

**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.)	

RESPONSE OF SOUTHWESTERN BELL TELEPHONE COMPANY

COMES NOW Southwestern Bell Telephone L.P., d/b/a Southwestern Bell Telephone Company (SWBT), and pursuant to the request of the Missouri Public Service Commission (Commission) made at the August 1, 2002, prehearing conference in this case, submits the following additional information regarding xDSL performance measures (PMs) to the Commission:

1. At the August 1, 2002 prehearing conference, SWBT summarized its position with respect to both new PMs and modifications to existing PMs that resulted from the most recent six-month review process conducted in April, 2001, pursuant to the direction of the Texas Public Utility Commission (PUC) in Project No. 20400. Under the express terms of Section 6.4 of Attachment 17 of the Missouri 271 Interconnection Agreement (M2A), any changes to existing performance measurements or the remedy plan which result from the six-month review process in Texas can only be included in Attachment 17 of the M2A if SWBT agrees to the change. With respect to new PMs which result from the Texas six-month process, Section 6.4 of Attachment 17 of the M2A provides that unless SWBT agrees to a new PM, no new PM may be included in Attachment 17 of the M2A unless it results from a final, Missouri-specific arbitration proceeding conducted by the Commission.

2. As SWBT described in its March 18, 2002, Motion to Update Attachment 17 of the M2A, and summarized at the August 1, 2002, prehearing conference, there is one area of new PMs and two modifications to existing PMs that resulted from the six-month review conducted in April, 2001, by the Texas PUC which SWBT did not agree to in Texas, and which SWBT does not agree to include in the M2A in Missouri. These three areas of PMs relate to: 1) new PMs relating to tariffed retail special access services; 2) the implementation of existing PM 1.2; and 3) changes in how payment penalties are calculated under PM 13.¹

3. At the August 1, 2002, prehearing conference, AT&T Communications of the Southwest, Inc. (AT&T) and NuVox Communications of Missouri, Inc., XO Missouri, Inc., MCI WorldCom Communications, Inc., MCI WorldCom Network Service, Inc., MCIMetro Access Transmission Services, LLC, and Brooks Fiber Communications of Missouri, Inc. (NuVox, et al.) raised the issue of changes to certain xDSL PMs, which counsel for AT&T represented had been “ordered” by the Texas PUC² and counsel for NuVox, et al. represented the Texas PUC was “requiring”³ in Order No. 39, issued on December 20, 2001, in Project No. 20400. AT&T and NuVox, et al. questioned whether SWBT would agree in Missouri to implement the modifications to the xDSL performance measurements which AT&T and NuVox represented were required in Texas. AT&T also referred the Commission to Page 2 of its April 11, 2002, Response in this case, in which AT&T stated that “SWBT has not sought reconsideration of Texas Order No. 39.”⁴

¹ To the extent that, in Order No. 33, the Texas PUC also altered PM 13’s Tier 1 Measurement Type from “Low” to “High,” eliminated the measurement cap to individual CLECs, and made these and other changes applicable retroactively, the effect was also to change the remedy plan.

² Transcript of Prehearing Conference, Case No. TO-99-227, August 1, 2002, pp. 4, 5, 6 and 9.

³ *Id.*, p. 9.

⁴ *Id.*, p. 5.

4. Both AT&T and NuVox, et al. have misrepresented the status of the xDSL PMs addressed by the Texas PUC in its Order No. 39. First, AT&T's representation that SWBT did not seek reconsideration of the Texas PUC's Order No. 39 is false -- SWBT did seek reconsideration of the xDSL PMs addressed in Order No. 39. AT&T, along with NuVox, et al., also misrepresented the current status of the xDSL PMs and in particular, Order No. 39, by failing to disclose to this Commission that the Texas PUC has granted SWBT's Motion for Reconsideration of Order No. 39, and in particular the xDSL PMs addressed in that order, and has deferred consideration of the xDSL PMs to the next six-month review process.

5. SWBT has attached to this Response as Exhibit 1 a copy of the Texas PUC's "ORDER NO. 42, GRANTING SOUTHWESTERN BELL TELEPHONE COMPANY'S MOTION FOR RECONSIDERATION OF ORDER NO. 39 AND APPROVING MODIFICATIONS TO PERFORMANCE MEASUREMENTS" issued by the Texas PUC on May 9, 2002, in Project No. 20400. As the Commission will note from this Order, the Texas PUC granted SWBT's Motion for Reconsideration of Order No. 39 and found that it needed "a more complete record" with respect to the xDSL measurements addressed in Order No. 39. The Texas PUC also determined that those very same xDSL PMs which both AT&T and NuVox, et al. claimed at the prehearing conference in this case are already required in Texas "will be considered at the Performance Measurement review" (scheduled to begin on August 13, 2002, in Austin, Texas). Finally, the Texas PUC stated that changes to these xDSL PMs may or may not be ordered at some future time, based on the results of future six-month reviews conducted by the Texas PUC.

6. AT&T's and NuVox, et al.'s misrepresentations to the Commission regarding the Texas PUC's Order No. 39 and the status of the Texas proceedings aside, SWBT did not agree to

the changes to the Performance Remedy Plan for xDSL performance measures originally ordered by the Texas PUC in its Order No. 39, but since reconsidered by the Texas PUC in Order No. 42 (attached). Nor does SWBT agree that the Commission may order these changes to xDSL performance measurements be included in Attachment 17 of the M2A, even if they are ultimately adopted by the Texas PUC over SWBT's objection in the upcoming six-month review process, unless SWBT agrees to the change as required by Section 6.4 of Attachment 17 of the M2A.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by first-class, postage prepaid, U.S. Mail or via hand-delivery on August 8, 2002.



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PROJECT NO. 20400

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SECTION 271 COMPLIANCE §
 MONITORING OF SOUTHWESTERN §
 BELL TELEPHONE COMPANY OF §
 TEXAS 9

PUBLIC UTILITY COMMISSION
 OF TEXAS

ORDER NO. 42

**GRANTING SOUTHWESTERN BELL TELEPHONE COMPANY'S MOTION
 FOR RECONSIDERATION OF ORDER NO. 39 AND APPROVING
 MODIFICATIONS TO PERFORMANCE MEASUREMENTS**

At the March 21, 2002, Open Meeting, the Commission considered Southwestern Bell Telephone Company's (SWBT's) Motion for Reconsideration of Order No. 39 regarding ordered changes to the Performance Remedy Plan for xDSL PMs and PM 1.2. After considering the pleadings submitted by the parties and consistent with the discussion during the Open Meeting, the Commission grants SWBT's Motion for Reconsideration and orders appropriate modifications to the Performance Measurements.

The Commission finds that in order to evaluate a more complete record, required changes to the Performance Remedy Plan for xDSL measurements, ordered pursuant to Order No. 39, will be considered at the Performance Measurement review. If the Commission finds that SWBT's performance, with respect to xDSL measurements, continues to fail to meet the applicable standards set out in the Business Rules, further modifications may be necessary. The Commission may consider that no changes are necessary, that the Performance Remedy Plan, as it relates to xDSL performance measurements, shall be modified as ordered in Order No. 39, or that other changes to Performance Remedy Plan are more appropriate.

In addition, the Commission finds that PM 1.2 shall be implemented in accordance with Attachment A, as agreed to by the parties.

Ordering Paragraphs

1. S W T shall file a revised Version 2.0 of the Performance Measurements within **30** days of this Order. The revised Performance Measurements shall contain all of the modifications ordered herein.
2. SWBT shall also file revised appendices to the Performance Remedy Plan within the same time frame.¹ The revised appendices shall reflect the Commission's changes to the Performance Measurements.

SIGNED AT AUSTIN, TEXAS the 8th day of May, 2002.

PUBLIC UTILITY COMMISSION OF EXAS


BRETT A. PERLMAN, COMMISSIONER


REBECCA KLEIN, COMMISSIONER

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¹ There are two appendices in Attachment 17 to the T2A that are titled, "Measurements Subject to Per Occurrence Damages or Assessment with a Cap" and "Performance Measures Subject to Tier-1 and Tier-2 Damages Identified as High, Medium and Low."

ATTACHMENT A

Joint Agreement for Performance Measure 1.2
SBC Southwestern Bell and IP Communications

Date: March 11, 2002

This agreement outlines the terms and conditions for the evaluation of Performance Measure 1.2 as agreed upon between SBC Southwestern Bell (SWBT) and IP Communications (IP).

The terms and conditions shall cover the following areas:

1. Criteria
2. Statistical Sampling
3. Physical Test Process
4. Results Calculation
5. **Study** of Disturbers
6. Remedies Adjustments
7. Caveats on Physical Test Device "Accuracy"
8. Disclaimers

Criteria

The criteria for evaluation consist of six categories. Each category shall be separated into four groups based on the equivalent 26 Gauge Loop Length returned on the response. The parameters for defining whether a criteria in a particular grouping is met is as follows:

	26 Gauge Equivalent Length (kft) Indicated by Loop Qual			
Indicator	0-6	6-12	12-18	18+
Loop Length	+2kft	+1.5kft	+1kft	>17kft
Bridge	N/A	+1.5kft	+1kft	N/A
Load	N/A	N/A	Y/N	N/A
Loop Medium	Y/N	Y/N	Y/N	N/A
Repeaters	N/A	N/A	Y/N	N/A
Pronto Indicator	N/A	N/A	Y/N	Y/N

Statistical Sampling

Samples will be collected in a **random** manner from Actual Loop Makeup requests that return Loop Makeup Information. A sample large enough to represent an 85% confidence level will be assembled. Additional samples will be added to the population

to account for those customers who refuse permission to perform the test procedure. Samples will be assigned to the appropriate work center for dispatch to technicians.

Physical Test Process

Samples in the 0-6 kft range and 18+ kft groups shall first be tested remotely using Mechanized Loop Testing (MLT). If the MLT test passes the parameters above, that element of the sample shall be considered to pass for loop length and will only require dispatch for inspection of the loop medium type. If the sample does not pass, it will be dispatched for further testing. For each item in the sample dispatched to a Technician, the technician will provide test results for the six criteria. The criteria shall be measured using standard loop testing equipment (such as a Sunrise Test Set for Time Domain Reflectometry readings for overall-loop length, overall bridge tap length and presence of repeaters and H88 Load Coil Testers for Load Coil detection). The technician will use physical observation to determine if the loop is served by any loop medium other than Copper only, and will also use physical observation to determine whether the Pronto indicator is correct.

The technician will record the information on the ticket used to dispatch the item and will return it to the dispatch center. The technician will at no time have access to the original responses from the Loop Makeup Information.

Results Calculation

Administrators in the dispatch center will retrieve each sample item from the system. The results of each sample will be recorded in a Microsoft Excel® spreadsheet. For each entry, the administrator will enter the original responses from the Loop Makeup Information returned and the test results from the technician. The administrator will use the criteria table above to determine whether the item passed or failed. The item will be said to have failed if any of the items above fail to meet the parameters for that item. If any of the information is missing, a technician will be dispatched and the item retested.

The overall calculation of performance will be defined as the number of items that passed divided by the total number of items sampled.

Study of Disturbance

A separate study of the presence of disturbance will be performed during the first quarter in which the measure begins tracking. Criteria will be defined, a method of evaluation will be clarified, and a first assessment will be performed. This study shall complete no later than the end of the third reporting month for the modified Performance Measure.

Remedies Adjustments

The measurement shall be diagnostic for the first 12 months of reported data under this agreement. The parties have agreed that diagnostic period will be ~~from~~ May **2002** to April **2003**. **SBC** will provide CLECs the first diagnostic accuracy report on May 20, 2002 for April 2002 data and ~~the~~ final diagnostic accuracy report April **21**, 2003 for March 2003 data.

Caveats on Physical Test Device "Accuracy"

Physical Test Devices, such as the ones proposed for use within, measure the properties of the plant to which they are attached by estimating the measure ~~from~~ electrical and frequency measurements. External factors such ~~as~~ temperature, ~~moisture~~, presence of foreign ~~electrical~~ conditions and others will have ~~an~~ influence on the results. ~~The~~ test estimation results will not match precisely with the actual distance of ~~the~~ physical copper plant. The parties acknowledge that at this time the variation in the measured estimate is not ~~known~~.

Disclaimers

SWBT does not abandon its right to pursue Legal challenge of Order 39 including ~~any~~ appeal of ~~the~~ imposition of penalties at any date in the ~~future~~. **SWBT** and **IP** do not abandon the right to seek modifications to the sampling methodology at ~~future~~ six-month reviews; however, neither party will seek a modification through the six month review process prior to 2003.