

**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    )        Case No. TO-99-227  
InterLATA Services Originating in Missouri           )  
Pursuant to Section 271 of the Telecommunications   )  
Act of 1996.                                                    )

**AMENDED PROPOSED ORDER REGARDING MOTION  
TO UPDATE ATTACHMENT 17 OF THE MISSOURI  
271 INTERCONNECTION AGREEMENT**

On March 18, 2002, Southwestern Bell Telephone L.P., d/b/a SBC Missouri (SBC Missouri), filed its Motion to Update Attachment 17 of the Missouri 271 Interconnection Agreement (M2A) to replace Version 1.7 of the performance measure Business Rules with Version 2.0 of those rules, and make minor related changes to the M2A. On January 16, 2004, the Missouri Public Service Commission (Commission) issued its Order Directing Filing, in which the Commission noted that it “has pending before it a Motion to Update Attachment 17 (Performance Remedy Plan) of the Missouri 271 Interconnection Agreement (M2A).” The Order directed the Commission’s Staff to “file an update regarding any significant changes in federal or state law that have occurred since the filing of its last update.” The Order further provided that the Staff’s report should also include “the status of the pending related matters at the Texas Public Utility Commission and state whether any similar updates in Arkansas, Kansas,

and Oklahoma have been adopted.” Finally, the Order provided that “any other party may also file a status report or a revised version of its proposed order.”<sup>1</sup>

The Commission hereby adopts the following Findings of Fact and Conclusions of Law regarding SBC Missouri’s Motion to Update Attachment 17 of the M2A.

### **FINDINGS OF FACT**

On March 6, 2001, the Commission issued its Order Finding Compliance With The Requirements of Section 271 of the Telecommunications Act of 1996 in this case, in which the Commission approved SBC Missouri’s revised M2A, and found that SBC Missouri’s Section 271 Application, along with the M2A as revised on February 28, 2001, satisfied the requirements of Section 271(c) of the Telecommunications Act of 1996 (the Act).<sup>2</sup>

The M2A approved by the Commission in March, 2001, is in large part based upon a similar agreement (the Texas 271 Interconnection Agreement, or T2A) approved in 1999 by the Texas Public Utilities Commission (PUC) following an extensive review of SBC Texas’ application to provide long distance service in Texas.

As the Commission found in its March 15, 2001, Order Regarding Recommendation on 271 Application Pursuant to the Telecommunications Act of 1996 and Approving the Missouri Interconnection Agreement (March 15, 2001, 271 Order), the M2A generally follows the substantive terms of the T2A, but also incorporates arbitration decisions of the Commission, as well as other modifications.<sup>3</sup> The M2A was revised several times before the Commission approved the final version in March, 2001. As the Commission found when it approved SBC

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<sup>1</sup> Pursuant to the Commission’s similar April 18, 2003, Order Directing Filing and Setting Oral Arguments, the Staff and various parties filed updates and proposed orders, in accordance with the Commission’s direction that each of the parties should file a proposed order setting out all the necessary findings and conclusions and citing to all relevant authority that would resolve the issues in favor of that party’s position.

<sup>2</sup> Order Finding Compliance With the Requirements of Section 271 of the Telecommunications Act of 1996, p. 5 (March 6, 2001).

<sup>3</sup> March 15, 2001, 271 Order at p. 10.

Missouri's M2A, interconnection agreements based on the M2A are binding contracts between a CLEC and SBC Missouri, which contain the terms for interconnection, access to unbundled network elements, resale, and other provisions.<sup>4</sup> The Commission also recognized that the M2A includes commitments by SBC Missouri that go beyond what it is obligated to provide under the Act.<sup>5</sup> Finally, the Commission recognized that nothing precludes a CLEC from negotiating a different agreement with SBC Missouri outside the terms and conditions contained in the M2A.<sup>6</sup>

Attachment 17 of the M2A approved by the Commission in March, 2001, includes a Performance Remedy Plan, pursuant to which SBC Missouri reports its wholesale performance on a monthly basis under numerous performance measures, and provides comparisons of that performance to SBC Missouri's performance with respect to its own retail business or to benchmark criteria, whichever is applicable. Appendix 3 to Attachment 17 of the M2A contains the comprehensive Business Rules applicable to the various performance measures.<sup>7</sup>

The M2A approved by the Commission in March, 2001, includes the set of performance measures known as Version 1.7 of the Business Rules as the appropriate set of performance measurements to be utilized by SBC Missouri and CLECs. Attachment 17 of the M2A also contains a specific provision which describes the limited circumstances under which the Performance Remedy Plan and performance measures contained in Attachment 17 could be changed, or new performance measures added. Section 6.4 of Attachment 17 of the M2A provides as follows:

6.4 Every six months, CLEC may participate with SWBT, other CLECs, and Commission representatives to review the performance measures to

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<sup>4</sup> Id.

<sup>5</sup> Id. at p. 13.

<sup>6</sup> Id. at p. 19.

<sup>7</sup> The Business Rules associated with the performance measures are themselves part of the measures in that they generally describe the underlying operational process being measured as well as the manner in which data with respect to that process shall be collected. Thus, for purposes of this report, the two may be referred to interchangeably as performance measures, except where indicated otherwise.

determine whether measurements should be added, deleted, or modified; whether the 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.

In April, 2001, a six-month review of Version 1.7 of the performance measures, as contemplated under the T2A, was conducted by the Texas PUC. Representatives from the Commission's Staff attended this six-month review and participated in the collaborative process. The result of this process was the development of a new version (2.0) of the Business Rules. Version 2.0 of the Business Rules was approved by the Texas PUC, and was subsequently adopted by the Arkansas Public Service Commission (PSC), the Kansas Corporation Commission (KCC), and the Oklahoma Corporation Commission (OCC).

On March 18, 2002, SBC Missouri filed its Motion to Update Attachment 17 of the M2A to include Version 2.0 of the Business Rules with the Commission. In its Motion, SBC Missouri described the review process conducted by the Texas PUC, and described its participation in that process. SBC Missouri also described that the most recent six-month review process conducted by the Texas PUC had resulted in a few changes with which SBC Missouri did not agree. In its Motion to Update, SBC Missouri identified the specific changes with which it did not agree as follows:

- SBC Missouri opposed being required to implement new measurements that would assess to its performance under its interstate and intrastate tariffs for the provisioning of retail Special Access services. SBC Missouri noted that Special Access services are provided only as a consequence of and in accordance with tariffs; they are not part of the M2A and thus cannot legally be subject to the Performance Remedy Plan.
- The implementation of PM 1.2, regarding loop makeup information, as defined in the Six-Month Review was unacceptable to SBC Missouri because it cannot be implemented as directed. PM 1.2 was proposed to compare loop makeup information provided to CLECs, including SBC Missouri's affiliate, with loop makeup information contained in SBC Missouri's engineering records. SBC Missouri noted that PM 1.2 does not accomplish its intended purpose, i.e., measuring the accuracy of SBC Missouri's loop makeup information.
- Finally, SBC Missouri noted that the Texas PUC's order regarding PM 13 was confusing as to whether it required punitive penalties, and noted that SBC Missouri objected to the extent these penalties were intended to apply. With respect to PM 13, SBC Missouri advised the Commission that it had agreed to an audit of its processes and data calculation in Texas and a restatement of the data relating to PM 13 in all of its states. SBC Missouri advised that it would agree to retroactively make any necessary payments that resulted from the restatement or audit described above, but these payments would be at the level established for this PM when it was developed, i.e., the "low" level, not the "high" level. SBC Missouri noted that it had requested clarification from the Texas PUC as to its intent with regard to PM 13.

As SBC Missouri described in its Motion to Update Attachment 17 of the M2A, SBC Missouri did not agree to these three areas of performance measures (or their implementation) described above that resulted from the Texas proceeding, and they were not included in Version 2.0 of the Business Rules submitted to the Commission as an attachment to SBC Missouri's March 18, 2002, Motion to Update. In support of its proposal, SBC Missouri referred to the language contained in Section 6.4 of Attachment 17 of the M2A, which addresses the limited circumstances under which changes to existing performance measures may occur and new measurements may be added:

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

In its Motion to Update Attachment 17 of the M2A, SBC Missouri also submitted and sought Commission approval of an updated version of Appendix 1 to Attachment 17 of the M2A (identifying “Measurements Subject to Per Occurrence Damages or Assessment with a Cap and Measurements Subject to Per Measure Damages or Assessment”) and Appendix 2 to Attachment 17 of the M2A (identifying “Performance Measures Subject to Tier-1 and Tier-2 Damages Identified as High, Medium and Low”). SBC Missouri also submitted a revised version of the General Terms and Conditions and Attachment 17 of the M2A, reflecting proposed revisions to three pages of the M2A (page iii of the Table of Contents to the General Terms and Conditions of the M2A, page 40 of the General Terms and Conditions of the M2A, and page 22 of Attachment 17 to the M2A) necessary to replace “Version 1.7” with “Version 2.0.” In addition, SBC Missouri also proposed changing the date appearing in the upper right corner of each page of these documents to reflect the date of its filing, i.e., March 18, 2002.

In its Motion to Update the M2A, SBC Missouri also proposed a process to make the modified M2A available to CLECs electing to adopt the M2A as a basis for their interconnection agreement with SBC Missouri. Under SBC Missouri’s proposal, the new version of Attachment 17 would become the basis for payment of Tier 2 penalty assessments to the State of Missouri upon the effective date of the Commission’s order approving the modifications described therein. SBC Missouri also proposed to negotiate a standard amendment to existing interconnection agreements based on the M2A to reflect Version 2.0 as submitted by SBC Missouri. SBC Missouri agreed that it would prepare and present CLECs with a standard Attachment 17 amendment to an M2A-based interconnection agreement, which would reflect the updates to the

M2A described therein. SBC Missouri also proposed a streamlined process whereby upon CLEC execution of the standard Attachment 17 amendment and the filing of such amendment with the Commission, the amendment would become effective by operation of law immediately upon filing with the Commission, similar to the process adopted by the Commission regarding approval of interconnection agreements based upon the M2A.

The Commission did not rule on SBC Missouri's March 18, 2002, Motion to Update the M2A. Several months after SBC Missouri filed its Motion to Update the M2A, in which it proposed to replace Version 1.7 of the Business Rules with Version 2.0 of the Business Rules, the Texas PUC conducted another six-month review of Version 2.0 of the Business Rules, which representatives of SBC Missouri and the Commission again attended. This proceeding was completed in October 2, 2002, and on October 17, 2002, the Texas PUC issued Order No. 45 in Project 20400. In this Order, the Texas PUC directed SBC Texas to file, by November 1, 2002, modifications to the Performance Remedy Plan and Performance Measurements to be incorporated into Attachment 17 of the T2A. These revisions to the Business Rules are referred to as Version 3.0. On November 1, 2002, SBC Texas filed a motion for reconsideration of the Texas PUC's Order No. 45 in Project 20400. Also, on November 1, 2002, pursuant to Order No. 45, SBC Texas filed proposed revisions to the T2A (to incorporate Version 3.0 of the Business Rules in Attachment 17 as described in Order No. 45).

On November 22, 2002, Staff filed a Report and Recommendation Regarding the Texas PUC's Orders Nos. 45 and 46 Approving Modifications to Performance Remedy Plan and Performance Measurements (Report and Recommendation). In its Report and Recommendation, Staff indicated that it had reviewed the Texas PUC's Orders Nos. 45 and 46, as well as SBC Texas' November 1, 2002 compliance filing, and that Staff was unaware of any reason why the

decisions made by the Texas Commission would be inappropriate if applied in Missouri. Staff attached copies of the Texas PUC's Orders, as well as the compliance filing the Texas PUC required SBC Texas to make containing the ordered changes. SBC Texas' compliance filing submitted to the Texas PUC on November 1, 2002, included a revised T2A Attachment 17: Performance Remedy Plan-TX, and a revised Appendix 1, Appendix 2 and Appendix 3 (the performance measurement Business Rules relating to Version 3.0).

The compliance filing submitted by SBC Texas to the Texas PUC on November 1, 2002, included numerous changes to the performance measures Business Rules contained in the T2A with which SBC Texas agreed. In addition, however, SBC Texas' compliance filing also included changes to Version 2.0 of the Business Rules, as well as to the Performance Remedy Plan (Attachment 17) of the T2A, with which SBC Texas did not agree. These changes were described in SBC Missouri's Response to Staff's Report and Recommendation, which SBC Missouri filed on December 2, 2002. The specific modifications required by the Texas PUC with which SBC Missouri did not agree at that time were described in SBC Missouri's Response as follows:

- Texas PUC ordered modifications to the application of the "K Table" in the T2A Performance Remedy Plan;
- The Texas PUC's ruling on disaggregating performance measurements relating to the provisions of enhanced extended loops (EELs);
- The Texas PUC's determination that the "tails test" portion of the firm order commitment (FOC) calculation for electronically submitted and process LSR should remain a remedied part of PM5;
- The Texas PUC's ruling to not eliminate LEX/EDI disaggregations for Performance Measurement 13 at the Tier 2 level;
- The Texas PUC's ruling ordering the reduction of the benchmark on PM 115.2 from 5% to 2%; and



- The Texas PUC's rule requiring SBC Missouri to provide disaggregation for line-splitting for certain performance measurements (PMs 55.1, 56, 58, 59, 60, 62, 65, 65.1, 67 and 69).

On March 5, 2003, the Texas PUC issued Order No. 47 denying SBC Texas' motion for reconsideration for Order No. 45.

In its December 2, 2002, Response to Staff's Report and Recommendation, SBC Missouri proposed that the Commission approve an updated version of Attachment 17 (and its appendices) to the M2A, to include the changes to the performance measures with which SBC Missouri agreed, which resulted from the most recent six-month review conducted by the Texas PUC, as specifically provided in Section 6.4 of Attachment 17 of the M2A. SBC Missouri did not agree to include the modifications and changes to performance measures ordered by the Texas PUC with which SBC Missouri did not agree. SBC Missouri again attached revised versions of the M2A General Terms and Conditions and Attachment 17 thereto. These documents reflected revisions to three pages of the M2A (page iii of the Table of Contents to the General Terms and Conditions of the M2A, page 38 of the General Terms and Conditions of the M2A, and page 22 of Attachment 17 to the M2A) necessary to replace "Version 1.7" with "Version 3.0." The revisions submitted by SBC Missouri on December 2, 2002, included all changes with which SBC Missouri agreed from both Version 2.0 and Version 3.0 of the Business Rules. In addition, SBC Missouri again proposed a process pursuant to which these modifications would become available on a going-forward basis to CLECs electing to adopt the M2A as their interconnection agreement in the State of Missouri, as well as making the revisions available to those CLECs with existing Commission-approved interconnection agreements based upon the M2A, through an expedited approval process.

On May 16, 2003, in response to the Commission's Order Directing Filing and Setting Oral Arguments, SBC Missouri submitted its Status Report, updated changes to the Attachment 17 measurements and associated business rules (as Exhibit A thereto) and Proposed Order (as Exhibit B thereto). In this pleading, SBC Missouri again referred to Section 6.4 of Attachment 17 of the M2A (describing the limited circumstances under which changes and additions to the Performance Remedy Plan and Business Rules may be made). SBC Missouri stated that although it reserves its right under Section 6.4 of Attachment 17 of the M2A to object to the inclusion of any changes or additions to Attachment 17 with which it does not agree, SBC Missouri is now willing to accept nearly all of the modifications to the Business Rules adopted by Texas PUC in the last two six-month performance measures review proceedings, as currently implemented in the Texas T2A. SBC Missouri stated that it did not agree to the "K-Table" changes ordered by the Texas PUC in its Order No. 45,<sup>8</sup> and did not agree to two changes resulting from the Texas PUC's six-month review relating to Version 1.7, but not implemented in the T2A.

On February 5, 2004, in response to the Commission's Order Directing Filing, SBC Missouri submitted its Status Report updating developments since its May 16, 2003 filing of its Status Report and Proposed Order. SBC Missouri urged the Commission's adoption of the updated changes to the Attachment 17 measurements and associated business rules that were provided as Exhibit A of its May 16, 2003, Status Report filed in response to the Commission's Order Directing Filing and Setting Oral Arguments. SBC Missouri also submitted an Amended Proposed Order.

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<sup>8</sup> SBC Missouri is challenging the "K-Table" changes ordered by the Texas PUC in United States District Court in Texas. These changes have not been implemented in the T2A in Texas.

As directed by the Commission, the parties have addressed the status of related proceedings in other states. With respect to Texas, on March 5, 2003, the Texas PUC issued Order No. 47 in Project 20400, in which it denied SBC Texas' and IP's motions for reconsideration of Order No. 45. On March 28, 2003, SBC Texas filed a Complaint (including a request for injunctive relief) in which it appealed the Texas PUC's Order No. 45 in United States District Court for the Western District of Texas. In its Complaint, SBC Texas sought to overturn the changes in the Performance Remedy Plan ordered by the Texas PUC in Order No. 45 in Case No. 20400, relating to changes to the "K-Table" contained in the Performance Remedy Plan in the T2A. The "K Table" issue is the only issue (of the several issues contained in SBC's Motion for Reconsideration of the Texas PUC's Order No. 45) that SBC Texas has challenged in United States District Court in Texas. The remaining changes to Attachment 17 of the T2A ordered by the Texas PUC in Order No. 45, which SBC Texas did not originally agree, have either been implemented or are in the process of being implemented in Texas.

The contested "K-Table" issue relates to the financial payments SBC Missouri would be required to make based upon its performance. Although nothing in the federal Act required SBC Missouri to agree to a Performance Remedy Plan under which SBC Missouri would automatically make payments either to an affected CLEC or to the State of Missouri when its performance fell short of the agreed-upon standards, SBC Missouri agreed to such a framework in Attachment 17 to the M2A. The Performance Remedy Plan that SBC Missouri agreed to and which was contained in the M2A divides performance measurements into three categories: Tier 1, Tier 2, and Diagnostic. Tier 1 damages are payable to a CLEC whenever performance for that CLEC fails to meet the applicable standard. Tier 2 assessments are payable to the State of Missouri based on the aggregate performance for all CLECs in Missouri. Tier 1 and Tier 2

categories are further classified into high, medium, and low, reflecting a particular performance measurement's competitive importance to CLECs, with the greatest payments owed for "high" measurements and lowest payments owed for "low" measurements. Tier 1 damages are assessed if a performance measurement is out of compliance for a single month, whereas Tier 2 assessments apply only if a measurement is missed for three consecutive months. Diagnostic measures are merely additional measure of the performance already captured by Tier 1 and/or Tier 2 measurements.

In order to account for the phenomenon of random variation, the Performance Remedy Plan contained in both the T2A and the M2A specifically excludes some sub-par results before calculating the damages or assessments based on performance results. To do this, the Performance Remedy Plan contained in Attachment 17 of the M2A includes a "K-Table," which indicates the number of allowable misses (the "K-value"), corresponding to the total number of measurements for which sufficient data are available in any given month. The K-value reflects the number of measures that should be excluded from the calculation of Tier-1 liquidated damages every month to account for the fact that a certain number of measures will fail the parity or benchmark comparisons due to random variations even though SBC Missouri may be providing service to CLECs at parity or at the benchmark level of performance, whichever is applicable.

The changes to the K-Table ordered by the Texas PUC will have a substantial financial impact on SBC Texas. Similar financial impact would also result in Missouri if the K-Table changes were imposed under the M2A. SBC Missouri contends that it did not agree to these K-Table revisions, and does not agree to this additional financial exposure under the M2A. SBC

Missouri asserts that without its agreement, these revisions to the Performance Remedy Plan contained in Attachment 17 of the M2A cannot be imposed by the Commission.

SBC Texas and the Texas Attorney General's Office (representing the Texas PUC) have reached an agreement on the injunctive relief requested by SBC Texas. Under that agreement, the K-Table changes required by the Texas PUC in its Order No. 45 have not been made to Attachment 17 of the T2A, and SBC Texas is accruing (in a separately identified internal account) the additional monies which would be owed to CLECs as a result of the Texas PUC's ordered K-Table changes, if they are affirmed by the federal district court. The federal district court proceeding in San Antonio, Texas is currently pending.

The specific modifications to the Performance Remedy Plan regarding the K-Table which are the subject of SBC Texas' federal court action are as follows:

- A. If a performance measure designated as Tier 1 is missed for two consecutive months, SBC Texas may not exclude that performance measure from the calculation of Tier 1 payments under the K-Table, beginning with the second month in which the measure is missed. Additionally, SBC Texas may not use the missed measures in determining the K-value.
- B. The ranking system for exclusions under the K-Table will be based on dollar amounts (as opposed to the importance of the measure to the CLECs), taking into account the severity, volume, and the level of per unit penalty classification of the performance measure.
- C. For any missed performance measure with less than or equal to ten transactions, SBC Texas will always make payments to the affected competing carrier.

With respect to Oklahoma, the Oklahoma Corporation Commission (OCC) issued its Final Order Approving Version 2.0 of Performance Measures on July 1, 2002, in Cause No. PUD 200200192, in Order No. 465113. In its order, the OCC approved the report and recommendations of the Administrative Law Judge, adopting Version 2.0 of the Business Rules

(in place of Version 1.7) as Appendix 3 to Attachment 17 of the Oklahoma 271 interconnection agreement (O2A), as well as related Appendices 1 and 2 to Attachment 17. The OCC found that Version 2.0 would be available on an ongoing basis to CLECs electing to adopt the O2A as their interconnection agreement with SBC Oklahoma in the State of Oklahoma. In addition, the OCC found that Version 2.0 would become the basis for payment of Tier 2 penalty assessments to the State of Oklahoma after the date of the Commission's final order.

With respect to the changes contained in Version 2.0 that SBC Oklahoma did not agree to, the OCC found that PM1.2 (relating to the accuracy of actual loop makeup information provided for DSL orders) would be implemented in Oklahoma in the same manner as ordered by the Texas PUC. The OCC also found that any action on PM13 (relating to retroactive payments on a "high" level on a per occurrence basis without a measurement cap) and any action to establish performance measurements for special access circuits, would be delayed until after the completion of proceedings on these issues at the Texas PUC and the FCC. Finally, the OCC found that reclassification of DSL-related performance measurements would be "held" pending their consideration at a subsequent six-month review proceeding in Texas. No proceedings to incorporate Version 3.0 of the Business Rules into the O2A have currently been initiated in Oklahoma.

With respect to Kansas, on August 22, 2001, SBC Kansas submitted for the Kansas Corporation Commission's (KCC's) approval Version 2.0 of the performance measurement Business Rules which resulted from the Texas six-month review proceeding. On May 9, 2002, the KCC issued its order approving the revisions to the K2A submitted by SBC Kansas on August 22, 2001, in Docket No. 01-SWBT-999-MIS. In its May 9, 2002 Order, the KCC required SBC Kansas to file any future modifications to the plan that are implemented by the

Texas PUC as a result of future six-month reviews. The KCC stated that the “modification shall be effective when filed, subject to stay and subject to modification based n the result of an appeal in Texas or reconsideration by the Texas PUC.”<sup>9</sup> On May 28, 2002, SBC Kansas filed a Petition for Reconsideration of the May 9, 2002 Order, and requested that a process be put in place to provide all parties the opportunities to contest any modifications prior to implementation. On June 27, 2002, the KCC issued its Order On Reconsideration and adopted a process through which modifications could be contested prior to implementation. Pursuant to this revised process:

modifications are still to be filed by SWBT within ten days of the date they are implemented in Texas; however, the modifications will be effective 15 days after the date they are filed unless the Commission issues an order staying the effective date. A party must file a motion to stay the effective date within three days of the date the modifications are filed.<sup>10</sup>

On November 12, 2002, SBC Kansas filed a Motion for Clarification seeking guidance on when modifications resulting from the Texas proceedings should be filed with the KCC. On December 12, 2002, the Commission issued an order addressing SBC Kansas’ motion, and stated that modifications should be filed in Kansas ten days after the “effective date” of the modifications in Texas.<sup>11</sup>

In Kansas, SBC Kansas agreed that since the Texas PUC’s Order No. 47 did not contain an “effective date” or otherwise mention when the modifications were to be implemented, SBC Kansas would consider the Texas PUC’s Order No. 47 to be “triggering event” for SBC Kansas’ filings with the KCC unless otherwise directed by the KCC. As a result, SBC Kansas filed Version 3.0 of the performance measurement Business Rules with the KCC on March 17, 2003. On March 20, 2003, SBC Kansas asked the KCC to stay the effectiveness of the K-Table

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<sup>9</sup> May 9, 2002, Order, p. 12, para. B.

<sup>10</sup> June 27, 2002, Order, p. 5, para. 12.

<sup>11</sup> December 12, 2002, Order, pp. 2-3, para. 4.

changes ordered by the Texas PUC in Order No. 45. On April 1, 2003, the KCC granted SBC Kansas' Motion for Stay, pending additional review of the status of Version 3.0 in Texas. On May 27, 2003, the KCC approved the use of Version 3.0, and concluded that "the modification to the K-Table is not 'effective' in Texas and will not be approved at this time."<sup>12</sup> SBC Kansas is to report to the KCC within ten days from any changes in the status of SBC Texas' appeal or its agreement with the Texas Attorney General.<sup>13</sup>

With respect to Arkansas, in Docket No. 00211-U, the Arkansas Public Service Commission (PSC) issued an order on September 18, 2001, in which it directed SBC Arkansas to file Version 2.0 of the Business Rules, together with any future revisions made effective by the Texas PUC, with the Arkansas PSC in Docket 86-033-A. The Arkansas PSC also found that revisions to the Business Rules filed with the PSC would have the same effective date as the corresponding revisions made to the T2A. The Arkansas PSC directed SBC Arkansas to provide notice of any changes to the performance measures contained in the A2A through a filing in Docket No. 86-033-A. On November 8, 2001, the Arkansas PSC issued an order clarifying that although SBC Arkansas was required to file changes to performance measurements as they are approved by the Texas PUC, this would not preclude SBC Arkansas from requesting the Arkansas PSC to stay the implementation of any performance measurement with which SBC Arkansas does not agree. The Arkansas PSC found that SBC Arkansas can separately challenge changes in performance measurements in Arkansas, whether SBC has agreed or not agreed to the changes in Texas. The Arkansas PSC also found that SBC Arkansas could seek a stay from the Arkansas PSC of the effective date of any changes in the performance measurements or Business Rules. SBC Arkansas updated from Version 2.0 to Version 3.0 of the performance

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<sup>12</sup> May 27, 2003, order, p. 5, para. 15.

<sup>13</sup> Id., p. 5, para. 16.



measurements Business Rules by a notice filing in Docket No. 86-033-A on March 26, 2003. SBC Arkansas did not implement the “K-Table” revisions to the Performance Remedy Plan ordered by the Texas PUC in the A2A (which are the subject of SBC Texas’ federal court action in Texas), since the Arkansas PSC’s notice filing procedures described above only apply to the Business Rules, not the Performance Remedy Plan.

### **CONCLUSIONS OF LAW**

The Commission concludes that the modifications to Attachment 17 of the M2A described by SBC Missouri in its May 16, 2003, Status Report and Proposed Order, and contained in Exhibit A thereto (including updated versions of Appendix 1 (Performance Measurements subject to Tier 1 and Tier 2 damages identified as High, Medium, and Low), Appendix 2 (Measurements Subject to Per Occurrence Damages or Assessment with a Cap And Measurements Subject to Per Measured Damages or Assessment), and Appendix 3 (Performance Measurement Business Rules, Version 3.0)), which are identical in all substantive respects to the Performance Remedy Plan and Performance Measurements that have been implemented in Texas, Arkansas and Kansas, should be incorporated into Attachment 17 of the M2A. In addition, SBC Missouri’s proposed revisions to three pages of the current M2A (page iii of the Table of Contents to the General Terms and Conditions of the M2A, page 40 of the General Terms and Conditions of the M2A, and page 22 of Attachment 17 to the M2A) necessary to replace “Version 1.7” with “Version 3.0” should also be incorporated into the M2A.

The updates to Attachment 17 of the M2A reflected in the attachments to SBC Missouri’s Status Report and Proposed Order do not include a few changes from Version 2.0 ordered by the Texas PUC, where the ordered changes have not been implemented in the T2A by the Texas PUC. These changes relate to:

- Special Access Performance Measurements
- PM13 Restatement

SBC Missouri does not agree that these changes may be made to Attachment 17 of the M2A, and under the specific requirements of Section 6.4 of Attachment 17 of the M2A, the Commission concludes that these changes cannot be incorporated into the M2A in this proceeding without SBC Missouri's agreement. Likewise, the updates to Attachment 17 of the M2A that we approve in this order do not include the "K-Table" revisions ordered by the Texas PUC in Order No. 45. The Commission concludes that these changes, which SBC is appealing in Texas, cannot be incorporated into the M2A in this proceeding without SBC Missouri's agreement.

The Commission also concludes that, upon the effective date of this order, the modifications to the M2A approved herein will become effective. In addition, the updated version of Attachment 17 will be the basis for payment of Tier 2 penalty assessments to the State of Missouri upon the effective date of the Commission's order. Those CLECs with existing Commission-approved interconnection agreements based upon the M2A may adopt an amendment to their interconnection agreements to reflect the updates to the M2A approved herein. SBC Missouri should present such CLECs with a standard Attachment 17 amendment to an M2A-based interconnection agreement, which amendment will reflect the updates to the M2A described herein. Consistent with the procedures for adopting the M2A contained in Section 2.1 of the General Terms and Conditions of the M2A, upon execution of the standard Attachment 17 amendment and the filing of such amendment with the Commission, the signed Attachment 17 amendment to an M2A-based interconnection agreement between any CLEC and SBC Missouri shall become effective by operation of law immediately upon filing with the Commission.

The Commission also concludes that it has no authority to modify the Performance Remedy Plan agreed to by SBC Missouri and contained in Attachment 17 of the M2A without

SBC Missouri's agreement. There is no authority under the Act for the Commission to require a Performance Remedy Plan in the M2A that requires payments by SBC Missouri if performance standards are not met. The Performance Remedy Plan contained in Attachment 17 of the M2A is one of the features of the M2A that was a voluntary commitment on the part of SBC Missouri. Changes to this interconnection agreement may only be made pursuant to the express provisions contained in that contract. Section 6.4 of Attachment 17 of the M2A (and interconnection agreements based upon the M2A) contain very specific provisions addressing the limited circumstances under which changes to performance measures or the Performance Remedy Plan can be made, and that process cannot be changed without SBC Missouri's agreement.

**IT IS THEREFORE ORDERED:**

1. SBC Missouri's Motion to Update Attachment 17 of the M2A is granted as described herein;
2. An updated version of Attachment 17 of the M2A attached hereto as Attachment 1, shall become effective as of the effective date of this order, and shall be available as described herein to all CLECs with existing interconnection agreements based upon the M2A and all CLECs adopting the M2A as the basis for their interconnection agreement with SBC Missouri, as of the effective date of this order;
3. That all other relief requested not expressly granted in this order is denied; and
4. That this order shall become effective as of \_\_\_\_\_, 2004.

**BY THE COMMISSION**

**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

( S E A L )

Nancy Dippell, Senior Regulatory Law  
Judge, by delegation of authority pursuant  
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this \_\_\_\_\_ day of \_\_\_\_\_, 2004.