, the Texas PUC denied SWBT's Motion for Rehearing and Clarification filed July 2, 2001, but yet again the Commissioners strongly encouraged SWBT and IP to continue to negotiate.

²³ It is currently believed that approximately 500 sample tests would be required monthly, distributed throughout SWBT's five-state territory in those states where the state commission has adopted the agreement between SWBT and IP. However, the required sample size could change, so as to provide a sample sufficient to support a statistically sound 85% confidence level.

(2) from SAI to central office for length and bridge tap; (3) from SAI to serving terminal for load coils; (4) from SAI to central office for load coils; (5) from SAI to serving terminal for repeaters; and (6) from SAI to central office for repeaters.

- Replace cross connect in SAI
- Return to serving terminal and repeat length and bridge tap test on pair from serving terminal to central office
- call frame to request replacement of load coils
- re-terminate service drop to serving terminal (i.e., restore the line to service)

Third Phase

- Collect test measurements
- Compare test measurements to existing information
- Report pertinent results monthly in PM 1.2

26. SWBT believes it is appropriate for the Commission to be fully informed of the potential impacts in Missouri, described above, of implementing the procedures SWBT and IP agreed to in Texas regarding PM 1.2, and which are described in the settlement agreement between SWBT and IP. SWBT is agreeable to implementing the same change in Missouri if the Commission determines it is appropriate.

PM 13

27. SWBT does not agree to that portion of the Texas PUC's Order No. 33 that requires SWBT to "apply damages or penalties retroactively, to the extent required." In Texas, SWBT acquiesced to the implementation of the PM 13 business rule, and to the audit of PM 13 data, but not to a retroactive change in the applicable Measurement Type (i.e., payment amount). Indeed, the subject was never discussed at the Six-Month Review, much less the subject of any "agreement" reached in that forum. Moreover, the Texas PUC has since granted SWBT's petition for rehearing regarding PM 13, deferring further action on the payment amount until the conclusion of the audit now being

conducted by Hewlett Packard. For this additional reason, the Commission need not and should not implement that portion of the Texas PUC's Order No. 33 in Missouri.

28. Finally, in Staff's Response to SWBT's Motion to Update Attachment 17 of the M2A, Staff quotes a portion of an order from the Arkansas Commission which relates to filing Texas-approved changes to the Business Rules or Performance Measurements with the Arkansas Commission.²⁴ Although it is not clear from Staff's Response why Staff included this language, it appears that Staff may be proposing that all future decisions from Six-Month Reviews conducted by the Texas PUC should be automatically imported and included in the M2A, even if SWBT does not agree with such decisions.

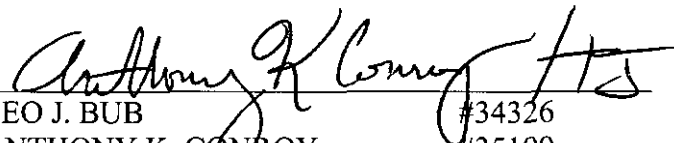
29. The Commission should not adopt changes to Performance Measurements or applicable Business Rules with which SWBT does not agree, (which SWBT believes is inconsistent with the express provisions contained in Section 6.4 of Attachment 17 of the M2A), simply because the Texas PUC or another state regulatory agency has ordered a change. Under the express terms of the M2A, SWBT retains its right to challenge any such change or new measure in Missouri, irrespective of the posture of any such change or revision in Texas.

²⁴ Staff Response, p. 4.

WHEREFORE, SWBT respectfully requests that the Commission grant SWBT's
Motion to Update Attachment 17 of the M2A, for the reasons described above.

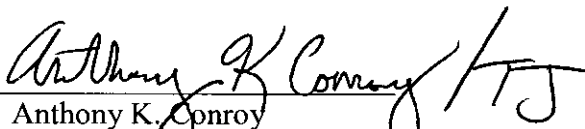
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the attached Service List by first-class, postage prepaid, U.S. Mail or via hand-delivery on April 22, 2002.


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