

Exhibit 2

Exhibit 2
To Supplemental Memorandum
of SBC and Ameritech
Regarding Performance Measures

Letter from Donald J. Russell, Chief,
Telecommunications Task Force, Department of Justice,
to Liam S. Coonan,
Assistant General Counsel, SBC Communications Inc.
March 6, 1998



U. S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 6, 1998

Liam S. Coonan, Esq.
Senior Vice President and
Assistant General Counsel
SBC Communications, Inc.
175 E. Houston Street
San Antonio, Texas 78205

Re: SBC Performance Measures

Dear Mr. Coonan:

As part of the Department's commitment to work with all Bell companies on relevant issues in advance of their section 271 applications, the Department of Justice and SBC Communications, Inc. ("SBC") have, as you know, been spending considerable time discussing issues relating to wholesale support processes and performance measures. In that regard, you have provided us with a draft list of proposed performance measures, a list that you have supplemented as our discussions have progressed.

Attachment A is a comprehensive list of performance measures. With the qualifications set forth below, we are satisfied that the performance measures listed in Attachment A, to which SBC has agreed,¹ would be sufficient, if properly implemented, to satisfy the Department's need for performance measures for evaluating a Section 271 application filed in the not-too-distant future.

We appreciate SBC's engagement with the Department on satisfying our competitive assessment in advance of a filing and look forward to working with you on additional related issues. One such issue is whether the performance measures in Attachment A have been "properly implemented," since the majority of our discussions have dealt with the performance measures themselves and since it is upon the actual measures that this letter focuses. As you can appreciate, there are important repercussions that may arise from how the measures are implemented. For example, definitional issues and other details connected with the measures themselves (such as

¹ As we have discussed with you, the Department has agreed to narrow variances from Attachment A in light of certain SBC processes and procedures. Specifically, we have agreed that SBC need not provide separate operator services and directory assistance speed-of-answer measurements for branded and unbranded calls and that SBC can limit its 811 measurements to an error-clearing interval measure that is presently under development.

the basis upon which due dates and start and stop times are set in particular measures) could significantly affect the meaning of the data. Thus, because we have not yet reached agreement on issues such as data retention, presentation, and reporting (e.g., disaggregation, reporting intervals and formats), and analysis, we expect that Department staff and SBC will continue to work towards resolution of these issues. We also expect that Department staff and SBC will discuss performance standards and benchmarking, other important aspects of the Department's performance analysis.

Moreover, while we are satisfied at the present time that the measures set out in Attachment A would, if properly implemented, suffice for present purposes, performance measurement is a dynamic area and future developments could necessitate changes in our views of appropriate performance measures. For example, while the measures listed in Attachment A are structured to cover the provision of unbundled network elements, once it becomes clear how unbundled network elements will be provided so as to allow requesting carriers to combine such elements in order to provide a telecommunications service, we may find that other measures are necessary to assess performance in this situation. In addition, the development of new services or new methods of providing existing services could necessitate additional performance measures. Alternatively, through ongoing regulatory proceedings, our own investigation, or otherwise, we might learn of additional risks, and even occurrences, of discrimination of which we were not previously aware. Accordingly, we would expect SBC to implement additional measures or modifications to existing measures should it become apparent to the Department that they are necessary. On the other hand, developments might reveal that certain measures were no longer necessary and could be eliminated.

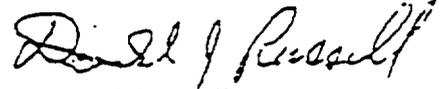
Our satisfaction with the performance measures set out in Attachment A must be placed in its proper context. First, it is limited to the Department's application of its competitive standard. Under section 271, the Department is to evaluate applications for Bell entry using "any standard" the Department believes is appropriate, and the FCC is required to give "substantial weight" to that evaluation. As we have explained, our standard, in addition to the specific statutory prerequisites, requires a demonstration that local markets in a state have been "fully and irreversibly opened to competition," and appropriate performance measures, standards, and benchmarks are important to the Department's application of our competitive standard.

Second, our conclusions relate only to the Department's evaluation of section 271 applications and should not be construed as an expression of the Department's views concerning the appropriate resolution of any federal or state regulatory proceeding relating to performance measures. The FCC and some state commissions have ongoing proceedings considering both performance measures and performance standards, including company-specific and state-specific issues. These proceedings may produce performance measures different from, or in addition to, those described in Attachment A.

I am hopeful that we can resolve the remaining issues expeditiously through our ongoing discussions. I appreciate your cooperation in addressing these issues and look

forward to our continuing mutual efforts. If you have any questions or suggestions regarding these issues, please call.

Sincerely,



Donald J. Russell
Chief
Telecommunications Task Force

PERFORMANCE MEASURES

I. PRE-ORDERING

1. *Pre-order OSS Availability:* Measures both the hours and days the BOC's pre-order OSSs are available to CLECs and non-scheduled downtime.
2. *Pre-order System Response Times:* Measures, in seconds, the speed with which the CLEC Service Representatives receive information (including rejection and error messages) for processes described below with a customer on the line. These cycle-time measures assume the CLEC has mechanical access to the BOC databases and should be measured in a manner that allows appropriate comparisons to like cycle times experienced by BOC retail service representatives. Times are provided separately for the following functions:
 - a. Address verification
 - b. Request for telephone number
 - c. Request for customer service record (CSR)
 - d. Service and product availability
 - e. Appointment scheduling

II. ORDERING

1. *Firm Order Commitment (FOC) Cycle Time:* Measures the average time from CLEC service order submission to BOC response, confirming receipt of a properly formatted and appointed order and committing to complete the order by a specified date. In addition, may be presented as the percentage returned within an agreed upon interval.
2. *Rejected Order Cycle Time:* Measures the average time, from CLEC service order submission to BOC response, for rejecting an incomplete service order or one containing errors. Each submission of an order, up to and including the FOC, requires a response cycle-time result.
3. *Ordering Quality:* The following performance measures are important determinants of service order processing parity or adequacy. Each is important in its own right and provides insights into different aspects of order quality. While the entire set would not be required, Percent Flow Through and either Percent Rejected Orders or Order Submissions per Order are necessary.
 - a. *Percent Rejected Orders:* Measured at the BOC gateway, it is the result of dividing rejected orders by total orders submitted, manually or mechanically. It is an adequacy measure because there are no equivalent BOC analogs. BOC orders are "rejected" via automatic edits before the order leaves the service representative position.
 - b. *Order Submissions per Order:* Measured at the BOC gateway, it is determined by dividing total order submissions by the number of orders receiving a firm order commitment.

- c. *Percent Flow Through*: Measures the percentage of orders that flow from the BOC gateway to acceptance by the BOC service order processor without manual intervention. Orders rejected at the gateway are excluded.
- 4. *Ordering OSS Availability*: Measures both the hours and days the BOC's ordering OSSs are available to CLECs and non-scheduled downtime.
- 5. *Ordering Center Availability*: Reports both the hours and days of operation of the BOC ordering center.
- 6. *Speed of Answer—Ordering Center*: Measures the average time to reach a BOC service representative.

III. PROVISIONING

- A. *Service Provisioning Interval*: Measures the time from customer request for service to completion when the appointment is offered by the BOC, either from a common appointment database, generally used in a resale environment, or by agreed-to appointment intervals, more commonly used in a UNE environment. Service Provisioning Interval should be measured both as a mean, or average interval, and as a percent over a standard interval. Next available appointments offered from the work schedule OSS and expedited requests should be included for measurement; customer-requested due dates longer than the offered appointment should be excluded.
 - 1. *Average Service Provisioning Interval*: Measured in days from end-user request to order completion and counted separately for dispatched and non-dispatched orders.
 - 2. *Percent Service Provisioned Out of Interval*: Measures the percentage of service orders completed in more than an agreed upon number of days. Ideally, measured incrementally by day. For example, orders completed in more than 3 days, 4 days, 5 days, and 6 days. This performance measure depicts the tail of the interval curve. Combined with the Average Installation Interval, portrays a robust picture of provisioning cycle time.
- B. *Other Provisioning Measures*
 - 1. *Percent Interconnection Facilities Provisioned Out of Interval*: Measures the percentage of interconnection facilities (switched trunks and dedicated circuits) provisioned in more than an agreed upon number of days.
 - 2. *Percent Missed Appointments—Company Reasons*: Order completion is measured against the original CLEC-requested due date. No due date changes may be made unless explicitly specified by the end user or explicitly agreed to by the CLEC and the BOC. Orders missed for company reasons—load, facilities, or other—are included. Orders missed due to customer reasons are not counted as a miss for purposes of this measure.
 - 3. *Percent New Service Failures*: Measures the number of trouble reports on newly provisioned service within an agreed number of days of the original trouble. Studies have shown high correlation between provisioning errors and trouble reports occurring within 10 days and lower correlations beyond 10 days.

4. *Completed Service Order Accuracy:* Measures the extent to which orders are completed by the BOC as ordered by the CLEC.
5. *Orders Held for Facilities:* Measures service orders not completed by the original due date because of a lack of network facilities (including loops and central office equipment) in terms of (a) the average time between the original due date and the final completion date, and (b) the number of pending orders, as of the report date, held beyond a specified period (usually 30 days) following the original due date.
6. *Average Completion Notice Interval:* Measures the average time from order completion to notification of the CLEC for orders submitted on a mechanized basis.

IV. MAINTENANCE

A. Trouble Reporting & Clearance

1. *Trouble Report Rate:* Measured as the number of trouble reports per customer or access line per month.
2. *Percent Repeat Reports:* Measured as the percentage of end-user troubles on the same access line within an agreed number of days of the original trouble. Studies have shown high correlation between repair errors and repeat reports occurring within 10 days and lower correlations beyond 10 days.
3. *Percent Out of Service Over 24 Hours:* Measured as a percentage of out-of-service troubles cleared within 24 hours.
4. *Percent Missed Appointments:* Measures the percentage of trouble reports cleared after the promised appointment. Requires that appointment times, once set, cannot be changed except by the end user.
5. *Mean Time to Repair:* Measured as the average interval from trouble report to clearance.
6. *Interconnection Facilities Restored Out of Interval:* Measures the percentage of interconnection facilities (switched trunks and dedicated circuits) reported out of service and restored after an agreed-to interval. May also be measured and reported as an average interval.
7. *Maintenance OSS Availability:* Measures both the hours and days the BOC's maintenance OSSs are available to CLECs and non-scheduled downtime.
8. *Maintenance Center Speed of Answer:* Measures the average time to reach a BOC repair service representative.

B. Network Quality

1. *Percent Blocked Calls:* Measures trunking grade (quality) of service. Should be provided separately for the following types of trunks:
 - a. ILEC End Office to CLEC End Office Trunk Groups
 - b. ILEC Tandem to CLEC End Office Trunk Groups
 - c. ILEC Tandem to and from ILEC End Office Trunk Groups

V. BILLING

1. *Bill Timeliness:* Measures the percentage of billing records delivered within an agreed-to interval. Should be provided for the following billing information provided to CLECs:
 - a. *Daily Usage File (DUF):* Measures, from message creation to the availability of the usage information to the CLEC, the percentage of DUFs provided within the interval.
 - b. *Wholesale Bill:* Measures the percentage of wholesale bills issued within an agreed-to number of days following the end of the billing cycle.
2. *Bill Completeness:* Measures the percentage of complete billing records for usage charges, recurring charges, and non-recurring charges provided to CLECs. Should be measured after bills are released. Under approved conditions, sufficiently robust pre-release test and audit procedures could substitute for a post-release audit.
 - a. *Usage:* Measures unbillable usage and usage from the current bill cycle not included on the current wholesale bill.
 - b. *Recurring Charges:* Measures current bill cycle recurring charges not included on the current wholesale bill.
 - c. *Non-Recurring Charges:* Measures non-recurring charges completed in the current bill period not included on the current wholesale bill.
3. *Bill Accuracy:* Measures the percentage of accurate billing records for usage charges, recurring charges, and non-recurring charges provided to CLECs. Should be measured after bills are released. Under approved conditions, sufficiently robust pre-release test and audit procedures could substitute for a post-release audit.

VI. OTHER

1. *Operator Services Toll Speed of Answer:* Measures raw interval in seconds or as a percentage under a set objective. Should be provided separately for unbranded and branded service.
2. *Directory Assistance Speed of Answer:* Measures raw interval in seconds or as a percentage under a set objective. Should be provided separately for unbranded and branded service.
3. *911 Database Update Timeliness and Accuracy:* Measures the percentage of missed due dates of 911 database updates and the percentage of accurate updates.

Exhibit 3

Exhibit 3
To Supplemental Memorandum
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Regarding Performance Measures

The Development of
Performance Measures Regimes

The Development of Performance Measures Regimes

This exhibit to the Supplemental Memorandum Regarding Performance Measurements and the Accompanying Reporting and Enforcement Mechanisms ("Supplemental Memorandum") discusses in greater detail the negotiation processes SBC's ILECs have undertaken, first with the U.S. Department of Justice ("DOJ"), and then with the relevant state public utilities commissions ("PUCs") and CLECs, to develop comprehensive performance measures and related reporting processes and enforcement mechanisms. It also describes the current status of performance measures dockets before the relevant state PUCs.

Introduction

Southwestern Bell Telephone Company ("SWBT") began discussions with the DOJ in July of 1997 regarding wholesale support processes and performance measures. SWBT and the DOJ extensively reviewed the DOJ's evaluation and the Federal Communications Commission's ("FCC") ruling in SWBT's Oklahoma Section 271 filing, Ameritech's Michigan Section 271 filing, BellSouth's Louisiana and South Carolina Section 271 applications, and the interconnection agreements entered into between SWBT, AT&T, MCI and other CLECs in Texas and Missouri, with the view to developing performance measurements and standards that would permit regulators and CLECs to evaluate the quality of service provided by SWBT to CLECs. In March of 1998, SWBT submitted a list of 66 measurements that the DOJ agreed "would be sufficient, if properly implemented, to satisfy the Department's need for performance

measures for evaluating a Section 271 application filed in the not-too-distant future.”¹

The DOJ and SWBT contemplated that the performance measures and standards would be updated as future developments necessitated amendments.

SWBT began voluntarily reporting to the DOJ and FCC on each of the 66 measures in March of 1998. It files reports on a monthly basis with both agencies detailing its performance across all of its five states for the pre-ordering, ordering, billing and operator services measurements. Additionally, the monthly reports provide performance reports for the provisioning and maintenance measures broken down by market area.

Many of these 66 measurements have been included in interconnection agreements and approved by the relevant PUCs. Many of the interconnection agreements with performance measurements also contain liquidated damages provisions in the event the relevant ILEC’s performance is below the standard. CLECs entering into interconnection agreements with SBC’s ILECs may also choose to adopt the most detailed performance measures and strictest remedies provisions from existing interconnection agreements.² This is not simply a theoretical possibility — in Texas, AT&T negotiated stringent performance measurements and associated liquidated damages related to intervals for ordering, provisioning, maintenance and repair.

¹ See Exhibit 2. See also Exhibit 5 to the Supplemental Memorandum for a complete listing of the 66 measurements.

² 47 U.S.C. § 252(i); 47 C.F.R. § 51.809; AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721, 738 (1999).

Subsequently, MCI, Sprint and Broadspan adopted the same terms and conditions as those contained in the AT&T agreement.

In 1997, SWBT, Pacific Bell ("PacBell") and Nevada Bell began discussions with the PUCs, the other ILECs operating in PacBell's and Nevada Bell's region and the local CLECs regarding performance measurements that would be acceptable in each State, and they have been using the 66 DOJ-approved performance measurements as a starting point for discussion and negotiation.

In the California Public Utilities Commission's ("CPUC") investigation and rulemaking proceeding ("OSS OII")³ regarding operations support systems, PacBell and GTE initiated negotiations directly with the CLECs, and the parties have submitted a joint proposal to the CPUC setting out agreed-upon performance measurements, performance standards and the parties' positions on the remaining open issues.⁴

Nevada Bell undertook similar negotiations with Sprint and GTE (the other Nevada ILECs) and the local CLECs, with input by the Public Utilities Commission of

³ Order Instituting Rulemaking on the Commission's Own Motion into Monitoring Performance of Operations Support Systems; Order Instituting Investigation on the Commission's Own Motion into Monitoring Performance of Operation Support Systems, Opinion, Docket Nos. R.97-10-016 and I.97-010-017 (Cal. Pub. Utils. Comm'n Oct. 9, 1997) ("OSS OII Opinion"). (This investigation and rulemaking is referred to as OSS OII in these notes.)

⁴ Joint Motion for Adoption of Partial Settlement Agreement Pursuant to Article 13.5 of the Commission's Rules of Practice and Procedure, OSS OII (Cal. Pub. Utils. Comm'n Jan. 20, 1999) ("Motion for Partial Settlement Agreement, OSS OII").

Nevada (“NPUC”). The NPUC has adopted the joint proposal submitted by the parties,⁵ with open issues to be resolved shortly.

Similarly, SWBT has been involved in collaborative workshops with the Public Utility Commission of Texas (“Texas PUC”) and the Texas CLECs regarding performance measurements as part of SWBT’s draft Section 271 application process in Texas.⁶ The Texas commission is expected to complete development of the performance measurements that will be used in Texas, and to approve a self-executing performance enhancement plan shortly. Additionally, SWBT intends to use the performance measurements and enforcement plan that results from the collaborative process in Texas as the basis for similar proposals that will be used throughout the other four SWBT states,

⁵ In re Commission Investigation into Procedures and Methods Necessary to Determine Whether Interconnection, Unbundled Access, and Resale Services Provided by Incumbent Local Exchange Carriers Are at Least Equal in Quality to That Provided by the Local Exchange Carrier to Itself or to Any Subsidiary, Affiliate, or Any Other Party, Order, Docket No. 97-9022 (Nev. Pub. Utils. Comm’n Mar. 10, 1999) (“Nevada OSS Order”). (This investigation and rulemaking proceeding is referred to as Nevada OSS in these notes.)

⁶ In re Investigation of Southwestern Bell Telephone Company’s Entry into the Texas InterLATA Telecommunications Market, Project No. 16251 (Tex. Pub. Util. Comm’n) This investigation and rulemaking proceeding is referred to as Project No. 16251 in these notes. Similar proceedings are taking place in Missouri and have recently been opened in Oklahoma. See In re Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Missouri, Docket No. TO-99-227 (Mo. Pub. Serv. Comm’n) (“Missouri 271 Application”); In re Application of Ernest G. Johnson, Director of the Public Utility Division, Oklahoma Corporation Commission, for an Order Determining Appropriate Performance Standards with Regard to Competitive Local Exchange Issues Applicable to Southwestern Bell Telephone Company, Cause No. PUD 990000131 (Okla. Corp. Comm’n Mar. 24, 1999).

offering a consistent set of performance measurements.⁷ Indeed, SWBT already offers the performance measurements available in Texas interconnection agreements to CLECs in Missouri, Oklahoma, Kansas and Arkansas (“MOKA states”) who have so requested.⁸

California Performance Measures

In California, the CPUC opened the OSS OII proceeding in October 1997 to address monitoring the performance of OSS.⁹ The scope of the proceeding includes

⁷ Southwestern Bell Telephone Company Surrebuttal Testimony of William R. Dysart, Missouri 271 Application, at 8-9 (Mo. Pub. Serv. Comm’n Feb. 1999); see also Southwestern Bell Telephone Company, Draft Affidavit of William R. Dysart, In re Application of Southwestern Bell Telephone Company Seeking Verification That It Has Fully Complied with and Satisfied the Requirements of Section 271(c) of the Telecommunications Act of 1996, Docket No. 98-048-U, at 3 (Ark. Pub. Serv. Comm’n Feb. 24, 1998); Southwestern Bell Telephone Company, Rebuttal Testimony of William R. Dysart, In re Application of the Attorney General of the State of Oklahoma, AT&T Communications of the Southwest, Inc., Brooks Fiber Communications of Tulsa, Inc., Cox Oklahoma Telecom, Inc., MCI Telecommunications Corporation, and Sprint Communications, L.P. to Explore Southwestern Bell Telephone Company’s Compliance with Section 271(c) of the Telecommunications Act of 1996, Cause No. PUD97000056, at 4 (Okla. Corp. Comm’n Apr. 21, 1998); Southwestern Bell Telephone Company, Rebuttal Testimony of William R. Dysart, In re Southwestern Bell Telephone Company — Kansas’ Compliance with Section 271 of the Federal Telecommunications Act of 1996, Docket No. 97-SWBT-411-GIT, at 3 (Kan. Corp. Comm’n May 27, 1998).

⁸ Currently, SWBT provides these measures to MFS, Sprint and Birch Telecom.

⁹ The three stated goals of the CPUC’s OSS OII proceeding are:

- [T]o determine reasonable standards of performance for Pacific Bell (Pacific) and GTE California Incorporated (GTEC) in their Operations Support Systems (OSS),
- to develop a mechanism that will allow the Commission to monitor improvements in the performance of OSS, and
- to assess the best and fastest method of ensuring compliance if standards are not met or improvement is not shown.

OSS OII Opinion, at 1.

performance measures, reporting, comparative standards, statistical tests, audits and remedies. PacBell has agreed to many additional measures that the CLECs and the CPUC believe measure important aspects of OSS and services beyond those contained in the DOJ-approved set of measurements. In addition to measuring the time necessary to respond to collocation requests and the time to provide a collocation arrangement, PacBell has agreed to measure the percentage of orders jeopardized (orders that will not be completed within the time indicated in the Firm Order Confirmation notice), the average jeopardy notice interval, the percentage of installations completed within the standard interval, coordinated customs conversions, network outage notification, the percentage of directory assistance database accuracy, the average directory assistance database update interval and the average notification of interface outages.

Following approximately three weeks of CPUC-sponsored workshops ending in May 1998, a working group of CLECs and the two ILECs (PacBell and GTE) continued to work together to identify open issues and clarify some of the consensus they had begun to reach. These findings were shared with the larger CLEC community in order to elicit input and resolve open issues. On August 7, 1998, the working group of CLECs and ILECs submitted a draft performance measures matrix to the CPUC staff. This included the list of measures and standards on which ILECs and the CLECs agreed, as well as the areas in which the parties disagreed and were seeking resolution by the CPUC.

In order to resolve open issues, the CPUC staff held additional workshops on December 14-16, 1998. On January 20, 1999 the working group of CLECs and the

ILECs filed a revised partial settlement agreement.¹⁰ The parties briefed the remaining open issues relating to performance measurements in January and March 1999 and have asked the CPUC to rule on those remaining issues. Currently, there are 43 measures, with 1300-1400 separate submeasurement test parts.¹¹ The CPUC is scheduled to rule in the near future on the open issues, which are primarily related to: (1) the appropriate performance standards for those measures where it is agreed that an objective standard should be used to measure performance because there is no appropriate retail analog but for which the parties could not reach agreement as to the appropriate standard¹² and (2) the structure of the enforcement provisions.

PacBell will officially start reporting its performance measures results beginning with reports for June 1999. It will issue its reports fifteen days after the close of the reporting month. The first official report is expected to be posted on the SBC website no

¹⁰ Motion for Partial Settlement Agreement, OSS OII. See Exhibit 7 to the Supplemental Memorandum for a complete list of the proposed California measurements. The participants in the California process exchanged information throughout the process with participants in the Nevada process (discussed below) and the joint settlement represents the consensus of the negotiations in California and Nevada.

¹¹ Submeasurement test parts are the disaggregated individual measures within each of the various performance measures.

¹² For example, there is a debate as to the appropriate amount of time it should take for PacBell to return Firm Order Confirmation ("FOCs"). The current standard is 24 hours. CLECs have requested that the standard for return of FOCs should be four hours for electronic to manual orders and six hours for manual to manual orders. PacBell has suggested that this time frame is too difficult for the manual orders and suggests a standard of 12 business hours. For a complete discussion of the open issues, see Pacific Bell's (U 1001 C) Motion for Commission Order Accepting Its Position on Performance Measures and Analogs/Benchmarks Issues, Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks, Docket Nos. R.93-04-003 et al. (Cal. Pub. Utils. Comm'n Jan. 8, 1999).

later than July 15, 1999.¹³ In fact, PacBell already reports its performance for many of the measurements on the SBC Performance Measures website, which is accessible by regulators and California CLECs.

Additionally, PacBell is continuing to work towards authorization under Section 271 of the 1996 Act. Comments and reply comments were filed in 1998 on PacBell's Section 271 draft application, and discovery on certain issues followed these filings.¹⁴ Hearings and collaborative process workshops were held in the summer of 1998, and the CPUC staff issued a report in October 1998.¹⁵ Further comments and reply comments were filed and the CPUC issued a final decision in December 1998 evaluating PacBell's performance on the 14 checklist items and adopting recommendations to aid PacBell in satisfying the outstanding checklist items.¹⁶ The target date for PacBell's 271 compliance filing with the CPUC is June 1, 1999.¹⁷

Nevada Performance Measures

In mid-1997 the NPUC initiated an inquiry in order to address monitoring the performance of OSS.¹⁸ As a part of this process, all parties filed comments with the

¹³ Motion for Partial Settlement Agreement, OSS OII, Attach. A at 61.

¹⁴ In re Network Architecture Development of Dominant Carrier Networks, Opinion, R.93-04-003, 1998 WL 974737, at *4-5 (Cal. Pub. Utils. Comm'n Dec. 17, 1998).

¹⁵ Id., at *3-7.

¹⁶ Id., at *34.

¹⁷ Id., at *103.

¹⁸ The stated goal of this docket is to "investigat[e] procedures and methods necessary to determine whether interconnection, unbundled access and resale services provided by incumbent local exchange carriers . . . are at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party."

[Footnote is continued on next page]

NPUC, attended NPUC-sponsored workshops and have met informally to draft an agreement on performance measures. In recognition of the work being done in the OSS OII proceeding in California, the NPUC staff required the CLECs and ILECs to work from the proposed California matrix.¹⁹ The NPUC held workshops throughout the summer of 1998 in which Nevada Bell, GTE and Sprint took part as ILECs. The participants in Nevada have continued to exchange information throughout the negotiations with participants in the California process, and the Nevada CLEC proposals were compared with the proposals of the various CLECs in California. The Nevada parties filed a Stipulation of Parties almost identical to the California agreement in February 1999.²⁰ The NPUC approved the Stipulation of the Parties performance measures on March 10, 1999,²¹ and Nevada Bell is expected to begin reporting results beginning in the summer of 1999.²²

SWBT Performance Measures

In Texas, the performance measures process began during the mediation of the interconnection agreements between SWBT, AT&T and MCI. In what is referred to as

[Footnote is continued from previous page]

Stipulation of Parties, Nevada OSS, at 1-2 (Nev. Pub. Utils. Comm'n Feb. 11, 1999) ("Stipulation of Parties, Nevada OSS").

¹⁹ As well, some of the performance measurements and related proposals that were suggested in the Nevada workshops were introduced into the ongoing work of the CLECs and ILECs in California.

²⁰ See Stipulation of Parties, Nevada OSS.; see also Exhibit 8 attached hereto for a complete list of the Nevada Measurements.

²¹ See Nevada OSS Order.

²² Stipulation of Parties, Nevada OSS, Attach. at 81.

“Mega-Arbitration II,” the CLECs and SWBT negotiated a set of performance measures standards and enforcement mechanisms for inclusion in the interconnection agreements.²³

In addition, the 66 DOJ-approved measures have been expanded as part of SWBT’s draft Section 271 application, filed with the Texas PUC in March 1998. In June 1998, the Texas PUC issued an order establishing a collaborative process for consideration of SWBT’s Section 271 application.²⁴ SWBT, the CLECs and the Texas PUC have engaged in extended collaborative discussions of performance measures as a part of this docket. During the collaborative process, SWBT, the CLECs and the Texas PUC staff have participated in workshops, filed comments and reply comments, and engaged in extensive negotiations.

The parties have been using the 66 performance measures approved by the DOJ, as well as the measures agreed to in Mega-Arbitration II, as a guide in these discussions. SWBT has agreed to many additional measurements, such as the time to process a request for access to poles, conduits and rights of way and coordinated conversions (i.e.,

²³ In re Petition of MFS Communications Co., Inc. for Arbitration of Pricing of Unbundled Loops, Amendment and Clarification of Arbitration Award, Docket Nos. 16189 et al. (Tex. Pub. Util. Comm’n Nov. 1997) (“Mega-Arbitration II”). The negotiations in Mega-Arbitration II began with the recommendations of the Local Competitors Users Group (“LCUG”), a group comprised of five IXCs that has proclaimed itself the “standards body” for performance measures. The Texas PUC staff and the FCC have rejected the LCUG standard set of measures, and to SWBT’s knowledge, these measures have not been adopted as the standard in any area. See Southwestern Bell’s Affidavit of Randy Dysart in Response to Final Status Report on the Collaborative Process, Project No. 16251, at 2 (Tex. Pub. Util. Comm’n Dec. 1, 1998) (“Dysart Aff.”).

²⁴ Project No. 16251, Order Instituting Collaborative Process (Tex. Pub. Util. Comm’n June 1, 1998).

the amount of time a customer switching to a CLEC with an unbundled loop is without service). SWBT has also added additional ways to measure its performance for some of the agreed-upon measurements. For example, in addition to assessing the speed at which local service center and local operating center representatives answer calls, SWBT also measures the percentage of busy signals customers receive. For provisioning, in addition to looking at the average installation intervals and missed due dates, SWBT calculates the delay days for missed due dates, the percentage of SWBT missed due dates greater than 30 days, and the number of orders cancelled as a result of SWBT's failure to meet the due date. As a result of the collaborative process, SWBT and the Texas PUC have agreed to a total of 105 measurements, with approximately 1300-1500 separate submeasurement test parts.²⁵

Discussions are continuing on (1) the appropriate performance standards for some measurements,²⁶ (2) the validation of SWBT's performance data and (3) liquidated damages and other enforcement mechanisms. An agreement between SWBT and the Texas PUC on the unresolved issues is expected soon.

²⁵ See Exhibit 6 to the Supplemental Memorandum for a complete list of the Texas Measurements. SWBT, the Texas PUC and the CLECs are currently negotiating additional performance measures, including measures relating to number portability.

²⁶ One of the few remaining issues for the Texas PUC to decide involves the standards for certain pre-ordering transactions involving DataGate and Verigate. Because SWBT and some of the CLECs use different pre-ordering systems, the reports measuring the total time involved in completing pre-order functions are not analogous. A differential is required in order to compare the results. The Texas PUC has not yet determined what the differential should be. See Letter from Christian A. Bourgeacq, Senior Counsel, Southwestern Bell to Katherine D. Farroba, Administrative Law Judge, Public Utility Commission of Texas, Attach. at 1 (Feb. 23, 1999) (regarding Project No. 16251 – Section 271 Collaborative Process: Performance Measures follow-up).

The Texas PUC issued a news release on January 26, 1999 announcing that SWBT "has fully met ten of the 14-point checklist items" and that it anticipated it would recommend 271 approval after the testing of SWBT's operating systems.²⁷ The testing of these systems has begun and is expected to be completed by June 1999.

SWBT intends for the performance measures that have been negotiated with the CLECs and the Texas PUC staff to serve as a template for implementing performance measures in the four SWBT MOKA states. As stated in testimony filed in SWBT's draft 271 application in Missouri, these measures are intended to serve as a comprehensive and consistent set of measures throughout SWBT's local exchange region. This is consistent with the process in California and Nevada, in which the Nevada and California PUCs recognized the work being done in each state, compared the proposals of the various ILECs and adopted the best standards from each process, creating a consistent set of measures for the Pacific Telesis local exchange region. Currently, the performance measures to which SWBT has agreed in Texas may be obtained by any CLEC in any of the MOKA states upon request. The measures will be reported to the CLECs on the SBC Performance Measures website and incorporated into their interconnection agreements.

Audit Procedures

In order to ensure that SBC's ILECs are reporting accurately, the performance measurement regimes call for auditing to be done of SBC's ILECs' systems. These

²⁷ See Public Utility Commission of Texas News Release, SWB's Long Distance Bid Nears the Finish Line (Jan. 26, 1999), available at <<http://www.puc.state.tx.us/nrelease/012699a.htm>> (visited Mar. 17, 1999).

audits will ensure the validity of the reports, and if a PUC or a CLEC does not believe the audit processes are sufficient, changes can be proposed at the biannual meetings held to review the adequacy of the performance measurement regimes.

In California, the Joint Agreement between the CLECs and ILECs filed in OSS OII includes audit provisions which will ensure that CLECs and the CPUC can investigate the accuracy of the performance measures reporting process. An initial audit and certification process will be performed to ensure that individual ILEC reporting procedures are sound and that data collection and reporting are timely, accurate and complete. Copies of this initial audit will be provided to the CPUC, and copies (which will include only non-proprietary information) will be distributed to the OSS OII service list. In addition, an annual comprehensive audit of the ILEC's reporting procedures and reportable data would be done on behalf of all CLECs by independent auditors. The cost of these annual audits would be shared between the CLECs and the audited ILEC. These annual audits would be distributed to the OSS OII service list (non-proprietary information only) and the CPUC. In addition to the annual audits, each CLEC would be allowed to audit five single measures during each year. These mini-audits would be paid for by the CLEC, unless the ILEC is found to be misreporting or misrepresenting data or to have non-compliant procedures, in which case the ILEC would pay for the mini-audit. Each mini-audit will be submitted to the CPUC as a proprietary document.²⁸

²⁸ Motion for Partial Settlement Agreement, OSS OII, Attach. at 65.

The approved Nevada Stipulation includes audit processes identical to the processes proposed in California.²⁹

In Texas, a CLEC and SWBT will consult with one another and attempt in good faith to resolve any issue regarding the accuracy or integrity of data collected, generated and reported. In the event that a CLEC requests such consultation and the issues raised by the CLEC have not been resolved within 45 days after the CLEC's request for consultation, SWBT will allow the CLEC to conduct an independent audit, at the CLEC's expense, of SWBT's overall performance measurement data collection, computing and reporting process. A CLEC may request one audit per twelve calendar months.³⁰ The Texas PUC has approved these audit mechanisms as part of SWBT's draft 271 application, with the additional recommendations that if an audit reinforces the identified problem or any new problem, SWBT should reimburse a CLEC for any expense incurred for such audit, and that SWBT should inform other CLECs of any problems identified during the audit initiated by any CLEC.³¹ In addition, the Texas PUC is validating SWBT's performance measures as part of the OSS testing project currently underway in Texas.

²⁹ Stipulation of Parties, Nevada OSS, Attach. at 86.

³⁰ Southwestern Bell Telephone Company and AT&T Interconnection Agreement, Attachment 17, § 8.5, approved in In re Petition of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company, Order Approving Amendments to Interconnection Agreement, Docket Nos. 16226 and 17579 (Tex. Pub. Util. Comm'n Feb. 26, 1998).

³¹ Project No. 16251, Final Staff Report on Collaborative Process, at 151-52 (Tex. Pub. Util. Comm'n Nov. 18, 1998).

Enforcement Mechanisms

In addition to the performance measurement, reporting and audit provisions, substantial monetary payments will be assessed if SBC's ILECs fail to achieve performance parity and meet the objective standards.

California. In California, pursuant to the request of the CPUC Staff, PacBell has submitted a proposal that remedies be imposed for submeasures based on parity when the level of performance is below the level of service that PacBell provides to itself, and, for objective standard measures, whenever PacBell fails to meet the standard.³²

Under PacBell's proposal, the amount of the liquidated damages would increase when PacBell deviates more severely from parity or the objective standard and, if the ILEC fails to provide parity performance for three consecutive months, or misses a single objective standard by more than 10%, an increased remedy would be assessed. There are a total of 43 measures, and PacBell estimates that liquidated damage payments for missing 20% of the submeasures would be almost \$1,000,000 per month.³³ In addition, if one-third of these submeasures is missed for three consecutive months, PacBell's estimated payments will be in excess of \$60,000,000 per year.³⁴ The California ILECs and the CLECs are in agreement on a forgiveness plan, whereby an ILEC may miss one

³² Pacific Bell's (U 1001 C) Summary of Proposal and Expected Payments, OSS OII, at 2 (Cal. Pub. Utils. Comm'n Feb. 24, 1999).

³³ Pacific Bell's (U 1001 C) Opening Brief on Performance Remedies, OSS OII, at 13 (Cal. Pub. Utils. Comm'n Mar. 22, 1999).

³⁴ Pacific bell's (U 1001 C) Summary of Proposed and Expected Payments, OSS OII, at 4 (Cal. Pub. Utils. Comm'n Feb. 24, 1999).

submeasure every six months without having to pay liquidated damages.³⁵ Additionally, PacBell's proposal would permit the ILEC to do a root cause analysis to show that ILEC performance is not the cause of the failure to meet the standards.³⁶

Under the most recent CLEC proposal, if the ILEC fails to provide parity performance for three consecutive months, or misses a single objective standard for three consecutive months, remedies in the amount of \$25,000 for each failure or miss would be assessed.³⁷ The CLECs also propose a second tier of remedies. Tier II remedies are a regulatory fine, paid into the California general fund.³⁸ Under the Tier II remedies, once a certain threshold of poor performance is reached, the ILEC would pay a fine based on the number of access lines in use. In addition, the CLECs' most recent proposal recognizes the need for PacBell to do root cause analyses in order to show that parity service has been provided, even if the measures do not reflect that it has.³⁹

Nevada. In Nevada, workshops on performance remedies have been held and there will be PUC hearings on this issue beginning in June 1999.

³⁵ *Id.* at 2-3. PacBell has determined, and the CLEC analysis of the PacBell proposal has confirmed, that due to random statistical variations, PacBell could pay over \$400,000 annually even if it provides parity of service. The forgiveness program is intended to provide some offset to this monetary compensation based on the testing formula. *Id.* at 3.

³⁶ Pacific Bell's (U 1001 C) Performance Remedies Plan Filed Pursuant to ALJ Ruling of January 26, 1997, OSS OII, at 16-17 (Cal. Pub. Utils. Comm'n Feb. 1, 1999).

³⁷ Supplement to CLEC's Position Regarding Performance Incentives for Pacific Bell, OSS OII, at 3 (Cal. Pub. Utils. Comm'n Feb. 19, 1999).

³⁸ Simplified Summary of CLEC Performance Incentives Proposal (With Background/Support), OSS OII, at 1 (Cal. Pub. Util. Comm'n Feb. 1, 1999).

³⁹ Pacific Bell's (U 1001 C) Opening Brief on Performance Remedies, OSS OII, at 23-27.

Texas. As part of the Texas 271 collaborative process, SWBT, the CLECs and the Texas commission staff have engaged in similar discussions regarding the liquidated damages and other enforcement mechanisms that will apply to the performance measurements when SWBT does not provide parity performance or meet objective standards. The Texas PUC staff proposal contains a two-tiered structure that would require payments of Tier 1 liquidated damages to the CLECs for failure to provide parity performance or to meet objective standards on nearly all, and Tier 2 penalties to the state treasury of Texas for failure to provide parity performance or meet objective standards three consecutive months in a row in respect to 48 broad outcome-based measures that have a direct and immediate impact on competition. In Tier 1 and Tier 2, liquidated damages are assessed on a per occurrence basis, with remedies in Tier 1 scaled based on the size of the CLEC and remedies in Tier 2 set at a higher level than Tier 1. SWBT, the Texas PUC, and the CLECs are currently negotiating modifications to the Texas PUC staff's plan, with a resolution expected shortly.

Conclusion

These performance measures and remedies are the result of over two years of negotiation and discussion between SBC's ILECs, other in-region ILECs, the relevant PUCs, the DOJ and, most importantly, the CLECs themselves. SBC's ILECs entered into negotiations with the state PUCs and the CLECs in order to address the concerns of all the parties. The current proposals being considered by the relevant PUCs provide measurements designed to provide detailed information on all aspects of how SBC's ILECs are furnishing OSS and other services to the CLECs. The processes are coming to

a close as the PUCs will soon rule on the open issues relating to certain objective performance standards and enforcement provisions. It is clear that the new performance measurement regimes developed by SBC's ILECs, other ILECs, the CLECs and the PUCs will provide all of the information necessary for the CLECs and the PUCs to determine whether SBC's ILECs are providing CLECs with parity of service and a meaningful opportunity to compete.