



**Rebecca B. DeCook**  
Senior Attorney

Room 1575  
1875 Lawrence Street  
Denver, CO 80202  
303 298-6357

December 12, 2002

Dale Hardy Roberts  
Secretary of the Commission  
Missouri Public Service Commission  
PO Box 360  
Jefferson City, MO 65101

**FILED<sup>3</sup>**

DEC 12 2002

Missouri Public  
Service Commission

**Re: Case No. TO-99-227**

Dear Mr. Secretary:

Attached for filing with the Commission, please find the original and eight (8) copies of AT&T Communications of the Southwest To Southwestern Bell Telephone Company'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.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

*Rebecca B. DeCook*  
Rebecca B. DeCook *tn*

Attachment  
cc: All Parties of Record

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

**FILED<sup>3</sup>**  
DEC 12 2002

Missouri Public  
Service Commission

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 Service )  
Originating in Missouri Pursuant to Section 271 )  
Of the Telecommunications Act of 1996. )

**RESPONSE OF  
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.  
TO SOUTHWESTERN BELL TELEPHONE COMPANY'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**

AT&T Communications of the Southwest, Inc. ("AT&T") hereby files the following  
Response.

1. On November 25, 2002, Staff filed its Report and Recommendation on the Public Utility Commission of Texas' Orders Nos. 45 and 46 Approving Modifications to Performance Remedy Plan and Performance Measurements. In that Report, Staff recommended the Commission adopt the decisions made by the Public Utility Commission of Texas in Orders Nos. 45 and 46 for updating the performance measures contained in the M2A. On December 2, 2002, Southwestern Bell Telephone L.P. d/b/a Southwestern Bell Telephone Company (SWBT) filed its Response to the 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 ("SWBT Response"). Generally, SWBT opposed Staff's recommendation on the grounds that Order No. 45 was not final because SWBT had filed a Motion for Reconsideration and Clarification of Order No. 45 and that SWBT will only make changes to performance measures and the Performance Remedy Plan that it agrees with.

Instead, SWBT asks the Commission to “approve an updated version of Attachment 17 (and its appendices) of the M2A, to include modifications and changes to M2A Performance Remedy Plan which resulted from the recent six-month review (i.e., Version 3.0) conducted by the Texas PUC, containing the modifications and changes with which SWBT agrees, as provided in Section 6.4 of Attachment 17 of the M2A but not including modifications and changes with which SWBT does not agree.” (SWBT, Response, pg. 5). The result is that SWBT is requesting this Commission accept modifications to Attachment 17 that do not comply with these requirements of the Texas Commission.

2. SWBT’s request is unacceptable and inappropriate. AT&T has filed a pleading opposing SWBT’s Motion for Reconsideration and Clarification with the Texas Commission. A copy of AT&T’s Response to SWBT’s Motion for Reconsideration and SWBT’s Compliance Filing is attached hereto as Exhibit 1. In its Response, AT&T asserts that SWBT’s Motion should be denied in all respects because SWBT has presented no new arguments or offered no basis for the Commission to alter its rulings. In addition, AT&T contends that SWBT’s compliance filing should be modified to correct a significant deviation from the requirements of Order No. 45.

3. AT&T supports Staff’s recommendation to adopt the decisions made by the Public Utility Commission of Texas in Orders Nos. 45 and 46 for updating the performance measures contained in the M2A. The results of the six-month performance review process conducted in Texas should be adopted on a uniform basis throughout the SWBT region. SWBT should be required to reflect the requirements ordered by the Texas Commission in Order Nos. 45 and 46 in the Modifications to Attachment 17.

4. Uniformity of performance measures was SWBT's goal throughout the entire M2A approval process<sup>1</sup>. AT&T has previously agreed with SWBT regarding the need for uniformity among the performance measures across the SWBT operating region. To the extent that SWBT wishes to export the results of the Texas six-month performance review process to other states such as Missouri, it should export all of the results, not just those that are agreeable to SWBT. AT&T strongly objects to SWBT's "pick and choose" approach to adopting some of those results, while ignoring others.

5. This Commission's decision (and the parallel decision in other SWBT states) will determine whether the periodic review of SWBT's measurements -- a key feature of the M2A and its counterparts -- can serve its intended function. SWBT's attempt to include only those changes that are acceptable to SWBT treats the six-month review as an exercise that produces nothing more than non-binding recommendations from the Texas Commission, which SWBT is free to accept or reject (or, at best, to take to "arbitration" after the six-month review has concluded). However, section 6.4 of Attachment 17 expressly recognizes that the PMs are subject to addition, deletion, or modification at the six-month review. In other words, the six-month review, and the possibility that the Commission (Texas or otherwise) will impose changes in the event of disagreement, is a feature of the contract to which SWBT has assented, and under which SWBT received 271 relief.

6. SWBT has suggested, both to the Texas Commission and in its Motion here, that the next-to-last sentence of section 6.4 of Attachment 17, by referring to arbitration of unresolved issues, allows SWBT to reject any decisions made by the Texas Commission in the six-month review and require a separate arbitration of those issues. AT&T had always

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<sup>1</sup> Case No. TT-99-227, *In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of In-region InterLATA Services to Section 271 of the Intent to File an Application For Authorization to Provide Originating in Missouri Pursuant Telecommunications Act of 1996*, Transcript of Prehearing Conference, August 1, 2002, Volume 19, pg. 3436.

understood that the six-month review process itself, with opportunities to develop the issues before Commission Staff(s), have Staff make recommendations on the issues on which the parties could not agree and present them to the Texas Commission for review and resolution, and have that Commission issue an Order containing the requisite changes to the performance measures and the remedy plan, constituted the "arbitration" referenced in section 6.4. Without such an understanding of the six-month review process, there is little incentive for any CLEC to expend increasingly scarce resources engaging in a process that does nothing more than develop a Commission "proposal" for SWBT's discretionary consideration, with CLECs required to separately arbitrate any issues where SWBT declines to accept the Commission's recommendation. SWBT's contrary interpretation – under which the Commission's Order at the conclusion of a six-month review is merely a device for commencing arbitration proceedings – would so protract the process of changing SWBT performance measures as to render the six-month review useless except as a means for making changes agreeable to SWBT. AT&T notes that the Kansas Staff shares AT&T's concern over SWBT's "arbitration" interpretation, stating that separate arbitrations are contrary to the agreed-to region-wide review, would increase resource demands, and would likely result in non-uniform PMs.

7. SWBT's interpretation would reduce the six-month review process (or any other matter addressed in Project No. 20400 through a similar collaborative process) to nothing more than a Staff-supervised negotiation, to be followed by separate arbitration proceedings on disputed issues. If SWBT were free to compel a separate arbitration proceeding before complying with provisions of orders like Orders 45 and 46, SWBT's incentive to reach agreement on any point of concern to CLECs is virtually eliminated. At the same time, a CLEC who may have identified a serious flaw in the performance measures or SWBT's implementation will have to add the expense of a separate arbitration to the already considerable effort required

to participate in the collaborative process, if it is to have any serious prospects for bringing about a change that SWBT is likely to dispute.

8. In concluding that the public interest would be met by grant of SWBT's Texas 271 application, the FCC relied on its finding that the performance remedy plan in the T2A "provides additional assurance that the local market will remain open after SWBT receives section 271 authorization." *SBC Texas Order* ¶¶ 417, 420. In reaching that conclusion, the FCC rejected CLEC objections to the scope and meaningfulness of SWBT's performance measures, finding that "the plan is not static." *Id.* at ¶ 425. The FCC cited this Commission's report that "a six month review process is in place to assure that the plan is not static in nature. The Texas Commission, in conjunction with SWBT and the competitive LECs, will engage in comprehensive review of the performance measures to determine if commercial experience indicates that changes are necessary." *Id.* at n. 1243. Regular, meaningful review of the measurements was important to the FCC's conclusions about the Texas remedy plan: "[t]his continuing ability of the measurements to evolve is an important feature because it allows the Plan to reflect changes in the telecommunications industry and in the Texas market." *Id.* at ¶ 425.

9. In seeking FCC approval of SBC's 271 Application for Missouri, both SWBT and the Missouri Public Service Commission relied heavily upon the six-month performance reviews conducted by the Texas PUC. For example, the Missouri Public Service Commission explained that the Missouri PSC Staff "has regularly participated in the six-month performance measurement review process held by the Public Utility Commission of Texas."<sup>2</sup> In addition, in addressing performance related issues raised during Case No. TO-99-227, SWBT argued, "that

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<sup>2</sup> CC Docket No. 01-194 - In the Matter of Application of SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, Written Consultation Of The Missouri Public Service Commission, September 10, 2001, pg. 25

the performance measure issues were more appropriately addressed in the six-month review process as set out in the Performance Remedy Plan, thus allowing the collaborative process to work.”<sup>3</sup> In response, the Missouri Commission accepted SWBT’s view and directed its Staff to participate in the six-month performance reviews held by the Texas PUC. If SWBT’s view of the six-month review process is allowed to prevail, then SWBT will have the discretion to forestall any evolution of the performance measurements that is not to its liking, unless and until that change is established through the effort and expense of a separate arbitration, outside of the six-month review process itself. SWBT’s latest view would also render the Missouri Staff’s participation in the six-month performance reviews held by the Texas PUC meaningless.

10. If the Commission allows SWBT’s view to prevail, establishing and enforcing performance measurements in a time frame that is competitively relevant to fast-changing technology – which has been difficult enough to date -- will become an impossibility because whenever the issue is significant, SWBT to force separate arbitration proceedings. Accordingly, the Commission should adopt Staff’s recommendation to adopt the decisions made by the Public Utility Commission of Texas in Orders Nos. 45 and 46 for updating the performance measures contained in the M2A. The Commission should also reject SWBT’s assertion of the right to selectively disregard features of an order resolving a six-month review proceeding. In so doing, the Commission should make clear that the results of the six-month review process are binding on SWBT and other parties to interconnection agreements that include Attachment 17 of the M2A, without the need for a separate arbitration or other further proceedings.

WHEREFORE, AT&T respectfully requests that the Commission consider these comments and adopt Staff’s recommendation to adopt the decisions made by the Public Utility

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<sup>3</sup> Case No. TO-99-227, *In the Matter of the 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, Order Denying Motions To Reconsider Recommendation And Opening Case For Monitoring Purposes*, September 4, 2001, pgs. 4 and 5.

Commission of Texas in Orders Nos. 45 and 46 for updating the performance measures contained in the M2A.

**AT&T COMMUNICATIONS OF  
THE SOUTHWEST, INC.**

By: Rebecca B. DeCook *Tn*  
Rebecca B. DeCook  
1875 Lawrence Street, Suite 1575  
Denver, CO 80202  
(303) 298-6357  
(303) 298-6301 (FAX)

J. Steve Weber MO Bar #20037  
101 W. McCarty, Ste. 216  
Jefferson City, MO 65101  
Tel: 573-635-5198  
Fax: 573-635-9442  
jsweber@att.com

ATTORNEYS FOR AT&T  
COMMUNICATIONS OF THE  
SOUTHWEST, INC.

(..continued)



# Exhibit 1

11/08/02  
AT&T

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**AT&T COMMUNICATIONS OF TEXAS, L.P.'S RESPONSES TO  
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cc: All Parties of Record

**PROJECT NO. 20400**

<b>SECTION 271 COMPLIANCE MONITORING OF SOUTHWESTERN BELL TELEPHONE COMPANY OF TEXAS</b>	<b>§ § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**AT&T COMMUNICATIONS OF TEXAS, L.P.'S RESPONSES TO  
SWBT'S MOTION FOR RECONSIDERATION AND SWBT'S COMPLIANCE  
FILING FOR THE 2002 PERFORMANCE MEASUREMENT REVIEW**

AT&T Communications of Texas, L.P. ("AT&T") submits these responses to SWBT's Motion for Reconsideration and Clarification of Order No. 45 and to SWBT's Performance Measurement Compliance Filing For the Third Six-Month Review, both filed November 1, 2002. For the reasons set forth below and based on the evidence and pleadings previously submitted during this review, SWBT's motion for reconsideration should be denied in all respects. SWBT's compliance filing should be modified to correct one significant departure from the requirements of Order No. 45 – the inclusion in Appendix Two to the business rules of "disposition codes" that were not included in the prior version of that Appendix and have not received the required review and approval by this Commission.

**I. SWBT's Motion For Reconsideration Should Be Denied**

SWBT's motion advances no new arguments and offers no basis for this Commission to alter any of the rulings that it made in Order No. 45. The Commission's modifications to the application of the K value in the remedy plan were well grounded in the evidence presented during the review. SWBT's heated rhetoric in opposition to these modifications is largely irrelevant.

With respect to rulings on particular measures, AT&T also will offer brief response in support of the Commission's decisions regarding PM 5 (FOC return), PM 115.2 (hot cut outages), and disaggregated PM reporting for line-splitting.

**A. The Modifications to the Remedy Plan are Well-Supported Substantively and Procedurally**

Order No. 45 requires changes to two provisions of the remedy plan – sections 8.3 and 11.1.1 of T2A Attachment 17. Order No. 45, Attachment A at 162-65. The record developed here fully supports the conclusion that those changes are warranted, in order to prevent the K value from continuing to excuse performance failures that the K value never was intended to excuse. Those modifications should cause the K value to more nearly serve its intended purpose and no more – namely, to prevent the remedy plan from requiring SWBT to pay sanctions for performance measurement statistical violations that result from random variation in the data, rather than real instances of discriminatory or substandard performance. The changes also will correct aberrations in application of the K value so that, for any given CLEC, lesser performance failures by SWBT will be excused before more serious performance failures are excused. Again, this tailoring is in keeping with the original intent behind the K value provisions of the remedy plan.

Procedurally, the Commission's modifications to the remedy plan find ample support in the latitude that was provided to SWBT to introduce evidence on these issues and to confront the evidence offered by AT&T and others. They also are grounded in precedent created during this Commission's first six-month review, when SWBT successfully sought modification of the remedy plan over AT&T's objection.

**1. Record Evidence Supports the Specific Remedy Plan Modifications Required Under Order No. 45**

The modifications directed by the Commission are directly responsive to the unexpected, unjust applications of the K value that were demonstrated by real evidence of the K value in operation. This review offered the first examination of how K actually applies to individual CLEC performance results, in the form of SWBT's own remedy plan report to AT&T for May 2002.<sup>1</sup> That evidence showed, for example, that in a month where SWBT recorded 12 parity or benchmark violations involving measures with more than 10 reported transactions, SWBT was required to pay only on the 4<sup>th</sup> and 9<sup>th</sup>-most serious violations, while "K" operated to excuse three violations serious enough to result in potential Tier 1 payments in excess of \$ 10,000 each, including repeat violation of a "High" maintenance-related measure as well as "Low" measures. Such arbitrary results plainly had not been intended by including the K value as part of SWBT's remedy plan. The remedy plan is supposed to provide both remedy and discipline in response to performance failures that impact particular CLECs or specific wholesale products or functions, regardless of any debate regarding "overall" performance. The Commission's modifications respond directly, and proportionately, to tailor application of the K value in keeping with the purpose of the plan and the intended role of "K" within it.

SWBT's motion for reconsideration largely avoids discussion of this evidence. Instead, SWBT pleads that these modifications will result in substantial dollar sanctions (the logical equivalent of the plea for a revenue stream that SWBT so often misattributes to CLECs and holds up for ridicule whenever the remedy plan is criticized). To the

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<sup>1</sup> Order No. 45, Attachment A at 164. See AT&T Communications of Texas, L.P.'s Post-Workshop Comments on the 2002 Performance Measurements Review at 20-22 (September 10, 2002) (hereafter "AT&T Post-Workshop Comments").

extent these modifications do result in a substantial increase in performance sanctions, that can only mean that the misplaced, excessive application of the K value that was illustrated during these proceedings is in fact widespread. A substantial increase in sanctions will result only if "K" is operating to excuse many repeat performance violations and to excuse more serious violations while allowing SWBT to pay on lesser violations. These facts would make the Commission's modifications more imperative, not less so. Moreover, even at the levels suggested in SWBT's motion, its Texas remedy payments would remain only a very small fraction of the \$ 289 million in annual liability exposure that SWBT agreed to put at risk, and this Commission and the FCC agreed was appropriate to put at risk, as part of gaining entrée to the long-distance market in which it so readily captured a substantial share. In that context, a hypothetical \$ 8.3 million increase in Texas Tier 1 payments to redress repeat Tier 1 violations, relatively serious violations, and violations impacting very small-volume providers is well within the level of sanctions contemplated by the plan, even if the great majority of measurements are reported in compliance with parity and benchmark standards.<sup>2</sup>

SWBT accuses the Commission of "ignor[ing] . . . the QualPro study results in ordering these modifications." SWBT Motion at 4. On the contrary, it is SWBT who has ignored its own consultants' testimony. QualPro presented its study in response to CLEC's primary recommendation, to eliminate the K value from the remedy plan

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<sup>2</sup> There also is reason to be skeptical of the size increase in sanctions projected by SWBT. For the last four months for which SWBT's reported remedy payment totals are available – May through August 2002 – SWBT has reported \$ 457,559 average monthly Tier 1 payments to CLECs for Texas performance. (The "K" value only affects Tier 1 payments). See "Tier 1 Liquidated Damages and Tier 2 Assessments," posted at <https://pm.sbc.com/sw-common/Tier1-Tier2Payments.xls>). SWBT's hypothesis of an additional \$ 700,000 per month in Texas would substantially more than double current payment levels. Regardless, if SWBT's projection is not exaggerated, it can only imply that a tremendous number of repeat performance violations and relatively serious violations are being excused by K today.

altogether. The Commission rejected that recommendation in Order No. 45, however, and approved only some of the alternate recommendations proposed by AT&T and others. QualPro's witness agreed that the firm had not addressed these alternate recommendations and testified that the studies undertaken by QualPro did not bear on those recommendations. Tr. 820-21. The QualPro study, like much of SWBT's presentation in these proceedings, simply failed to address the particular problems that have resulted from application of the K value in practice. The modifications required under Order No. 45 are tailored to those particular problems.

Extending section 8.3 to all Tier 1 measures is not indiscriminate – SWBT long has asserted, and this Commission and the FCC have agreed, that all Tier 1 measurements are “customer-affecting.” *Texas 271 Order* ¶ 422. The modification to section 8.3 properly recognizes that repeat violations of any Tier 1 measure affect end-use customers. SWBT ignores the fact that Tier 1 payments serve not only a deterrent, but also a proper compensatory purpose. In words that SWBT agrees to every time it enters an interconnection agreement containing the T2A form of Attachment 17 – Tier 1 payments serve as “a reasonable approximation of any contractual damage resulting from a non-compliant performance measure.” T2A Attachment 17, § 6.1. Including all Tier 1 measures in section 8.3 is a modest step to ensure that that purpose will be served in at least one circumstance where it is clear that random variation is not at work – repeat violations.

SWBT's complaint that chronic failures may result from defects in the measures themselves rings hollow (SWBT Motion at 5-6). After years of experience with these measures and three comprehensive reviews in which SWBT has been able to raise and

generally obtain revisions to address perceived defects in the measures, the remedy plan should operate on the presumption that the parity and benchmark standards are appropriate and meaningful.<sup>3</sup> Requiring payment of Tier 1 sanctions to begin with the second consecutive month of violation also does nothing more than limit application of “K” to its intended purpose. When SWBT violates one of these measures for the second time in a row, the Commission can have 99.75% confidence that that violation is not the result of random variation.<sup>4</sup> Where random variation is not at work, there is no justification for applying the K value, as the Commission’s change to section 8.3 recognizes.

The record also fully supports the Commission’s decision to require that, for purposes of applying K, SWBT rank its violations for a CLEC in any given month in order of the amount of damages potentially due for each violation, such that K will apply first to excuse less severe (i.e., lower-damage) violations. Order No. 45, App. A at 164. AT&T Post-Workshop Comments at 21-22. The Commission properly found, and SWBT does not really dispute, that under the current plan “Tier-1 damage amounts are significantly lower than the amount potentially due if the PMs were excluded under the K-table based on the dollar amounts.” *Id.* Indeed, the Commission’s modification will do much better to serve the “rational and valid” purpose of the K ranking that SWBT itself articulates – “to ensure that the performance measures with the greatest impact on CLEC end-users are not excluded . . . .” SWBT Motion at 6. This change simply

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<sup>3</sup> The procedural cap provided in section 7.3.1 also protects SWBT in the unlikely event that some unjust application of the measures causes it to accumulate liability to an individual CLEC or CLECs collectively in excess of specified thresholds.

<sup>4</sup> SWBT’s plan is designed to provide a 95% confidence level that any individual performance violation is not the result of random variation, leaving a 5% risk that random variation is at work. The risk that random variation will cause violation of the same measurement for two consecutive months is 5% times 5%, or 0.25%.



recognizes that the lines between Tier 1 “Low,” “Medium,” and “High” measures are not absolute. An extreme failure of SWBT’s pre-order responsiveness (Tier 1 Low) surely can have greater impact than performance that barely fails the parity criterion for a Medium or even High measure. As the evidence at the workshop showed, the current plan always excuses the Low measure first, regardless of the severity of the violation and the number of customers affected. The Commission’s modification will continue to give force to the distinction between High, Medium, and Low, because the very different dollar multipliers that apply in each category will most often result in dollar-based rankings that parallel the classifications. In those instances when lower-category violations result in higher damages, however, the fair inference is that those violations are the more important, customer-affecting violations to which Tier 1 payments should apply.<sup>5</sup>

## **2. The Modifications to the Remedy Plan Are Procedurally Proper**

These proceedings provided SWBT with a full and fair opportunity to contest CLECs proposed modifications to the remedy plan. Indeed, SWBT took the liberty on more than one occasion to submit evidence to the Commission after the time provided in applicable scheduling orders and after SWBT had had the opportunity to review CLECs timely-submitted evidence and arguments.

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<sup>5</sup> The change directed in Order No. 45 also will place greater weight on the number of “occurrences” that are multiplied by the “per occurrence” amount to arrive at the required Tier 1 payment, providing a better gauge of severity than the current reliance on the total volume of transactions measured in a month. The latter focus has tended to excuse relatively serious violations in such critical areas as maintenance measures, simply because those measures are based on units (trouble reports) that tend to be smaller in number than measures that are based on installation volume or lines in service.

CLECs' proposed changes to the plan were filed several weeks prior to the workshops conducted before Staff. See AT&T Communications of Texas, L.P.'s Recommendations for the Performance Measurements Review 7-10 (June 25, 2002) (hereafter "AT&T Recommendations").<sup>6</sup> CLECs offered to discuss those changes with SWBT during the negotiation calls provided for in the review schedule, but SWBT declined. When it came time to submit the disputed issues matrix to the Commission in anticipation of the workshops, CLECs submitted their proposals and supporting argument. See Joint Matrix at 147-60 (August 1, 2002). SWBT, however, included only limited argument in the matrix, stating instead that it would "file next week in brief, a complete position statement regarding the Remedy Plan issues raised by the CLECs." *Id.* at 151. SWBT indeed followed a week later not only with a brief, but with two reports from the QualPro consulting firm, one of which SWBT had received in November 2001 but chose not to share until after the time for submitting the matrix had passed.

At the August workshops, SWBT was permitted full reign in presenting evidence on the remedy plan issues. SWBT insisted that CLECs, as proponents of changes to the plan, present their evidence first, and they did so. SWBT then made a prepared presentation through two expert witnesses from the QualPro firm. AT&T brought its statistical expert to the workshop. Staff questioned both SWBT and AT&T witnesses, and SWBT witnesses took the opportunity to engage in direct exchanges with AT&T's expert, in the same fashion common to examination of witness panels in other Commission proceedings. No party, including SWBT, was restricted in length of

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<sup>6</sup> This filing included both the proposal to eliminate application of K for repeat violations and to rank violations in order of the applicable Tier 1 payment for purposes of applying K, as well as other recommendations that were not accepted by the Commission.

presentation on these issues during the workshop, and no party indicated any need or desire for additional workshop time to present evidence.

Following the workshops, the parties again were invited to submit comments on these and other issues. SWBT took that opportunity not only to submit argument, but to offer supplemental or surrebuttal testimony from its experts, based on questions that had arisen at the workshops. *See* SWBT's Post-Workshop Brief, Attachment C (September 10, 2002) (QualPro's "Comments and Clarification Regarding Testimony During the Performance Measurements Workshop on August 15, 2002).

In short, SWBT had notice of CLECs' claims, the opportunity to present affirmative evidence, and the opportunity to confront CLEC witnesses and evidence, equal to the procedural rights it would have enjoyed in any other form of arbitration or dispute resolution before the Commission. Indeed, AT&T proposed an even more formal final day of hearing to be conducted at the conclusion of the workshops, *see* AT&T Recommendations at 6, but SWBT objected to that procedure. SWBT should not be heard to claim that the Commission's determinations in Order No. 45 suffer from a want of procedure.

Further, SWBT itself has used the six-month review proceedings to propose changes to the remedy plan (as distinct from performance measures), with success and over CLEC objection. In the first six-month review, SWBT proposed to modify sections 11.1.2.1 and 12.1.2 of Attachment 17. These provisions set out the steps used to calculate Tier 1 and Tier 2 payments for measurements expressed as means (e.g., mean time to restore). Under the T2A as approved in SWBT's 271 proceedings, these provisions could result in SWBT paying damages on more than 100% of the

“occurrences” in a single month, if its reported performance was more than double the maximum level that would meet the parity requirement. In the six-month review, SWBT asserted that the formula should be changed to cap the percent of occurrences subject to payment at 100%. *See* Order No. 15, Att. C, at 9 (July 19, 2000). The Commission adopted SWBT’s proposed change, reducing the amount of damages otherwise payable under these provisions, over AT&T’s objection. *See id.* The restriction to 100% was added to Step Two under sections 11.1.2.1 and 12.1.2, where it can be found today.

The Commission’s remedy plan modifications in Order No. 45 represent just the same type of “fine-tuning” that SWBT sought and received in Order No.15. SWBT’s only objection is that the current modifications are sought by CLECs and may serve to permit the remedy plan to fulfill its intended purposes. The remedy plan modification sought and received by SWBT in 2000 stand as its admission that the type of modifications directed in Order No. 45 fall squarely within the six-month review procedure outlined in section 6.4 of the T2A.

**B. The Commission’s Rulings on Particular Measures Should Stand**

AT&T responds briefly to portions of SWBT’s motion as it relates to particular measures.

**1. PM 5**

SWBT urges that the “tail” test should be eliminated in connection with the reduction in the PM 5 benchmark. (SWBT Motion at 9). The result would be to eliminate any restraint on the time permitted for SWBT to return FOCs on 5% of CLEC orders.

The 45-minute benchmark for electronically submitted and processed orders was well justified, given the instantaneous FOC equivalent that SWBT provides to its retail operations. There is no basis for eliminating the tail test as a consequence of this modest reduction in the benchmark. If the Commission is concerned at the prospect of reducing the benchmark for the tail test in correspondence with the change in the main PM 5 benchmark, the appropriate response would be to leave the tail test as is – the slowest 5% of FOCs must be returned in an average of 1.2 hours, while lowering the 95%-return benchmark to 45 minutes. AT&T had proposed similarly to leave the tail test at 1.2 hours in connection with moving the 95% benchmark to 30 minutes.

## **2. PM 115.2**

The Commission's decision to set the benchmark for hot cut outages at 2% was directly supported by evidence AT&T put forward regarding the role that higher outage rates had played in driving AT&T to convert newly-won business customers to UNE-P, thereby avoiding the hot cut process. *See* AT&T Post-Workshop Comments at 13. That evidence is directly relevant to the legal and policy test that should govern benchmark definition – whether the benchmark provides CLECs a “meaningful opportunity to compete.”

SWBT's motion avoids any discussion of that issue and instead simply argues that the 2% benchmark is not grounded in recent data. In fact, the data that SWBT cites shows SWBT meeting a 2% standard more often than not and belies any claim of unreasonableness. The more important point is that benchmarks should not be based on whatever performance level SWBT's data shows that it can meet, but rather on what the evidence shows is required to provide an efficient competitor with a meaningful

opportunity to compete. The evidence presented on that point supported a 1% benchmark, and certainly there is no reason to retreat from the 2% mark set in Order No. 45.

### **3. Line Splitting (PMs 55.1, 56, 58, 59, 60, 65, 65.1, 67, 69)**

SWBT's opposition to separate reporting of line-splitting transactions under these measurements has nothing to do with performance measurement, and everything to do with SWBT's continued policy objection to recognizing line splitting as the distinct, and competitively potent, wholesale arrangement that it is. The Commission's decision to require this disaggregation is fully justified by: SWBT's agreement in the 2001 review to develop such disaggregations, as set forth in General Business Rule D, which SWBT cynically refuses to acknowledge; SWBT's admission that it has developed a single-LSR process for at least one species of line-splitting transactions (converting existing UNE-P customers to line-splitting arrangements using CLEC-provided splitters); and the need to identify SWBT's performance with respect to these distinct wholesale arrangements (just as SWBT does with UNE-P), rather than to obscure that performance in a mix with SWBT provisioning or maintenance performance for stand-alone loops and ports. *See AT&T Post-Workshop Comments at 10-12.*

## **II. SWBT's Appendix Two Does Not Conform to Order No. 45**

Appendix 2 to the business rules lists certain "series 13" disposition codes used by SWBT in response to trouble reports. The POTS (resale and UNE-P) maintenance measurements exclude transactions that are closed to these codes (with limited exception). Accordingly, listing a code in Appendix 2 is tantamount to adding an exclusion to these measures.

Consistent with the agreement reached during the workshops, SWBT's compliance filing revised the language of Appendix 2 to provide that codes may not be added to the appendix without CLEC consent or Commission approval. *See* SWBT Compliance Filing, PM Business Rules version 3.0, Appendix 2. However, SWBT went on to include in Appendix 2 several codes that have not been agreed to by CLECs or approved by this Commission. SWBT has included in its compliance filing a series of codes that SWBT has used to exclude transactions from the performance measures, without ever obtaining agreement or approval for adding them to Appendix 2. These include such codes as 1328, "CLEC report generated in error," an open-ended category that has spawned serious controversy in application.

SWBT did not put these codes forward as proposed PM changes in this review, where they could have been the subject of workshop discussion and terms for limiting their application could have been considered. Accordingly, AT&T urged that these codes not be included in Appendix 2 at this time and on this record. AT&T Post-Workshop Comments at 6-9.

The Commission ruled on this point as follows: "The Commission clarifies that Appendix 2 may not be unilaterally modified by SWBT. If SWBT determines that additional disposition "13" codes should be added to Appendix 2 prior to the next PM review, SWBT shall file a request for review in Project No. 20400 and the Commission will address it at that time." Order No. 45, Att. A, p. 74. Pursuant to that ruling, SWBT should not have added code 1328 or any other codes to Appendix 2. Accordingly, SWBT should be directed to strike the following codes from Appendix 2 in its compliance filing and to cease relying on those codes to exclude data from the performance measures:

1315, 1327, 1328, 1329, 1340, 1356, 1374, 1375. If SWBT wishes to add any of these codes to Appendix 2 prior to the next PM review, it should file the request for review in this project as directed, where the proposal can be contested and limiting terms considered.

### **Conclusion**

Wherefore, for the reasons stated here and based on the evidence and argument presented in these PM review proceedings, AT&T requests the Commission to deny SWBT's motion and to require SWBT to correct Appendix 2 of its compliance filing to eliminate any disposition codes that were not included in that Appendix in version 2.0.

Respectfully submitted,

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Michelle Sloane Bourianoff  
TBN #02925400  
AT&T COMMUNICATIONS OF TEXAS, L.P.  
919 Congress Avenue, Suite 900  
Austin, Texas 78701-2444  
Telephone: 512-370-1083

Kathleen M. LaValle  
Patrick R. Cowlshaw  
JACKSON WALKER L.L.P.  
901 Main Street, Suite 6000  
Dallas, TX 75202  
Telephone: 214-953-6000



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing in Docket TO-99-227 was served upon the parties on the following service list on this 12<sup>th</sup> Day of December, 2002 by either hand delivery or placing same in postage page envelope and depositing in the U.S. Mail.

*Rebecca B. DeCook* 

General Counsel  
MO Public Service Commission  
PO Box 360  
Jefferson City, MO 65102

Paul G. Lane/Leo J. Bub  
Anthony Conroy/Mimi MacDonald  
Southwestern Bell Tel. Co.  
One Bell Center, Rm. 3520  
St. Louis, MO 63101

Richard S. Brownlee, III  
Hendren and Andrae  
PO Box 1069  
Jefferson City, MO 65102

James M. Fischer  
Fischer & Dority  
101 Madison, Suite 400  
Jefferson City, MO 65101

Karl Zobrist/Christine Egbarts  
Blackwell Sanders Peper Martin  
2300 Main Street, Suite 1100  
Kansas City, MO 64108

Mark W. Comley  
Newman, Comley & Ruth  
601 Monroe Street, Ste. 301  
Jefferson City, MO 65101

Office of the Public Counsel  
PO Box 7800  
Jefferson City, MO 65102

Carl J. Lumley/Leland B. Curtis  
Curtis, Oetting, Heinz, Garrett &  
Soule  
130 S. Bemiston, Ste. 200  
Clayton, MO 63105

Stephen F. Morris  
MCI Telecommunications Corp.  
701 Brazos, Suite 600  
Austin, TX 78701

Kenneth A. Schiffman  
Sprint Communications  
8140 Ward Parkway, 5E  
Kansas City, MO 64114

Mary Ann Young  
William D. Steinmeier  
2031 Tower Drive  
Jefferson City, MO 65110

Charles Brent Stewart  
Stewart & Keevil  
1001 Cherry Street, Ste. 302  
Columbia, MO 65201

Craig Johnson  
305 E. McCarty  
PO Box 1438  
Jefferson City, MO 65102

James D. McMullen/Mark Johnson  
Sonnenschein Nath & Rosenthal  
4520 Main Street, Ste. 1100  
Kansas City, MO 64111

W. R. England, III  
Brydon, Swearngen & England  
312 E. Capitol Ave.  
Jefferson City, MO 65101

Ronald Molteni  
Assistant Attorney General  
PO Box 899  
Jefferson City, MO 65102

Peter Mirakian, III  
Spencer Fane Britt & Browne LLP  
1000 Walnut, Ste. 1400  
Kansas City, MO 64106

Michael Ferry  
Gateway Legal Services, Inc.  
4232 Forest Park, Ste. 1800  
St. Louis, MO 63108

Lisa Creighton Hendricks  
6450 Sprint Parkway, Bldg. 14  
Mail Stop: KSOPHN0212-2A253  
Overland Park, KS 66251

Michael C. Sloan  
Swidler Berlin Shereff Friedman  
3000 K Street NW, Ste. 300  
Washington, DC 20007-5116

Bradley R. Kruse  
McLeodUSA Telecommunications  
PO Box 3177  
Cedar Rapids, IA 52406-3177

Paul H. Gardner  
131 East High Street  
Jefferson City, MO 65101