

**SWB**  
**November 1, 2002**

**PROJECT NO. 20400**

<b>SECTION 271 COMPLIANCE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>MONITORING OF SOUTHWESTERN</b>	<b>§</b>	
<b>BELL TELEPHONE COMPANY</b>	<b>§</b>	<b>OF TEXAS</b>

**SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A SOUTHWESTERN BELL  
 TELEPHONE COMPANY MOTION FOR RECONSIDERATION AND  
CLARIFICATION OF ORDER NO. 45**

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CLARIFICATION OF ORDER NO. 45**

Southwestern Bell Telephone Company (SWBT) files this motion for reconsideration and clarification in response to the Commission's modifications to the performance remedy plan and to certain performance measurements in the third six-month review, as reflected in Order No. 45. The unwarranted modifications to the K Table's functionality in the performance remedy plan alone will result in increased monthly payments under the plan of approximately \$700,000 per month in Texas, or \$8.3 million annually.<sup>1</sup> The impact of the Commission decisions relating to the application of the K Table become even more significant when considering that the regulatory commissions of four other states served by SWBT<sup>2</sup> will implement the Commission's decisions in the context of the performance remedy plans in effect in their respective jurisdictions. Consequently, the overall financial impact of the modifications to the K Table methodology to SWBT in all affected states is approximately \$1 million a month, or in the neighborhood of \$12 million a year. Whether viewing the impact of the Commission's decisions relating to the K Table on the basis of Texas alone, or on a five-state basis, SWBT vehemently objects to those decisions as unwarranted and cannot agree to them, either individually or as a group. Indeed, if these modifications

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<sup>1</sup> These figures are based on three months of actual performance measurement data from June, July, and August 2002.

<sup>2</sup> The other affected states are: Arkansas, Kansas, Missouri, and Oklahoma.

were to stand, SWBT could continue to improve its performance in the provision of wholesale service to CLECs and nevertheless be subject to greater monetary liability under the plan, compared to its level of liability existing under the plan prior to its revision.

In this pleading, SWBT requests the Commission to reconsider certain modifications to the performance remedy plan and to reconsider and/or clarify rulings relating to certain performance measures. With respect to the performance remedy plan matters for which SWBT seeks reconsideration, this pleading serves as notice, pursuant to § 6.4 in Attachment 17 of the Texas 271 Interconnection Agreement (T2A),<sup>3</sup> that SWBT does not agree to those changes to the performance remedy plan. To the extent that the Commission does not reconsider the performance remedy plan modifications addressed in this motion, SWBT will weigh its options with regards to its rights under § 6.4 and will proceed accordingly.

#### **I. Reconsideration of Modifications to the Application of the K Table in the Performance Remedy Plan**

The primary purpose of this pleading is to request reconsideration of certain unwarranted modifications to the performance remedy plan ordered by the Commission in Order No. 45. Specifically, these Commission-ordered modifications affect the manner in which the K Table functions. These modifications, as stated in Order No. 45, are:

1. If a performance measure designated as Tier 1 is missed for two consecutive months, SWBT shall not exclude that performance measure from the calculation of Tier 1 payments under the K Table, beginning with the second month in

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<sup>3</sup> Section 6.4 of Appendix 17 to the T2A states in pertinent part: “Any changes to the existing performance measures and this remedy plan shall be by mutual agreement of the parties . . . .”

which the measure is missed. Additionally, SWBT shall not use the missed measures in determining the K value.

2. The ranking system for exclusions under the K Table will be based on dollar amounts, taking into account the severity, volume, and level of per unit penalty classification of the performance measure.
3. For any missed performance measure with less than or equal to ten transactions, SWBT shall make payments to the affected CLEC.

As noted above, these modifications to the performance remedy plan will result in a substantial increase in monthly payments under the plan. The Commission has sanctioned this negative financial impact to SWBT despite the record's plain demonstration of SWBT's improved performance under the performance remedy plan since obtaining § 271 approval from the FCC. It appears that that Commission has ignored the performance data provided by SWBT and the QualPro study results in ordering these modifications to the manner in which the K Table functions. Seemingly, in response to the complaints of the competitive local exchange carriers (CLECs) that their payments under the plan have gradually declined—a sure-fire indicator that the intent of the plan is being well-served—the Commission has chosen to punish SWBT for its good performance, rather than reward it.

Such a response effectively turns the objective of the performance remedy plan on its head. The plan's intended purpose is essentially two-fold: to provide sufficient incentives for SWBT to maintain a high level of wholesale service, and to provide sufficient disincentives for SWBT to engage in anti-competitive behavior. In approving the performance remedy plan, both the FCC and the Commission concluded that the plan, including the K Table and its application, met these objectives. By now modifying the manner in which the K Table is applied, however, the Commission appears to have placed a greater emphasis simply on the level of monies flowing to the CLECs under

the performance remedy plan, given the lack of nexus between the K Table-related modifications and SWBT's performance under the plan. Indeed, if those modifications stand, SWBT could continue to improve its performance in the provision of wholesale service to CLECs and nevertheless be subject to greater monetary liability under the plan, compared to its level of liability existing under the plan prior to its revision. The Commission's actions have, quite unfairly, changed SWBT's target performance midstream, to SWBT's financial detriment.

On their face, the individual modifications to the application of the K Table in the performance remedy plan are unjustified and contrary to the plan's objectives. In effect, these changes undercut any meaningful application of the K Table. First, the mandatory inclusion of any Tier 1 performance measure that is missed in the second consecutive month from the calculation of Tier 1 payments, and the concomitant exclusion of a missed measure from the determination of the K value, is an unreasonable response to SWBT's improved performance under the performance remedy plan as a whole. In applying this approach across the board to all performance measures, rather than to only specific measures (as reflected in § 8.3 of Attachment 17 of the T2A prior to the Commission's recent revision of the plan), the Commission has abandoned any differentiated judgment as to the impact that a missed measure will have upon the end-use customer, effectively holding SWBT to the same level of performance on each and every performance measure regardless of the degree of their impact on the CLEC's ability to serve end-users. This approach also fails to take into account that, in some cases, repeated misses for a particular performance measure are the result of the performance remedy plan's failure or inability to recognize differences

in processes used by CLECs and SWBT, or the consequence of certain CLEC business practices that adversely affect SWBT's performance.

Moreover, in mandating that the K Table cannot apply to a performance measure beginning in the second consecutive month in which it is missed—as opposed to the third consecutive missed month, as reflected currently in § 8.3 of Attachment 17 of the T2A prior to the Commission's recent revision of the plan—the Commission has severely compromised SWBT's ability to undertake the necessary steps to improve its performance prior to being subject to payments under the plan for consecutive misses of the performance measure. Again, these modifications to the application of the K Table in the context of consecutive misses appear aimed to simply increase the level of payments to CLECs under the plan, without regard to SWBT's improved performance since the FCC granted SWBT its §271 approval.

Similarly, the remaining modifications to the application of the K Table also appear motivated to increase SWBT's liability under the plan by increasing the amount of CLEC disbursements. By ranking exclusions under the K Table based on dollar amounts, taking into account the severity, volume, and level of per unit penalty classification of the performance measure, the Commission has usurped the high/medium/low classification scheme in the application of the K Table in the interest of ensuring that larger CLECs receive increased payments under the plan. The classification scheme serves a rational and valid purpose in the plan: to ensure that performance measures with the greatest impact on CLEC end-users are not excluded under the application of the K Table. Furthermore, in guaranteeing payments to CLECs for missed performance measures involving ten or less transactions, the Commission

has again usurped the high/medium/low classifications in the interest of ensuring that smaller CLECs receive increased payments under the plan.

In adopting these apparent piecemeal modifications to the performance remedy plan, the Commission has undercut the holistic structure of the plan, which cannot be viewed as a document of separate and stand-alone parts. The adoption of such modifications, in light of SWBT's improved performance in providing wholesale service to CLECs under the plan, makes them all the more egregious. Stated simply, the Commission's modifications are unwarranted and unfair. Moreover, these modifications to the performance remedy plan are beyond the scope of the sixth-month review as envisioned by §6.4 of Attachment 17. By its terms, §6.4 limits the review to a determination as to "... whether measures 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 Tier1." Clearly, such significant structural modifications to the performance remedy plan and T2A contract alternations were never intended.

Furthermore, according to the clear terms of § 6.4 of Attachment 17 of the T2A, any change or modification to the performance remedy plan requires the mutual agreement of the parties. This motion for reconsideration sets forth SWBT's rationale as to why it cannot agree to the modifications to the performance remedy plan in Order No. 45 addressed here. Accordingly, as SWBT has stated previously in this sixth-month review, § 6.4 requires that the performance remedy plan remain intact, as originally intended, if the parties cannot mutually agree to the modification to the plan, despite their best efforts to come to closure.

For the reasons stated, SWBT respectfully requests that the Commission reconsider these modifications to the manner in which the K Table functions in the performance remedy plan and retain the performance remedy plan intact without such changes.

## **II. Reconsideration And/Or Clarification Of Rulings Relating To Certain Performance Measures.**

For the reasons set out below, SWBT requests reconsideration and/or clarification of the rulings in Order No. 45 with respect to the following performance measures (PMs):

### **A. Single Disaggregation for EELs**

SWBT requests clarification of the Commission's ruling on enhanced extended loop (EEL)<sup>4</sup>. This issue was not included in the parties' joint list of issues and was not even raised until the workshop discussions. Because the issue was raised so late in the process, there was little or no substantive discussion to develop an understanding of this issue. SWBT agreed, however, to review this issue to consider what it would take to provide separate disaggregations. SWBT never contemplated that the Commission would order, with such specificity, the implementation of the EEL disaggregation without the benefit of full and open discussion in the sixth-month review process. Consequently, SWBT needs clarification from the Commission on the issues described below prior to being able to implement Order No. 45.

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<sup>4</sup> The EEL is a combination of Unbundled Network Elements (UNEs) consisting of certain Unbundled Loops and certain Unbundled Dedicated Transport, combined by SWBT, using the appropriate cross-connects, and where needed, multiplexing. The EEL connects a telecommunications carrier's end user in a Central Office (CO) where the telecommunications carrier is not collocated, via an unbundled loop, to a telecommunications carrier collocation arrangement in another central office, via Unbundled Dedicated Transport.



The Commission has ordered SWBT to report the following disaggregations for EELs: 2 wire analog, 4 wire analog, 2 wire digital, 4 wire digital, transport (DS0, DS1, DS3, OCx), and multiplexing.

SWBT seeks clarification of the following issues prior to being able to implement the EEL disaggregation:

- If multiplexing is needed, it must be ordered with the EEL loop and transport combination. It cannot be added later. Therefore, is a separate disaggregation for multiplex required?
- SWBT does not believe that the UNE Transport OCx is a component of the EEL and, therefore, does not agree that it should be included in the performance measure.
- SWBT does not believe that the UNE Transport DS0 is a component of the EEL offering in Texas and therefore does not agree that it should be included in the performance measure.

**B. PM 5**

SWBT seeks reconsideration of PM 5. While the Commission appropriately ruled that “there was insufficient evidence to show that reducing the benchmark would materially improve the CLECs ability to compete”, it ordered that the tails test portion of the FOC calculation for electronically submitted and electronically processed (elec/elec) LSRs remain a remedied part of the measurement. SWBT does not object to the reduction of the benchmark to 45 minutes. Under such a reduction, however, the tails test becomes even more onerous and near-impossible to meet. Under a 45-minute benchmark, the tails test gives SWBT only an additional 9 minutes in which the highest 5% of FOCs must be met. Because the tail remains subject to remedy, SWBT could pay CLECs for performance of the greatest 5% that averaged only 55 minutes, a level at which AT&T admitted did not adversely affect its ability to compete. Given SWBT’s excellent performance on elec/elec FOC and the fact that the CLECs agreed in the SBC

Ameritech regional sixth-month review collaborative to remove the tails test on elec/elec disaggregation, the tails test should be eliminated for SWBT in Texas as well.

**C. PM 13**

While SWBT is pleased with the Commission's ruling regarding the elimination of the Tier 1 LEX/EDI disaggregations for PM 13, it believes that the same ruling should have been made at the Tier 2 level. Flow through is not determined or designed at the LEX or EDI interface, but at LASR. The business rule logic that determines flow through eligibility is applied at LASR, not at the interface. The manner in which the electronic request is sent is not determinative, rather the type of request sent determines its ability to flow through.

Determining Tier 2 assessments at an interface level simply does not take into account the way that flow through is determined. Rather than being based on the overall flow through performance of LASR, the performance measure unfairly penalizes SWBT based simply on the mode of entry, which has nothing to do with order flow through. Therefore, SWBT requests the Commission to reconsider its ruling regarding Tier 2 flow through and make it payable at an aggregate LEX and EDI level.

**D. PM 115.2**

SWBT requests the Commission to reconsider its ruling ordering the reduction of the benchmark on PM 115.2 from 5% to 2%, which the Commission did based on the request by AT&T to reduce the benchmark to 1%. Although the Commission properly did not grant AT&T's request to reduce the benchmark to 1%, it has significantly lowered the current benchmark, which the FCC established in its order granting Bell Atlantic § 271 relief in New York. The chart below shows historical data for PM 115.2

for Texas CLECs, demonstrating SWBT's performance during 2002 by market area and statewide levels:

	<b>TEXAS</b>	<b>CW</b>	<b>DF</b>	<b>HS</b>	<b>ST</b>
<b>Jan-02</b>	<b>2.29%</b>	1.58%	1.88%	3.18%	3.08%
<b>Feb-02</b>	<b>2.38%</b>	2.78%	1.80%	2.73%	2.21%
<b>Mar-02</b>	<b>2.26%</b>	2.06%	2.50%	1.83%	3.33%
<b>Apr-02</b>	<b>2.68%</b>	0.94%	5.40%	2.71%	2.01%
<b>May-02</b>	<b>1.75%</b>	1.60%	1.64%	1.69%	2.53%
<b>Jun-02</b>	<b>1.32%</b>	0.93%	1.46%	1.93%	0.67%
<b>Jul-02</b>	<b>2.30%</b>	1.71%	3.90%	2.07%	1.02%
<b>Aug-02</b>	<b>1.30%</b>	0.83%	1.44%	1.55%	1.15%
<b>Sep-02</b>	<b>0.99%</b>	1.42%	1.01%	0.48%	0.80%

Clearly, this information demonstrates that AT&T's proposal to lower the benchmark to 1% is not supported by the informal discussions and the workshop discussions. It also does not support lowering the benchmark to 2% as well.

As the data in the chart indicates, SWBT's performance has exceeded the 5% benchmark every month and continues to improve to outstanding levels. However, superior performance should not be the basis for lowering the benchmark to the 2% level ordered in Order No. 45. This particular performance measure is payable at a market area level. The performance results for this measure have improved, not due to a lowered benchmark but due to SWBT's ongoing commitment to improving its provision of wholesale service. If the 2% benchmark ordered by the Commission had been in effect during the time spanned by the above chart, SWBT would missed the measure in one of the past three months and in six of the past nine months in at least one market area. Simply reducing a measure's benchmark for the purpose of reaching a point at which SWBT will miss the measure is not a legitimate basis for any such reduction. While SWBT does not believe that a reduced benchmark is neither necessary nor justified, based on the record in this six-month review, it would

nevertheless agree to support a 3% benchmark. Therefore, SWBT requests the Commission to modify its order to change the benchmark from 2% to 3%, which still represents a significant reduction from the previous 5% benchmark.

**E. PMs 55.1, 56, 58, 59, 60, 62, 65, 65.1, 67, and 69**

SWBT asks the Commission to reconsider its order requiring SWBT to provide a disaggregation for line splitting. SWBT does not provide “line splitting” to CLECs. Rather, SWBT provides the CLEC with UNEs that allow the CLEC to engage in line splitting. As such, SWBT has no “line splitting offering” to measure, but only has standard UNE offerings that are being utilized in a line splitting arrangement.

SWBT has agreed to develop, at the request of interested CLECs, a process to allow a migration of an existing UNE-P to the separate UNEs necessary to enable a CLEC to provision service in a line splitting arrangement via a single Local Service Request (LSR).

Upon receipt of the CLEC’s single LSR, SWBT issues the following service orders:

1. Disconnect existing UNE-P
2. Disconnect toll file guide
3. New Connect xDSL capable loop to collocation (reusing the existing loop if DSL capable). In all cases, central office work will be required to terminate the loop to the CLEC’s collocation arrangement. The request for an xDSL capable loop has a standard, mechanically assigned, five-day due date interval.
4. Establish analog switch port to collocation (reusing existing telephone number from UNE-P). In all cases, central office work will be required to terminate the analog switch port to the CLEC’s collocation arrangement.

All UNEs and services orders included in this process currently exist today and have performance measures associated with them. There are no unique USOCs

associated with line splitting. Once provisioned, SWBT systems are unable to distinguish a loop purchased for a line splitting arrangement from any other xDSL capable loop, which precludes SWBT from measuring these loops separately.

CLECs may also establish a new line splitting arrangement by requesting the UNEs needed to provide voice and data to their end user (e.g., xDSL capable loop, unbundled local switching including shared transport). For these types of arrangements, SWBT would generally not be aware that the CLEC was engaging in line splitting.

SWBT does not associate the stand-alone DSL-capable loop with the stand-alone analog switch port with transport used in a line splitting arrangement once the initial conversion from UNE-P occurs. SWBT never associates the stand-alone DSL-capable loop with the stand-alone analog switch port with transport when ordered new. In sum, SWBT does not have the ability to identify line-splitting arrangements that may be present in its network. For these reasons, SWBT requests that the Commission reconsider its ruling requiring SWBT to provide a disaggregation for line splitting.

### **III Conclusion**

For the reasons stated above, SWBT urges the Commission to reconsider the modifications to the performance remedy plan and certain performance measures set out in Order No. 45. Additionally, as stated above, SWBT does not agree to certain modifications to the plan and, for that reason, asserts the plan should remain intact as originally intended, in accordance with §6.4 of Appendix 17 to the T2A.

Respectfully submitted,

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**ATTORNEYS FOR SOUTHWESTERN  
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**CERTIFICATE OF SERVICE**

I, Kathleen S. Hamilton, Senior Counsel for SWBT, hereby certify that a true and correct copy of the foregoing document was served on all counsel of record on this 1<sup>st</sup> day of November, 2002.