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FILED³

December 12, 2002

DEC 12 2002

Missouri Public
Service Commission

Secretary of the Commission
Missouri Public Service Commission
200 Madison, Suite 200
Jefferson City, MO 65101

Via Federal Express
835733397432

Re: Case No. TO-99-227

Dear Secretary of the Commission:

Enclosed please find for filing with your office Reply of WorldCom Companies Regarding Southwestern Bell Telephone Company's Response to Staff's Report and Recommendation in connection with the above-referenced proceeding.

Very truly yours,


Carl J. Lumley

CJL:dn

Enclosure

cc. Parties of Record (W/Enclosure)

DEC 12 2002

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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.)

Missouri Public
 Service Commission

Case No. TO-99-227

**WCOM's REPLY TO SWBT'S RESPONSE TO
 STAFF'S NOVEMBER 22, 2002 REPORT AND RECOMMENDATION**

Come Now MCI WorldCom Communications, Inc., MCI WorldCom Network Services, Inc., MCImetro Access Transmission Services, LLC, and Brooks Fiber Communications of Missouri, Inc. (collectively WCOM) and for their Reply to SWBT's Response to Staff's November 22, 2002 Report and Recommendation on the Public Utility Commission of Texas Order Nos. 45 and 46 Approving Modifications to Performance Remedy Plan and Performance Measurements, state to the Commission:

1. In its Report and Recommendation, Staff appropriately recommends that the Commission consider adoption of the decisions made by the Public Utility Commission of Texas in Orders Nos. 45 and 46 as modifications to the M2A. These Texas Orders made changes to the Performance Remedy Plan and Performance Measurements of the T2A pursuant to the six-month performance review process. These changes result in Version 3.0 of the Performance Remedy Plan.

2. As Staff notes in its Report, this Commission has made clear in prior orders its intent to remain apprised of developments pursuant to the six-month performance review process. Such intent makes perfect sense, in light of this Commission's heavy reliance in this proceeding (and the FCC's reliance) upon the collaborative review in Texas of such regional systems and procedures. In its March 15, 2001 Recommendation order, this

Commission indicated that it had adopted all changes from the preceding six-month review process and stated that such action was "significant because adoption of these changes ensures the Missouri market will benefit from the evolving nature of SWBT's performance plan, which the FCC specifically identified as 'an important feature.'" (p. 70). The FCC specifically noted the importance of the performance plan, state monitoring thereof, and multi-state cooperation regarding such matters, in its November 16, 2001 order granting SWBT 271 authority for Missouri (para. 26, 36, 127-28). Indeed, SWBT encouraged both this Commission and the FCC to rely on the uniformity of its regional systems, including by representing to this Commission in a January 7, 2000 pleading that it "intends to make the same performance measures approved in Texas available in Missouri." See also Dysart (SWBT) 1998 Direct, p. 4-5; Dysart (SWBT) 1999 Surrebuttal, p. 8.

3. In its Response to Staff's Report and Recommendation, SWBT reiterates its prior erroneous arguments that the Commission cannot order any changes to the M2A to which SWBT does not agree. As Staff and other parties have made clear to the Commission in recent pleadings and proceedings, the M2A itself is not a contract between any parties, but rather is a model on which the Commission relied in making its recommendations to the FCC under Section 271. (SWBT concedes this point, noting in paragraphs 11 and 12 of its Response the distinction between a revised model being available for adoption by new CLECs and the model being a basis for negotiation and arbitration of amendments to existing contracts between SWBT and CLECs). The Commission has continuing jurisdiction under Section 271(d)(6)(A) to determine whether that model (and its recommendations to the FCC) remains appropriate, including by

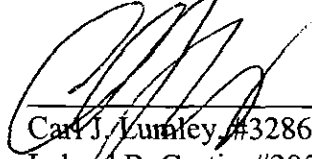
means of its expressly stated intent to monitor developments in the area of performance measurements. Furthermore, the Commission has continuing jurisdiction to consider changes to existing agreements on a consolidated basis, together with its consideration of appropriate changes to the model. Such an approach is particularly fitting for a regional subject such as performance measurements. Such an approach is also under consideration in Case No. TO-2002-397 regarding a re-examination of various UNE rates.

4. SWBT also provides the Commission with a copy of its Motion for Reconsideration and Clarification of Texas Order No. 45. For the Commission's further information, WCOM provides herewith a copy of its Response to SWBT's Motion (attached hereto and incorporated herein by reference). As discussed in the attached Response, proceedings in which modifications to the performance measures of a model X2A agreement are being considered are well-suited and legally sufficient to serve the dual function of an arbitration concerning changes to existing agreements based on the model. Such coordinated and efficient activity is consistent with the intent of the parties to such agreements as well as the overall plan of the Commission in approving use of such a model agreement.

5. The M2A is now lagging significantly behind the T2A in the area of performance measurements. The Commission should promptly act upon the Staff's Report and Recommendation to make the M2A current again.

Respectfully submitted,

CURTIS, OETTING, HEINZ,
GARRETT & O'KEEFE, P.C.

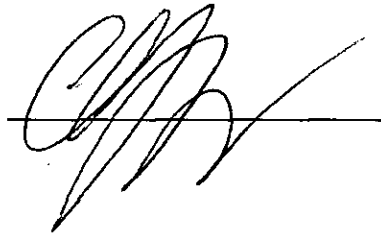


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, this 12th day of December, 2002 to the persons listed on the attached list:



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Case No. TO-99-227

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PROJECT NO. 20400

**SECTION 271 COMPLIANCE
MONITORING OF SOUTHWESTERN
BELL TELEPHONE COMPANY OF
TEXAS**

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§
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§

**BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS**

**WORLDCOM, INC.'S REPLY TO SOUTHWESTERN BELL TELEPHONE
COMPANY'S MOTION FOR RECONSIDERATION AND CLARIFICATION OF
ORDER NO. 45**

WorldCom, Inc. (WorldCom) respectfully urges the Commission to deny Southwestern Bell Telephone Company's (SWBT) motion in all respects. The Commission through the various conferences held in this proceeding has fully addressed each of the issues SWBT raises in its motion.

Of particular concern, WorldCom expressly urges the Commission to overrule SWBT's motion with respect to changes to application of the k-table, and to SWBT's position with respect to the effect of the Commission's Order No. 45.

K-TABLE EXCLUSIONS

Regarding the k-table, as WorldCom noted in its comments filed on September 10, 2002, the k-table improperly excludes critical measurements from the remedy plan. In its comments WorldCom urged to the Commission to enter a decision consistent with the decisions of other state commissions that have reviewed the impact of the k-table, and urged the Commission to eliminate the k-table or modify the k-table as proposed by AT&T.

Although WorldCom continues to believe that the k-table should be eliminated,¹ in light of the availability of a continuing 6-month review process, WorldCom believes the Commission's Order No. 45 strikes an acceptable balance for the interim.

Moreover, SWBT's motion raises no new issues not already fully considered by the Commission.

EFFECT OF ORDER NO. 45

As it did earlier in this proceeding,² SWBT again takes the position that the rulings of the Commission on disputed issues in the performance measurement review proceedings, are not binding on SWBT.³ SWBT maintains that it is free to reject any changes to the measurements or remedy plan directed by the Commission at the conclusion of one a 6-month review process. Apparently, the only means by which to implement the work of the participants, including the Commission, is through a separate arbitration after the performance measurement review, before any change could bind SWBT over its objection.

SWBT's interpretation reduces the performance-measurement review proceedings to a meaningless exercise for this Commission and its Staff, as well as the CLECs. SWBT would unilaterally convert the 6-month review into a one-sided exercise, in which the role of CLECs and the Commission is to offer recommendations to SWBT, which it may accept or reject in its sole discretion. In the past many issues have been resolved by agreement. However, those agreements may well have been the product of a discipline imposed on the

¹ See WorldCom's Comments at pp. 6-9 (Sep. 10, 2002)

² See SWBT Motion for Rehearing (July 2, 2001).

³ See SWBT Motion for Reconsideration at pp. 3 and 7.

parties by the knowledge that unresolved issues would be decided by the Commission. If the Commission were to accept the view that its conclusions are mere proposals that SWBT is free to decline, SWB will have little to no incentive to make meaningful compromise in these proceedings and CLECs' incentive to participate will decline correspondingly.

If CLECs must expend the resources to first complete the review process and then begin a full-fledged arbitration implement changes to the performance measurements and the remedy plan that are not to SWBT's liking, a critical element of the basis for the FCC's granting SBC 271 relief will be lost.⁴ Performance-measurement review proceedings can be an effective and dynamic tool only if the price to participate does not deter involvement by interested parties. Piling on the delay and expense of a separate arbitration at the end of each review is far from the result the FCC had in mind: a periodic adjustment where necessary of the measures that the FCC viewed as an important feature.

WorldCom respectfully urges the Commission to reject the view that it cannot decide issues adversely to any party, including SWBT, in these review proceedings. WorldCom submits that SWBT's commitment to these periodic reviews in the T2A provides the Commission ample authority to conduct these proceedings in a way that enables it to make enforceable decisions at the end of the day.

⁴ Responding to allegations of gaps and deficiencies in SWBT's performance measures, the FCC noted that the PM plan was not a static instrument and cited to the Commission's report that "a six month review process is in place to assure that the plan is not static in nature." *Texas 271 Order* ¶ 425 and n. 1243. The FCC noted that this feature of the remedy plan is an "important feature because it allows the Plan to reflect changes in the telecommunications industry and in the Texas market." *Id.* SWBT's

SWBT relies on T2A Attachment 17, section 6.4 for its interpretation of the value of the 6-month review process. That section states in part, "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." WorldCom urges the Commission to conclude that the arbitration referred to in section 6.4 is a reference to the review proceedings themselves. Not only do the formal elements of those proceedings provide the requisite elements of an arbitration, but to conclude otherwise is to ignore the Commission's historical penchant for efficiency in process. The review conferences were transcribed. Each party that participated in the review process had the opportunity to present its data in support of its position on an issue that could not be resolved by agreement. Each party was provided the opportunity to make formal written submission of its recommendations, and provide supporting rationale and data, on those issues that were not resolved prior to the formal workshop sessions before the Commission. That evidence was reviewed by the Commission and affected parties. The Commission Staff had the opportunity to question the parties as to their respective positions. The parties had the opportunity to engage in a dialogue with each other to explore their differing positions. Each party had the opportunity to specify issues for decision in its matrix prior to the workshops and to present its rationale and/or evidence, and to challenge opposing rationale and/or evidence, where issues were not resolved by agreement. That record

interpretation of the effect of the conclusions reached in a review process vitiates this important feature.

provides the basis for Staff's recommendations and the Commission's decisions. The similarities to an arbitration are unquestionable.

In short, the parties have had their arbitration on performance-measure issues that were not resolved by agreement during this 6-month review. These procedures satisfy the requirement of an "arbitration" as that term is used in section 6.4 and avoids the need for separate arbitrations.

Therefore, WorldCom respectfully urges the Commission to deny SWBT's motion for reconsideration and clarification.

Respectfully submitted,

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By: _____
Alfred R. Herrera

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served by hand delivery or via facsimile and/or electronic mail on all parties of record in this proceeding on the 8th day of November, 2002.

Alfred R. Herrera