

Control Number: 20400



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Attachment A

**PROJECT NO. 20400**

**SECTION 271 COMPLIANCE** § **PUBLIC UTILITY COMMISSION**  
**MONITORING OF SOUTHWESTERN** §  
**BELL TELEPHONE COMPANY OF** § **OF TEXAS**  
**TEXAS** §

33111-5 PM 2:00  
PUBLIC UTILITY COMMISSION  
FILING CLERK

**ORDER NO. 47**  
**RULING ON MOTIONS FOR RECONSIDERATION OF ORDER NO. 45**

On October 17, 2002, the Public Utility Commission of Texas (the Commission) issued Order No. 45 in this proceeding. On October 30, 2002, IP Communications, Inc. (IP) filed a Motion for Rehearing of Order No. 45, and on November 1, 2002, Southwestern Bell Telephone Company (SWBT) filed a Motion for Reconsideration of Order No. 45. Interested persons filed responses to the motions on November 8, 2002 and on November 14, 2002, SWBT replied to the responses. At the Open Meeting on November 21, 2002, the Commission took up the Motions and extended the time for ruling until January 16, 2003. Thereafter, at the December 19, 2002 Open Meeting the Commissioners considered the motions. This Order memorializes the Commission's decisions and rules on all aspects of the motions.

**I. BACKGROUND**

Order No. 45 contains the Commission's decisions relative to its Third Six-Month Review of SWBT's performance measurements and Performance Remedy Plan as contained in Attachment 17 to the Texas 271 Agreement (T2A). Commission Staff conducted workshops on August 12-14, 2002 and following the conclusion of the workshops, on August 30, 2002, the parties jointly filed a matrix identifying all changes to Attachment 17 that were agreed to by the parties as well as all changes to Attachment 17 that were disputed by one or more parties and the parties' respective positions. At the October 10, 2002 Open Meeting the Commission considered the testimony provided at the workshops as well as the written pleadings filed prior to and after the workshops and made its findings on the outstanding disputed issues. These findings were memorialized in Order No. 45.

## II. MOTIONS

### A. IP's Motion

In its Motion for Rehearing, IP requested that the Commission reconsider Order No. 45 as to its rulings on PM 2 and line sharing/line splitting PMs.<sup>1</sup>

### B. SWBT's Motion

In its Motion SWBT raised several issues surrounding the decisions made by the Commission in Order No. 45 relative to the K Table; the disaggregation for Enhanced Extended Loops (EELs); the benchmark for Electronic-Electronic FOCs (PM 5); the disaggregation of LEX and EDI performance (PM 13); the benchmark for coordinated hot cuts (PM 115.2); and disaggregation for line splitting LSRs.<sup>2</sup>

## III. DISCUSSION

### A. IP's Motion

IP requested that the Commission reconsider its rulings as to two specific issues. With regard to PM 2, IP argued that SWBT failed to provide data to support its recommendation, and the Commission's decision, to allow SWBT more time to respond to request for loop make-up data for requests greater than 5 loops. IP argued that there should be no segmentation of queries, and that all queries should be subject to the "95% within 30 seconds" benchmark. With regard to the line sharing/line splitting PMs (PM 55.1 et seq.), IP argued that the Commission should have required parity for the PMs rather than setting benchmarks.

After considering the arguments presented by IP, the Commission denies IP's motion. The Commission has determined that IP failed to present any arguments that were not considered by the Commission prior to the issuance of Order No. 45. The Commission finds that the record

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<sup>1</sup> Motion for Rehearing relating to the Six Month Review of Southwestern Bell Telephone Company's ("SWBT's") Performance Measurements at 3-8 (Oct. 30, 2002).

<sup>2</sup> Southwestern Bell Telephone, L.P. D/B/A Southwestern Bell Telephone Company Motion for Reconsideration and Clarification of Order No. 45 at 2-13 (Nov. 1, 2002).

evidence is sufficient to support its decisions in Order No. 45 relative to both PM 2 and the line sharing/line splitting PMs.<sup>3</sup>

## **B. SWBT's Motion**

The Commission has considered the arguments presented by SWBT in its motion and determines that SWBT's motion is granted in part and denied in part as discussed below.

### **1. K Table**

With regard to SWBT's arguments surrounding the Commission's decisions relating to the K Table, the Commission finds that the application of the K Table was intended to address issues related to random variation. The removal of the K value application from measures that are missed for two consecutive months is appropriate, because missing the same measure for two consecutive months cannot be attributed to random variation. Additionally, the Commission's decision on ranking PMs for the purpose of K-exclusion is well-balanced in that it appropriately accounts for severity, volume of transaction and the relative importance of the measure, not just the per unit penalty amount level. Therefore, SWBT's Motion as to the K Table modifications is denied.

### **2. EEL Disaggregation**

With regard to the EEL disaggregation, the Commission reiterates that it is critical for facilities-based providers to have the EEL in providing service to its end user customers. Thus, it is imperative that appropriate performance measurements capture the activities related to different components of the EEL.

SWBT's Motion as to the required EEL disaggregation is denied. The Commission clarifies that by virtue of its ruling in Order No. 45 to include disaggregations for EELs containing transport DS0 and OCx, the Commission was not making a finding as to the inclusion or exclusion of these elements in the T2A or any other interconnection agreement to which Attachment 17 is a part. Rather, the Commission finds in this proceeding that to the extent such

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<sup>3</sup> Order No. 45 at 8-9, 85-86.

EELs are provisioned, the relevant data must be collected and reported with the appropriate performance measurements.

### **3. PM 5**

SWBT sought reconsideration of PM 5, specifically, the Commission's decision relating to the benchmark applicable to the remaining 5% of electronically submitted and electronically processed LSRs, or the "tail test". In Order No. 45, the Commission stated, "[T]he Commission adopts a 95% within 45 minutes benchmark for Electronic – Electronic, with the tail test applicable...." In its Motion, SWBT requested reconsideration so that the Commission would clarify the tail test.

The Commission finds that to be consistent with its earlier ruling the tail test should be 5% at an average of 72 minutes. Therefore, the PM 5 benchmark applicable to electronically submitted and electronically processed LSRs is as follows: "95% in 45 minutes and the remaining 5% at an average of 72 minutes."

### **4. PM 13**

SWBT requested reconsideration of the Commission's finding that SWBT continue to disaggregate LEX and EDI for the purposes of Tier-2 payment calculations. The Commission finds that maintenance of both LEX and EDI are critical for competition in state of Texas, and thus Tier-2 level penalty for each is appropriate. Therefore, the Commission denies SWBT's Motion as to this issue.

### **5. PM 115.2**

SWBT requested that the Commission reconsider its decision as to the benchmark in PM 115.2 for coordinated conversions. The Commission set the benchmark at 2%. The Commission finds that SWBT's historical performance data supports the 2% benchmark. Benchmarks are set based on the best information available at that time and should be adjusted accordingly. Additionally, PM 115.2 is one of increasing importance as facilities-based competition becomes more prevalent, therefore, the Commission denies SWBT's Motion as to PM 115.2.

## 6. Line Splitting

SWBT requested that the Commission reconsider its decision to require SWBT to provide a disaggregation for line splitting. The Commission's order required SWBT to add that disaggregation to PMs 55.1, 56, 58, 59, 60, 62, 65, 65.1, 67 and 69. SWBT argued that it does not provide "line splitting" and thus has no methods available to measure the process.

The Commission finds that it is critical to have this disaggregation for CLECs that engage in line splitting for providing DSL services. SWBT did not provide sufficient evidence to show that the line splitting process cannot be measured. Consistent with Order No. 45, the Commission notes that SWBT has agreed to a one-LSR process for the ordering of line splitting, therefore, it is incumbent upon SWBT to develop a method for tracking those LSRs. It is important for the Commission and CLECs to have data to evaluate in determining whether the CLECs are provided a meaningful opportunity to compete in the DSL market. Therefore, SWBT's Motion as to this issue is denied.

## IV. ORDERING PARAGRAPHS

1. Consistent with the discussion set forth herein, the Commission denies IP's Motion for Rehearing of Order No. 45.

2. SWBT's Motion for Reconsideration of Order No. 45 is granted as to PM 5. The benchmark for electronically submitted, electronically processed LSRs is as follows: "95% in 45 minutes and the remaining 5% at an average of 72 minutes."

3. SWBT's Motion for Reconsideration of Order No. 45 is denied as to the issues relating to the K Table; the disaggregation for Enhanced Extended Loops (EELs); the disaggregation of LEX and EDI performance (PM 13); the benchmark for coordinated hot cuts(PM 115.2); and disaggregation for line splitting LSRs.

4. All other relief not expressly granted herein is denied.

SIGNED AT AUSTIN, TEXAS the 5th day of March, 2003.

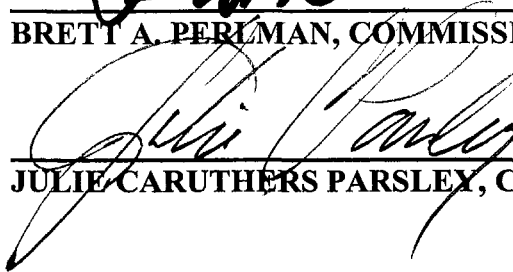
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