

**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
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**

COMES NOW Southwestern Bell Telephone L.P., d/b/a Southwestern Bell Telephone Company (SWBT), and for 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 (Report and Recommendation), states to the Missouri Public Service Commission (Commission) as follows:

1. In its Report and Recommendation, Staff indicates that the Public Utility Commission of Texas (Texas PUC) has recently issued two orders (Order Nos. 45 and 46) in Project No. 20400, directing modifications to Version 2.0 of the Performance Remedy Plan included in Attachment 17 of the Texas 271 agreement (T2A).¹ The Texas PUC's orders directing these modifications resulted from the most recent six month performance measure review conducted by the Texas PUC. Staff attached copies of the Texas PUC's orders, as well as the "compliance filing" the Texas PUC required SWBT to make containing the ordered changes. Once the changes ordered by the Texas PUC become effective, Version 2.0 of the Performance

¹ Staff Report and Recommendation, par. 3.

Remedy Plan previously adopted by the Texas PUC will be replaced with these modifications, and will be known as Version 3.0 of the Performance Remedy Plan of the T2A.

2. SWBT's compliance filing, which was submitted to the Texas PUC on November 1, 2002, includes a revised T2A Attachment 17: Performance Remedy Plan-TX, a revised Appendix 1 thereto (a list of the measurements subject to per occurrence damages or assessment with a cap and measurements subject to per measure damages or assessment), a revised Appendix 2 thereto (a table identifying performance measures subject to Tier 1 and Tier 2 damages identified as high, medium and low), and a revised Appendix 3 thereto (the performance measurement "business rules" relating to Version 3.0).

3. The compliance filing submitted by SWBT in Texas on November 1, 2002, included numerous modifications to the T2A Performance Remedy Plan to which SWBT agreed in Texas and is willing to accept in Missouri. In addition, however, SWBT's compliance filing also included modifications to existing Version 2.0 of the T2A Performance Remedy Plan that SWBT does not believe are appropriate and has not agreed to in Texas, and does not agree should be incorporated into the M2A in Missouri.

4. On November 1, 2002, SWBT also filed a Motion for Reconsideration and Clarification of Order No. 45 with the Texas PUC. A copy of SWBT's Motion for Reconsideration and Clarification of Texas PUC Order No. 45 is attached hereto as Exhibit 1, and is incorporated herein by this reference. In its Motion for Reconsideration and Clarification, SWBT described the subset of the modifications to the T2A Performance Remedy Plan, as well as modifications to individual performance measurements, which were included in Order No. 45, as to which SWBT sought reconsideration and clarification. The specific modifications required and/or rulings by the Texas PUC as to which SWBT sought reconsideration and/or clarification,

as described in detail in Exhibit 1 hereto, include: i) Texas PUC ordered modifications to the application of the “K Table” in the T2A Performance Remedy Plan; ii) clarification of the Texas PUC’s ruling on disaggregating performance measurements relating to the provisions of enhanced extended loops (EELs); iii) 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; iv) the Texas PUC’s ruling to not eliminate LEX/EDI disaggregations for performance measure (PM) 13 at the Tier 2 level; v) the Texas PUC’s ruling ordering the reduction of the benchmark on PM 115.2 from 5% to 2%; and vi) the Texas PUC’s ruling requiring SWBT to provide disaggregation for line-splitting for certain PMs (PMs 55.1, 56, 58, 59, 60, 62, 65, 65.1, 67 and 69). The Texas PUC has not yet ruled on SWBT’s Motion for Reconsideration and Clarification of Order No. 45, attached hereto as Exhibit 1.

5. In its Report and Recommendation, Staff stated that it has reviewed Texas PUC Orders Nos. 45 and 46, as well as SWBT’s November 1, 2002, compliance filing in Texas, and that Staff “is unaware of any reason why the decisions made by the Texas Commission would be inappropriate if applied in Missouri.”² SWBT is not certain if Staff reviewed SWBT’s Motion for Reconsideration and Clarification of Order No. 45 in Texas, attached hereto as Exhibit 1, but as described in that Motion, certain of the modifications to Version 2.0 of the Texas Performance Remedy Plan and certain performance measurements are clearly not appropriate and should not be “applied” to the Missouri Performance Remedy Plan or Version 1.7 of the performance measurements which were approved by the Missouri Commission upon its review and approval of the M2A in March, 2001.

6. As SWBT described in its March 18, 2002, Motion to Update Attachment 17 of the Missouri 271 Interconnection Agreement (M2A), Attachment 17 of the M2A approved by

² Report and Recommendation, par. 4.

the Commission in March, 2001, includes a Performance Remedy Plan (Attachment 17 to the M2A), pursuant to which SWBT currently reports its wholesale performance on a monthly basis under numerous performance measures and provides comparisons of that performance to SWBT's performance with respect to its own retail business or to benchmark criteria, whichever is applicable. Appendix 3 to Attachment 17 is known as the Performance Measurement Business Rules.³ The Performance Measurement Business Rules included in the M2A are referred to as "Version 1.7."

7. A previous six-month performance measurement review process conducted by the Texas PUC resulted in modifications to the Business Rules applicable to the current Performance Remedy Plan in the T2A, which business rules are referred to as Version 2.0. In its March 18, 2002, Motion to Update Attachment 17 of the M2A, SWBT asked the Commission to approve modifications to Attachment 17 of the M2A to replace Version 1.7 with Version 2.0, with the exception of the modifications relating to Version 2.0 which were ordered by the Texas PUC, but which were not agreed to by SWBT.

8. Under the M2A, changes to performance measures and the Performance Remedy Plan may be made only by mutual agreement or, in the absence of mutual agreement for new measures, following an arbitration proceeding. 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 determine whether measurements should be added, deleted, or modified; whether that applicable benchmark standards should be modified or replaced by party 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

³ The Business Rules associated with Performance Measures are part of the measures, in that they include general descriptions of the underlying operational process being measured, as well as the manner in which data with respect to that process is collected.

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.

The Missouri Performance Remedy Plan approved by the Commission as Attachment 17 of the M2A specifically contemplated that changes to the plan or existing performance measures may occur and that new measurements may be added. The plan specifically set forth how such changes could occur, and how additional measurements could be added. Under the express provisions of Section 6.4 of Attachment 17 of the M2A approved by the Commission, changes to existing performance measures or the plan itself can only be made by *mutual agreement* of the parties. New performance measures and their appropriate classification, to the extent they are not mutually agreeable to the parties, can only result from an arbitration conducted by the Commission.

9. SWBT is committed to the six-month review process as it has developed and as it was defined in both the T2A and the M2A. As a result, SWBT believes that the Commission should approve an updated version of Attachment 17 (and its appendices) of the M2A, to include modifications and changes to the 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 the modifications and changes with which SWBT does not agree.

10. Attached to this Response as Exhibit 2 are revised versions of the M2A General Terms and Conditions and Attachment 17 thereto. These documents reflect 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 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.” These revisions include those from Version 2.0 and Version 3.0 to which SWBT agrees. In addition, the date appearing in the upper right corner of each page of these documents has been revised to reflect the date of this filing, i.e., December 2, 2002. Revised versions of Appendix 1, 2 and 3 to Attachment 17 of the M2A, reflecting changes and modifications from Version 2.0 and Version 3.0 to which SWBT agrees, are also included in Exhibit 2.

11. Upon the Commission’s approval of these agreed-to modifications, the M2A, with the modifications reflected in Exhibit 2, will continue to be available on a going-forward basis to CLECs electing to adopt the M2A as their interconnection agreement with SWBT in the State of Missouri. In addition, 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 herein.

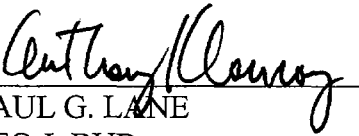
12. Further, for those CLECs with existing Commission-approved interconnection agreements based upon the M2A, SWBT will seek to negotiate an amendment to those interconnection agreements to reflect the updates to the M2A described herein. SWBT will prepare and present such CLECs with a standard Attachment 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, SWBT proposes that 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 SWBT shall become effective by operation of law immediately upon filing with the Commission. If a CLEC proposes new measures which are not agreeable to SWBT, the CLEC may arbitrate any such issues at the Commission as provided in Section 6.4 of Attachment 17 of the M2A.

WHEREFORE, SWBT respectfully requests that the Commission approve the modifications to the M2A described above, which are designed to reflect the agreed-to modifications resulting from the second and third six-month reviews of SWBT's Performance Remedy Plan conducted by the Texas PUC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served on counsel of record for all parties via electronic (or U.S. mail, postage prepaid, for counsel specified below) delivery on December 2, 2002.


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