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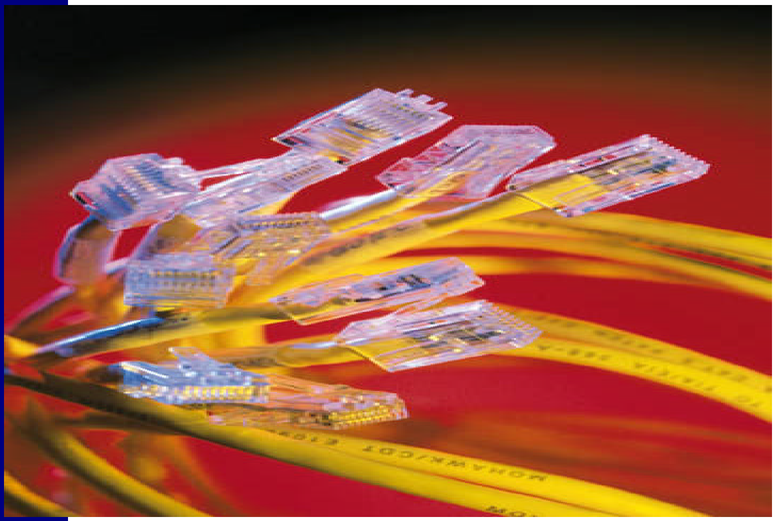
# Performance Assurance Plans: State Experience So Far



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# PERFORMANCE ASSURANCE PLANS: STATE EXPERIENCE SO FAR

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## EXECUTIVE SUMMARY


With the approval in October 2002 of Verizon's application in Virginia to enter the in-region long distance market, the Bell operating companies (BOCs) serving 23 states have demonstrated to the FCC's satisfaction that markets are irreversibly open to local competition. Performance assurance plans (PAPs) monitored and enforced by the states, are integral components of the FCC approvals. In some of those states the local markets have been open long enough to get a sense of whether the PAPs are working. At the request of the Mid-Atlantic Conference of Regulatory Utilities Commissioners (MACRUC), the NRRI contacted the 13 state commissions for which the Bell operating companies received approvals for BOC in-region long distance service under section 271 of the 1996 Telecommunications Act through May 2002 and asked a number of questions on the implementation of the plans. The survey paid particular attention to monitoring and enforcement. Key questions raised by MACRUC were whether fines have been imposed for nonperformance; if fines have been levied, the amounts; whether there are any discernible regional patterns of violations; and whether company behavior appears to have changed as a result of enforcement measures. Ten states participated in the survey, including the four states with the longest experience under section 271 approval.

The NRRI study suggested a consistent pattern in the performance measures missed by BOCs in two states, Missouri and Oklahoma. DSL measures and unbundled network element measures were missed in Missouri, New York and Oklahoma. Measures have been missed in other states, but the data made available to the NRRI did not permit easy comparison.

All responding states have penalty systems for BOCs' substandard performance, but in some cases the amounts could not be ascertained since much of the data is confidential. Where the states provided data, the amounts were often significant. In Pennsylvania, for example, remedies paid by the BOC totaled almost $11 million in 2001, with payments to the state of about $1 million. Penalties to the state of Missouri totaled $621,800 from the inception of the plan to the time when the commission responded to the survey. In Oklahoma, penalty payments to CLECs totaled $440,000 and to the state $200,000. Accumulated penalties paid to CLECs in Texas were close to $15 million and to the state, $6 million.

All conclusions from the NRRI survey are tentative, of course, given the few BOCs with approved plans, the even fewer that participated in the survey and the short amount of time PAPs have been in effect.

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# FOREWORD

Performance assurance plans are a substantial component of Bell operating company commitments to live up to the requirements under section 271 of the Telecommunications Act of 1996 after entry into long-distance markets. This report reviews the experience in states granted FCC approval under section 271 through May 2002. The data thus far is limited but should be of interest to state regulatory commissions.

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## INTRODUCTION

With the approval in October 2002 of Verizon's application in Virginia to enter the in-region long distance market, the Bell operating companies (BOCs) serving 23 states have demonstrated to the FCC's satisfaction that markets are irreversibly open to local competition. Performance assurance plans (PAPs) monitored and enforced by the states are integral components of the FCC approvals. In some of those states, the local markets have been open long enough to get a sense of whether the PAPs are working. At the request of the Mid-Atlantic Conference of Regulatory Utilities Commissioners (MACRUC), the NRRI contacted the 13 state commissions for which the BOCs received approvals for in-region long distance service under section 271 of the 1996 Telecommunications Act through May 2002 and asked a number of questions on the implementation of the plans. The survey paid particular attention to monitoring and enforcement. Key questions raised by MACRUC were whether fines have been imposed for nonperformance; if fines have been levied, the amounts; whether there are any discernible regional patterns of violations; and whether company behavior appears to have changed as a result of enforcement measures.

Ten states participated in the survey, including the four states with the longest experience under section 271 approval. Table 1 below shows the states with approvals through September 2002, the months elapsed since Bell entry was approved and the states that responded to the NRRI request for information.

The NRRI study suggested a consistent pattern in the performance measures missed by BOCs in two states, Missouri and Oklahoma. Digital subscriber line (DSL) measures were missed in Missouri, New York and Oklahoma, and unbundled network element (UNE) measures were missed in New York and Oklahoma. Measures have been missed in other states, but the data made available to the NRRI did not permit easy comparison.

All responding states have penalty payment systems for BOCs' substandard performance, but in some cases the amounts could not be ascertained since the data is confidential. Where the states provided data, the amounts were often significant. In Pennsylvania, for example, remedies paid by the BOC totaled almost $11 million in

2001, with payments to the state of about $1 million. Penalties to the state of Missouri totaled $621,800 from the inception of the plan to the time when the commission responded to the survey. In Oklahoma, penalty payments to CLECs totaled $440,000 and to the state $200,000. Accumulated penalties paid to CLECs in Texas were close to $15 million and to the state, $6 million.

All conclusions from the NRRI survey are tentative, of course, given the few BOCs with approved plans, the even fewer that participated in the survey, and the short amount of time PAPs have been in effect.

**TABLE 1: FCC APPROVALS UNDER SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996**

| State | Company | Date Approved | Months Since Approval (as of October '02) |
|---|---|---|---|
| New York ∗ | Verizon | Dec. 22, 1999 | 34 |
| Texas ∗ | SBC | June 30, 2000 | 28 |
| Kansas ∗ | SBC | Jan. 22, 2001 | 21 |
| Oklahoma ∗ | SBC | Jan. 22, 2001 | 21 |
| Massachusetts | Verizon | April 16, 2001 | 18 |
| Connecticut ∗ | Verizon | July 20, 2001 | 15 |
| Pennsylvania ∗ | Verizon | Sept. 19, 2001 | 13 |
| Arkansas ∗ | SBC | Nov. 16, 2001 | 11 |
| Missouri ∗ | SBC | Nov. 16, 2001 | 11 |
| Rhode Island ∗ | Verizon | Feb. 24, 2002 | 8 |
| Vermont | Verizon | April 17, 2002 | 6 |
| Georgia ∗ | BellSouth | May 15, 2002 | 5 |
| Louisiana | BellSouth | May 15, 2002 | 5 |
| Maine | Verizon | June 19, 2002 | 4 |
| New Jersey | Verizon | June 24, 2002 | 4 |
| Alabama | BellSouth | Sept. 18, 2002 | 1 |
| Kentucky | BellSouth | Sept. 18, 2002 | 1 |
| Mississippi | BellSouth | Sept. 18, 2002 | 1 |
| North Carolina | BellSouth | Sept. 18, 2002 | 1 |
| South Carolina | BellSouth | Sept. 18, 2002 | 1 |
| Delaware | Verizon | Sept. 25, 2002 | 1 |
| New Hampshire | Verizon | Sept. 25, 2002 | 1 |
| Virginia | Verizon | Oct. 30, 2002 | 0 |

Source: FCC, *RBOC Applications to Provide In-Region, InterLATA Services Under 271*, accessed Nov. 8, 2002 at: http://www.fcc.gov/Bureaus/Common_Carrier/in-region _applications/

∗ Commissions which participated in the NRRI survey of state experience with performance assurance plans, June 2002.

## BACKGROUND

One of the principal goals of the Telecommunications Act of 1996 was to increase competition in all telecommunications markets. To that end, the Act provided for elimination of the line-of-business restrictions that separated local from long distance carriers. Local carriers were required to open their markets to competitive entry from a number of sources including interexchange carriers, cable system operators, competitive access providers, and resellers. Because the Act was intended to enhance long distance competition as well as create local competition, BOCs were provided the opportunity to enter interLATA markets from which they had been excluded under the terms of the Modified Final Judgment (MFJ) that broke up AT&T. Specifically, section 271 of the Communications Act of 1934, as amended, provides that BOCs must obtain state-by-state permission from the FCC to provide in-region interLATA services.[1] The decision is up to the FCC, but the states and the U.S. Department of Justice have consultative roles.

Taken at face value, the requirements for obtaining section 271 permission seem fairly straightforward: The BOC must have a facilities-based competitor providing service to residential and business customers, or it can have a statement of generally available terms and conditions for interconnection to competitors that satisfies a 14-point "competitive checklist" of conditions for interconnection and nondiscriminatory access to BOC network facilities and functions. Although it is possible that some of the early applications might have been trial balloons, five of the first six were denied by the FCC, and the first was withdrawn. However, as it denied those early applications, the FCC was providing guidance for the BOCs and for the state commissions as to what was required for a favorable decision.

From this somewhat fitful process, the general parameters of a successful application under section 271 emerged: There must be a clear indication that the BOC's local markets are irreversibly opened to competition. This means, among other things, that the prices for interconnection and unbundled network elements are set at levels that would allow for sustainable entry, that the BOC's operations support systems

[1] Once allowed, interLATA service must be provided via a structurally separated subsidiary.

(OSS) are capable of providing CLECs with service comparable in speed and accuracy to what the BOC provides itself, and that the OSS systems are capable of handling volumes of CLEC orders and changes in sufficient quantities to allow meaningful competition. Meeting and assuring this standard has proved to be more difficult and time consuming than might have been imagined prior to passage of the 1996 Act.

What became clear was that the BOCs' OSS had not been designed to handle large numbers of non-BOC service orders and changes; they were largely legacies from a noncompetitive era. BOC/CLEC interfaces had to be tested, revised and retested until state commissions could vouch for their parity with the BOCs' internal systems as well as their reliability under simulated actual levels of CLEC orders and changes. This testing, revising and retesting process involved the BOCs, state commission staff, CLECs and third-party consultants. It was time-consuming, costly and often contentious.

Notwithstanding all the difficulties encountered along the way, the OSS testing process finally produced a successful section 271 application. On Dec. 22, 1999, Verizon[2] was given permission to offer interLATA service in New York. Six months later, again after a long testing process, SBC was given permission to offer interLATA service in Texas. To a great extent, the first two successful applications set the standard for the rest. Given the time, effort, and expense that went into them, it is almost certain that all parties learned from them. The BOCs learned what changes to their systems and procedures were required for a successful application; state commissions saw how much effort and resources were required and gained considerable understanding of what problems might be encountered in the OSS tests.

Although the first two successful tests could not be applied directly to other states, they provided guidance and templates for tests in other states, especially those that had existing systems and procedures most similar to those in New York or Texas. Thus, other SBC BOCs and commissions could learn from Texas, and former Nynex BOCs and commissions could learn from New York. There did appear to be a learning

[2] Bell Atlantic-New York at the time.

curve: The next successful applications were in Kansas, Oklahoma, and Massachusetts.

After a slow start, the pace of section 271 applications and approvals has picked up. Up to now, the FCC has approved 23 applications and has not denied an application since November 1998. Since then, however, BOCs have filed and withdrawn 15 applications, six of which were subsequently refiled and approved. Moreover, there are 12 applications pending at the FCC, all of which are expected to be decided by December of this year.

Gaining interLATA approval is a significant milestone; nevertheless it is not the end of the process. To ensure that local markets remain open after approval under section 271 is granted, post-271 performance assurance plans (PAPs) provide for monitoring as well as meaningful penalties for unacceptable performance or backsliding. An example of the use of performance plans and meaningful penalties may be seen in the case of New York. Shortly after Verizon obtained interLATA permission in New York, it experienced problems fulfilling wholesale customers' service orders on a timely basis. Those problems led to $3 million in fines and additional penalties, including $10 million in credits for CLECs that had trouble accessing Verizon's OSS.[3]

Indeed, an effective PAP is an integral part of a successful application. Approving, monitoring and enforcing PAPs is part of state commissions' post-271 responsibility. Fortunately, the OSS testing process and results provide considerable guidance for PAPs. Experience gained by commissions through the testing process and CLECs' operating experience to date provides considerable information on both the kinds of problems that are likely to be experienced, the relative importance of the various performance metrics and how the BOC can fix the problem. This information is essential in designing an effective PAP. Moreover, PAPs that provide for ongoing monitoring have penalty provisions that are self-effectuating, meaningful and possibly

[3] See "FCC, PSC Answer AT&T With Fines, Credits for BA," *State & Local Communications Report*, March 24, 2000, available at: http://www.tr.com/tronline/slcr/2000/sl032400/sl032400-14.htm

progressive (increasing with duration and/or incidence) are most likely to ensure that local telephone markets remain irreversibly open to competition.[4]

[4] In some cases, it may be most efficient to have some penalties, especially those payable to affected CLECs, be self-liquidating and included in interconnection agreements rather than commission rules.

## GENERAL FINDINGS

The NRRI sent the survey to all 13 states where the BOCs received approvals from the FCC to offer in-region interLATA services as of June 1, 2002. The responses were collected from ten states, with a 77 percent response rate. The survey is composed of two parts: performance metrics and performance results/enforcement. In the first part, states were asked about the performance metrics they apply in their state, including the elements of the performance metrics, critical measures, and the process of changing the metrics. The second part asked states to provide information concerning the actual performance results and experiences with the metrics and the enforcement mechanism in their state.

- ? The most noticeable, though not too surprising, feature of the survey results is that the performance assurance plans do not vary greatly from state to state, especially so among states that are in the same service territory of one Bell operating company. The states that allowed the BOC provision of in-region interLATA services earlier than other states in the territory set models for other states to refer to, i.e., New York for the Verizon service territory, Texas for the Southwestern Bell Telephone Company (SWBT)[5] service territory, and probably Georgia and Louisiana for future BellSouth states.
- ? Related to the above, there are regional cooperation efforts among neighboring states. Examples include a five-state collaborative review mechanism in the service territory of SWBT (Arkansas, Kansas, Missouri, Oklahoma, and Texas) and a cooperative mechanism for annual review between Massachusetts and Rhode Island.
- ? The performance assurance plans (PAPs) or equivalent plans with different names and their revisions are required to be approved or adopted, directly or indirectly (as part of an interconnection agreement), by the state commission before they go into effect in all responding states.

[5] Southwestern Bell Telephone Company (SWBT) is a subsidiary of SBC Communications Inc. that serves in Arkansas, Kansas, Missouri, Oklahoma, and Texas.

? Although there are some variations in grouping of the measures of performance metrics depending on the BOC service territory, the performance metrics have similar structures with a common coverage of several domains, including pre-ordering, ordering, provisioning, maintenance and repair, billing and network performance. In some states, such as Connecticut, New York and Rhode Island, numeric weights are assigned to each measure. In the SWBT territory (Arkansas, Kansas, Missouri, Oklahoma and Texas), performance metrics are classified as Tier I and Tier II,[6] each measure ranked high, medium, low, or diagnostic in the two tiers. Similarly in Georgia (the BellSouth service territory), measures are classified in three tiers.

? Performance reviews are held either semi-annually or annually in most states, at which time changes in the performance metrics can be made. Participants generally include the commission staff, the BOC, and competitive local exchange carriers (CLECs).

? Survey results show consistent patterns in frequently missed performance measures in a couple of instances. For example, responses from some of the responding states commonly show that benchmarks for DSL (Missouri, New York and Oklahoma) and UNEs (New York and Oklahoma) are frequently and consistently missed by the BOCs. The Missouri and Oklahoma commissions, both served by SWBT, identified five performance measures in common as those frequently failed by SWBT: average response time – loop makeup info; average response time – loop makeup data; accuracy of loop makeup info – DSL orders; actual loop makeup data returned – Datagate; actual loop makeup data returned – Verigate.

? In case of substandard performance, a self-executing penalty payment from the BOC to CLECs is a common remedy in all responding states. In some states (Arkansas, Georgia, Kansas, Missouri, Oklahoma, Pennsylvania and Texas) there is another penalty payment that goes to the state (either general

[6] Tier I metrics are related to activities that would result in financial damages to specific CLECs, and Tier II metrics are associated with activities that may threaten the competitiveness of the market.

funds – Arkansas, Georgia, Kansas, Missouri, Oklahoma and Texas – or a special educational fund – Pennsylvania).

? In most states, performance reports are submitted to the commission monthly. These are available to the commission and the CLECs, but public access to the reports or data is allowed in only four states (Connecticut, Georgia, New York and Texas). CLEC-specific data are likely to be available only to individual CLECs in most states, with some exceptions such as Oklahoma where the commission has access to both the aggregate and individual data.

? Several different mechanisms are used in the responding states for dispute resolution with regard to performance measurements. These include a third-party audit, a commission audit, a periodic review, an alternative dispute resolution procedure, arbitration, workshops and a formal complaint filed with the state commission. In most responding states, no staff members are exclusively assigned to section 271 performance issues. Most states assigned a few staff members on a part-time basis to work on this area, with a differing number of staff members depending on the individual state's staffing situation.

## FINDINGS ON PERFORMANCE METRICS

### State Commission Approval of Performance Assurance Plans

As shown in table 2, all responding states required that the PAPs be approved or adopted, either directly or indirectly (as part of an interconnection agreement), by the state commission before they became official.

**TABLE 2: STATE COMMISSION APPROVAL OF PERFORMANCE ASSURANCE PLANS**

| **Q: Are performance assurance plans subject to state commission approval?** | |
|---|---|
| **Yes** | AR, CT, GA, KS, MO, NY, OK, PA, RI, TX **[10]** |
| **No** | |
| **State** | **Comment** |
| **AR** | The plan is a part of the A2A Interconnection Agreement which the Arkansas PSC approved June 18, 2001, in Docket No. 00-211-U. |
| **KS** | The Kansas Performance Remedy Plan was adopted by the commission, and revisions to the plan must be adopted by the commission before they become official. |
| **MO** | There is no Missouri statute or regulation which would mandate such a plan. The only performance plan in Missouri currently in force is found within Southwestern Bell Telephone Company, L.P.'s (SWBT's) generic interconnection agreement known as the M2A and indirectly required the commission's approval because it is part of an interconnection agreement. |
| **PA** | Pennsylvania first approved a set of Carrier-to-Carrier (C2C) Guidelines (guidelines/metrics) and a Performance Assurance Plan (PAP/remedies) by order entered on December 31, 1999, in Docket P-00991643. A restructuring of the C2C Guidelines and the PAP is presently under consideration by the PUC at Docket No. M-00011468. This predates the BOC's entry into the in-region long distance market. |
| **TX** | The Texas Performance Remedy Plan was originally adopted by the commission, and revisions to the plan must be adopted by the commission before they are official. |

Source: NRRI survey of states, June 2002.

## Structure of Performance Metrics

Although there are some variations in grouping of the measures and standards of performance metrics depending on the BOC service territory, the performance metrics commonly cover several domains, including pre-ordering, ordering, provisioning, maintenance and repair, billing and network performance. Each domain is divided into many metrics and submetrics. These performance metrics also commonly cover the mode of entry by CLECs, which may include resale, UNEs, interconnection trunks, collocation, and DSL.

## Important Measures

In Connecticut, New York and Rhode Island, but not Pennsylvania, the four states in Verizon's service territory that responded to the survey,[7] numeric weights are assigned to each metric – generally 5, 10, 15 or 20 – based on the type of product, the importance of the measured process, and the volume of the product. Some of the measures are classified as "critical." The critical measures are[8]: OSS interface (PM 1); percent on time ordering notification (PM 2); percent missed appointment – VZ – Total – EEL (PM 4a); percent missed appointment (PM 4b); percent missed appointment – VZ – no dispatch – platform (PM 5); hot cut performance (PM 6); percent on time performance – UNE LNP (PM 7); missed repair appointments (PM 8); mean time to repair (PM 9); percent repeat reports within 30 Days (PM 10); final trunk groups blocked (PM 11); collocation (PM 12); and trouble reports (PM 13).

In the SWBT service territory (Arkansas, Kansas, Missouri, Oklahoma and Texas), all measures are weighted in two categories, Tier I and Tier II. Measures can be simultaneously classified as Tier I and Tier II. Each specific performance measure is given a rating of high, medium, low, or diagnostic. Tier I metrics are related to activities that would result in financial damages to specific CLECs, and Tier II metrics are associated with activities that may threaten the competitiveness of the market. Certain measures are classified as diagnostic, and cannot result in penalty payments for

[7] The Pennsylvania PUC does not presently weight metrics or designate critical measures and is currently considering whether and how to adopt New York-style metrics and remedies.
[8] This list reflects the critical measures of 2001 and 2002. The 2000 list is a little different.

violation. Monetary damages or assessments are related to the rating of high, medium, or low. Tier I payments are paid to individual CLECs, while Tier II payments are made to the state's general fund (not to the commission).

Oklahoma's "Performance Measurement Monitoring List"[9] is comprised of performance measures that are more closely monitored than others monthly in the aggregate (all CLECs combined). It includes 18 measures. These are: average response time – loop make-up information (PM 1); accuracy of loop make-up information (PM 1.2); percent firm order confirmations (FOCs) returned on time (PM 5); percent FOCs for xDSL and line sharing returned on time (PM 5.1); percent rejects (PM 9); percent manual rejects received electronically and returned within six hours (PM 10.1); overall percent LSR process flow through (PM 13.1); percent SWBT caused missed due dates – resale (PM 29); percent SWBT caused missed due dates – specials (PM 45); average installation interval – DSL (PM 55.1); percent xDSL capable loops requiring removal of load coals/repeaters (PM 55.2); percent installed within customer requested due date – DSL (PM 56); percent SWBT caused missed due dates – UNE (PM 58); trouble report rate – UNE (PM 65); percent missed due dates – interconnection trunks (PM 73); average delay days for missed due dates – interconnection (PM 74); percent premature disconnects for LNP orders (PM 96); and percent premature disconnects for CHC/FDT LNP with loop (PM 114).

## Changes in Performance Metrics

In all responding states, there have been changes in performance metrics through review processes, largely to add or eliminate measures rather than to alter calculation methods. State comments are shown in table 3.

[9] The list was not adopted by the commission formally. Rather, it is used informally by the commission staff to monitor performance in terms of competitive effects.

## TABLE 3:  CHANGES IN PERFORMANCE METRICS

| Q: Has there been any change in performance metrics since they were introduced? If yes, please explain the changes that have been made. | |
|---|---|
| **Yes** | AR, CT, GA, KS, MO, NY, OK, PA, RI, TX **[10]** |
| **No** | |
| **State** | **Comment** |
| **AR** | The performance metrics were initially introduced as version 1.7 of the Business Rules. Version 2.0 is in effect now. |
| **CT** | Same as New York. Any modifications ordered in New York are automatically incorporated into the Connecticut plan. |
| **GA** | We had a six-month review.  The commission added additional metrics, disaggregation, and penalties. |
| **KS** | The measures have been subject to one review, in summer 2001.  This review resulted in the elimination of some measures and the addition of some new ones. No change has been made to the calculations. |
| **MO** | Some metrics have been dropped by the collaborative efforts of the joint industry-state-SWBT group but none of those remaining have been changed. |
| **NY** | ? Year 1 to Year 2 changes: A DSL mode of entry was added, metric changes by the Carrier-to-Carrier Working Group were adopted, and dollars (potential bill credits) were reallocated within the plan.<br>? Year 2 to Year 3 changes are now being negotiated. |
| **OK** | Some measures were deleted and some new ones were added. |
| **PA** | There were various refinements to the C2C Guidelines and Performance Assurance Plan during 2000. In February 2002, line sharing was added as a product to the C2C Guidelines. |
| **RI** | Any final changes made at the NY commission are also filed in Rhode Island for commission review and possible inclusion. |
| **TX** | The measures have been subject to two reviews, in the summers of 2000 and 2001. These reviews resulted in the elimination of some measures and the addition of some new ones. No change has been made to the calculations. |

Source: NRRI Survey, June 2002.

### Mechanisms/Processes for Changing the Performance Metrics

In the responding states, a common way to change the performance metrics is a periodic review, either annually or semi-annually. In the SWBT service territory, a six-month review was anticipated but in practice it is conducted annually.  The Arkansas, Kansas, Missouri and Oklahoma commissions participate in the reviews of the performance metrics at the Texas Public Utility Commission.  In the BellSouth service territory, Georgia also has a six-month periodic review.  In New York and Rhode Island, where Verizon is the BOC in the region, an annual review is conducted, whereas in Connecticut a biannual review is done.

There are other ways to change the performance metrics.  For example, in New York, there is a 15-day clause, which allows reallocation of the monthly distribution of bill credits between provisions of the performance assurance plan by giving the company 15 days notice prior to the beginning of the month the changes are to take effect.  In Connecticut, Verizon may at any time recommend any modifications, additions or deletions to the measures.  In Rhode Island, a formal motion for action can be submitted to the commission at any time besides the annual review.  State responses are shown in table 4.

## TABLE 4: MECHANISMS/PROCESSES FOR CHANGING THE PERFORMANCE METRICS

**Q: What is the mechanism or process for changing the performance metrics?**

| State | Comment |
|---|---|
| AR | The Texas PUC conducts semi-annual reviews of the performance metrics with SWBT and the CLEC industry. The Arkansas commission participates in these reviews. |
| CT | Biannual Reviews and updates. Verizon may, at any time, recommend any modifications, additions or deletions to the measures. Staff can also conduct a 60-day advanced notice of the audit of the data. CLECs and any other interested persons are given an opportunity to provide comments on any recommendation made. |
| GA | There is currently a six-month process. |
| KS | The Kansas commission participates in the Texas PUC's reviews. |
| MO | The need for changes to various metrics is discussed and suggested changes are prepared for submission to the various states' commissions in semi-annual industry-state-SWBT collaborative efforts held in Texas. The suggested changes would result in changes to approved interconnection agreements, hence the need for commission approval. |
| NY | There are two ways to change the plan: an annual review and the 15-day clause. The 15-day clause allows us to reallocate dollars between any provisions of the plan by giving the company a 15-day notice prior to the beginning of the month the changes are to take effect. |
| OK | The Oklahoma Corporation Commission participates in a six-month review (five-state collaborative process) conducted at the Public Utility Commission of Texas. The results of the review (changes, additions and deletions) are filed in Oklahoma, and a hearing is held before the commission for final approval. |
| PA | The original order adopting the C2C Guidelines and PAP (*PMO I*) in Pennsylvania contemplated periodic reviews. To date, these have not commenced due to several reasons. |
| RI | Motion before the commission. At the annual review or at any time, a formal motion can be submitted to the commission for action. |
| TX | ?Measures are evaluated during a periodic review. This review was anticipated to be every six months, but in practice it is every year because of the amount of time required to receive and review comments from parties, develop new measures, have companies implement the changes, collect data for the new measures, and time for staff and companies to review that new data.<br><br>?The review involves a multi-day workshop at which ILECs and CLECs discuss proposed changes. Prior to the meeting at the commission, ILECs and CLECs meet off-site to discuss changes to measures. Their proposals are filed with the commission, and staff have time to review these proposals prior to the workshop. After the workshop, staff file recommendations for changes, and parties are allowed to file comments. A final proposal is presented to the Commissioners for approval. |

Source: NRRI Survey, June 2002.

## FINDINGS ON VIOLATIONS AND ENFORCEMENT

### Frequently Violated Performance Measures

States were asked to identify performance measures that have been violated often by the BOC after entry under section 271. Four states (Missouri, New York, Oklahoma and Pennsylvania) provided specific measures that have been violated often by the BOCs, and other states provided general comments. According to the state responses, some patterns appear to exist. That is, some performance measures have been more frequently missed than others by the BOCs across the states. This phenomenon seems to be clearer in neighboring states that have the same BOC in the region. Measures or measurement categories identified as being missed frequently by more than one state commission are summarized in table 5.

**TABLE 5: FREQUENTLY MISSED PERFORMANCE MEASURES IN MORE THAN ONE STATE**

| Measures/Categories | Identifying Commission |
|---|---|
| DSL | Missouri, New York, Oklahoma |
| UNEs | New York, Oklahoma |
| Average response time – loop makeup info (PM 1.0-09) | Missouri, Oklahoma |
| Average response time – loop makeup data (PM 1.0-24) | Missouri, Oklahoma |
| Accuracy of loop makeup info – DSL orders (PM 1.2) | Missouri, Oklahoma |
| Actual loop makeup data returned – Datagate PM 2.0-08) | Missouri, Oklahoma |
| Actual loop makeup data returned – Verigate (PM2.0-18) | Missouri, Oklahoma |

Source: NRRI Survey, June 2002.

The four states that provided specific measures violated often by the BOCs will be reviewed first; then the general comments.

## New York – Verizon[10]

In the case of Verizon - New York, among the mode of entry (MOE) measures, UNEs is the most frequently violated category, with 17 monthly bill credit occurrences over the period from January 2000 to April 2002. Resale (10 occurrences) and DSL (eight occurrences) have also been frequently violated.

Considering 2001 only, however, DSL was most often violated with eight monthly occurrences, which is greater than UNEs (seven monthly occurrences). Trunks (one occurrence) is a relatively less frequently violated category compared to other categories, and collocation is the only category in the MOE that has not resulted in a bill credits payment.[11] As can be seen in figure 1, all categories of MOE measures seem to show a decreasing number of violations per year as time goes by. Interestingly no violations in the categories of the MOE were made in 2002 through April.

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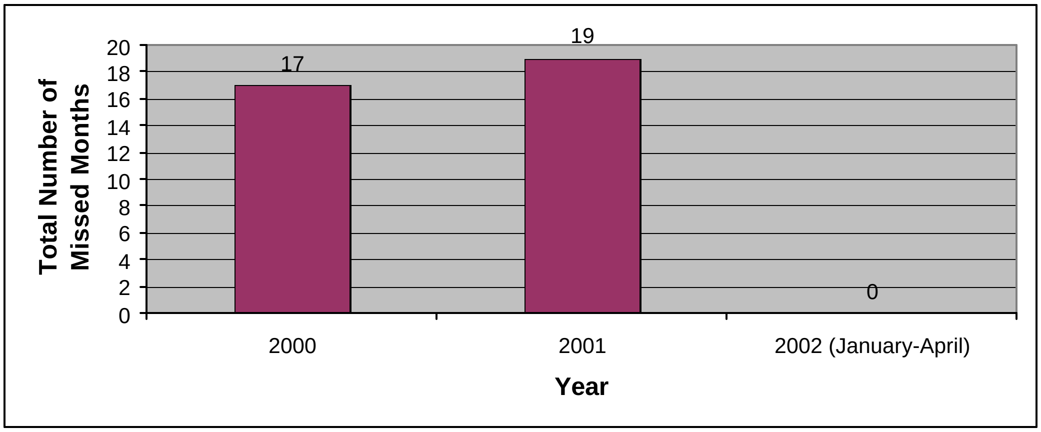
[10] All data shown here does not contain data between September 2001 and November 2001 for which performance reports were exempted due to the 9/11 attacks. In addition, the monthly violation does not mean the actual number of violations in each performance measure. Instead, it indicates the month that resulted in bill credits from Verizon to CLECs for that performance measure.

[11] As explained in notes to figure 1, "collocation" was eliminated from the MOE starting in January 2001.



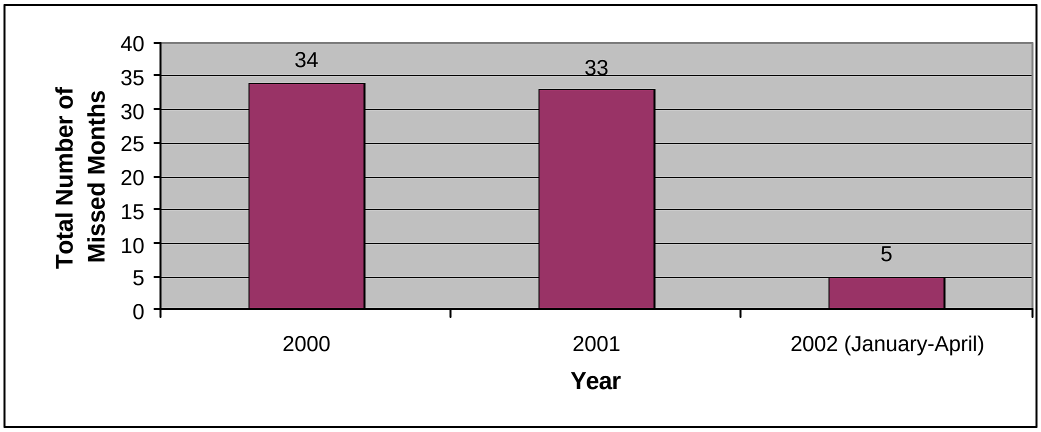

| Category\Year | 2000 | 2001 | 2002 January-April |
|---|---|---|---|
| Resale | 7 | 3 | 0 |
| UNEs | 10 | 7 | 0 |
| Trunks | 0 | 1 | 0 |
| Collocation | 0 | | |
| DSL | | 8 | 0 |
| Total | 17 | 19 | 0 |

Notes: *Collocation was removed from the MOE beginning in January 2001.
*DSL was included as an MOE beginning in January 2001.
Source: NRRI Survey, June 2002.

**Fig. 1. Mode of entry violations (New York – Verizon)**
**January 2000 through April 2002**

Among the critical measures, mean time to repair (19 monthly occurrences), percent repeat reports within 30 days (17 monthly occurrences), percent missed appointment (12) and xDSL (10) were the four measures violated most often during the period from January 2000 to April 2002. Collocation was violated five months in a row only during 2001. Other critical measures have shown relatively less frequent violations (percent completed, three; response time OSS interface, two; OSS interface, two; and percent on time ordering notification, two) over the same period. Although the number of monthly violations decreased in 2001,[12] the two most frequently violated critical measures during the two years from 2000 to 2001 (mean time to repair and percent repeat reports within 30 days) were still violated in 2002 (through April), showing a consistent pattern of violation (see figure 2).

[12] The New York commission respondent (Rich Brash, Public Utilities Auditor III) commented during a telephone conversation that the decreasing number of violations does not necessarily mean performance has improved:  It could also be a result of less demand for service in certain measurement areas.

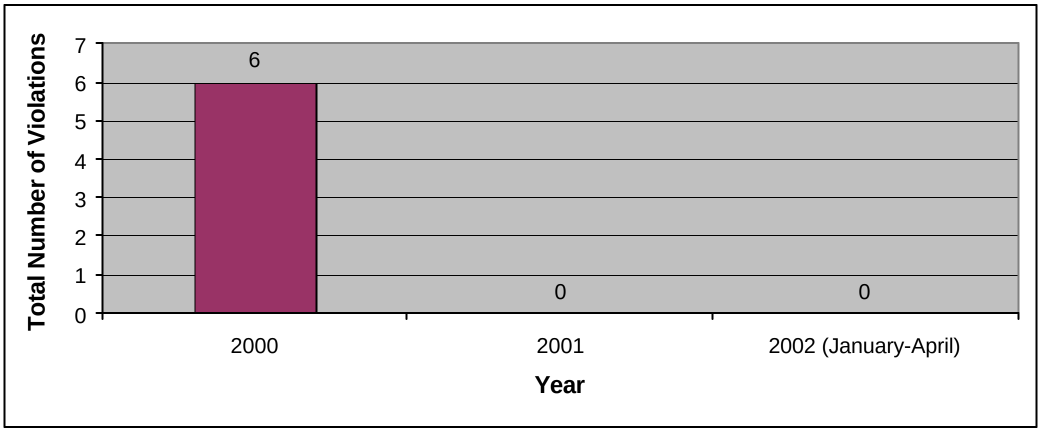



| Category\Year | 2000 | 2001 | 2002 January-April |
|---|---|---|---|
| Response Time OSS Interface | 2 | | |
| OSS Interface | | 2 | 0 |
| Percent On Time Ordering Notification | 1 | 0 | 1 |
| Percent Completed | | 3 | 0 |
| Percent Missed Appointment | 3 | 9 | 0 |
| Mean Time To Repair | 10 | 7 | 2 |
| Percent Repeat Reports within 30 Days | 8 | 7 | 2 |
| Collocation | 0 | 5 | 0 |
| xDSL | 10 | | |
| Total | 34 | 33 | 5 |

Notes: *For simplicity, this figure shows only violated critical measures among the 13 critical measures.
*Response time OSS interface was eliminated from the critical measures beginning in January 2001.
*OSS interface was included in the critical measures beginning in January 2001.
*Percent completed was included in the critical measures beginning in January 2001.
*xDSL was eliminated from the critical measures beginning in January 2001.
Source: NRRI Survey, June 2002.

**Fig. 2. Critical measures violations (New York – Verizon) January 2000 through April 2002**

In the case of special provisions, UNE ordering (three monthly occurrences) and UNE flow through (three quarterly occurrences) have been violated. However, those violations were in 2000 only, with no violations in 2001 and 2002 (through April) (see figure 3).




| Category\Year | 2000 | 2001 | 2002 January-April |
|---|---|---|---|
| UNE Ordering | 3 | 0 | 0 |
| UNE Flow Through | 3 | 0 | 0 |
| UNE Hot Cut Loop | 0 | 0 | 0 |
| EDI Measures | 0 | 0 | 0 |
| Total | 6 | 0 | 0 |

Note: UNE flow through is calculated quarterly.
Source: NRRI Survey, June 2002.

**Fig. 3. Special provisions violations (New York – Verizon) January 2000 through April 2002**

### Pennsylvania – Verizon

The Pennsylvania Public Utility Commission identified four performance measures as the metrics with the largest cumulative remedy payments (May 2001 – April 2002): average interval offered – no dispatch (PM PR-1-01); average interval completed – total no dispatch (PM PR-2-01); network trouble report rate – loop (PM MR-2-02); and network trouble report rate – CPE/TOK/FOK (PM MR-2-05).

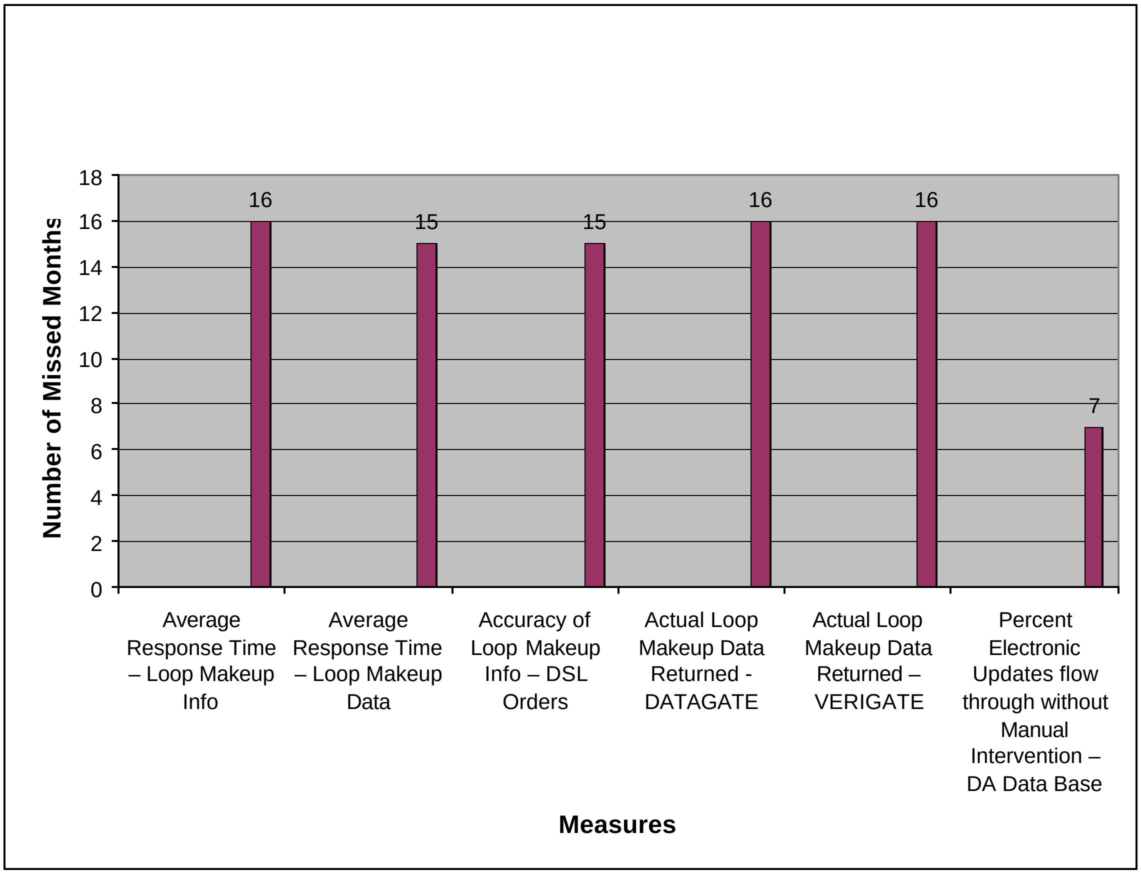
**Missouri – SWBT**

The Missouri Public Service Commission reported that nine performance measures have been frequently missed by SWBT. They are: average response for OSS pre-order – actual loop makeup-actual returned (PM 1.0-09); average response for OSS pre-order – actual loop makeup - actual data returned – Verigate (PM 1.0-24); accuracy of actual loop makeup information provided for DSL orders (PM 1.2-01); actual loop makeup – actual data returned – Datagate (PM 2.0-18); actual loop makeup – design data returned – Datagate (PM 2.0-09); actual loop makeup – actual data returned – Verigate (PM 2.0-18); actual loop makeup – design data returned – Verigate (PM 2.0-19); trouble report rate – DSL – line sharing (PM 65.0-09); and trouble report rate (net of install and repeat reports) DSL - line sharing (PM 65.1-09).

**Oklahoma – SWBT**

The Oklahoma Corporation Commission responded that the following six performance measures were frequently missed over 16 months (February 2001 through May 2002): average response time – loop makeup info (PM 1.0-09); average response time – loop makeup data (PM 1.0-24); accuracy of loop makeup info – DSL orders (PM 1.2); actual loop makeup data returned – Datagate (PM 2.0-08); actual loop makeup data returned – Verigate (PM2.0-18); and percent electronic updates flow-through without manual intervention – DA data base (PM 113).

As shown in figure 4, some of the measures show a consistent pattern of violation. Three measures (average response time – loop makeup info, actual loop makeup data returned – Datagate, and actual loop makeup data returned – Verigate) have been failed in 16 months consecutively, and two measures (average response time – loop makeup data and accuracy of loop makeup info – DSL orders) have been missed 15 months out of 16 months. Not surprisingly, the first five of the six frequently missed performance measures provided by the Oklahoma Corporation Commission were also identified by the Missouri Public Service Commission.




Source: NRRI Survey, June 2002.

**Fig. 4. Frequently missed performance measures (Oklahoma – SWBT) February 2001 through May 2002**

Other state comments and responses are shown in table 6.

**TABLE 6: FREQUENTLY VIOLATED PERFORMANCE MEASURES**

| Q: What measures are violated (or not met) often by the BOC? Please provide the actual number of violations per each year after the section 271 entry. | |
|---|---|
| **State** | **Comment** |
| **AR** | These data are not maintained by the commission. |
| **CT** | Same as New York |
| **GA** | BellSouth received section 271 approval in May. We are awaiting additional monthly data. |
| **KS** | Considered confidential |
| **NY** | Over the year 2001, missed appointments, repeat reports, mean time to repair, and special access metrics were frequent misses. DSL also had frequent misses for trouble report rate and installation troubles. |
| **OK** | SWBT's performance lacks most in their processing of DSL orders and UNE orders. Staff has concerns that inaccurate loop makeup information and missed due dates on a continuing basis are harmful to end-users and could prove detrimental to the CLECs' ability to effectively compete. |
| **PA** | The four metrics with the largest cumulative remedy payments (May 2001 – April 2002) are: provisioning PR-1-01, average interval offered – no dispatch; provisioning PR-2-01, average interval completed – total no dispatch; maintenance and repair MR-2-02, network trouble report rate – loop; and maintenance and repair MR-2-05, network trouble report rate – CPE/TOK/FOK. This period includes the RBOC's performance pre- and post-271-entry. |
| **RI** | Not enough time has expired for experience in this area. |

Source: NRRI Survey, June 2002.

## Actions or Remedies for Substandard Performance

A self-executing penalty payment from the BOC to CLECs is a common remedy for substandard performance in all responding states. In addition to the payment to CLECs (Tier I measures), the SWBT service territory (Arkansas, Kansas, Missouri, Oklahoma and Texas) and the BellSouth territory (Georgia) have another penalty payment that goes to the state general funds (Tier II measures). In the Verizon service territory Connecticut, New York and Rhode Island have a payment system that goes only to the CLECs in case of substandard performance, while Pennsylvania has a payment that goes to the special educational fund as well as a payment to CLECs. State responses are shown in table 7.

### TABLE 7: ACTIONS OR REMEDIES FOR SUBSTANDARD PERFORMANCE

<table>
<tr><th colspan="2">Q: What actions have been (or are to be) taken in case of sub-standard performance (e.g., bill credits to CLECs, fines by the commission, etc.)? If possible, please provide the actual amounts of those penalties that were imposed on the BOC.</th></tr>
<tr><th>State</th><th>Comment</th></tr>
<tr><td>AR</td><td>The performance assurance plan has created self-executing payments/credits of $61,405 to CLECs and payments of $76,500 to the State of Arkansas during 2002.
<table>
<tr><th></th><th>Jan 2002</th><th>Feb 2002</th><th>March 2002</th><th>Total</th></tr>
<tr><td>Tier I (CLECs)</td><td>$40,649</td><td>$20,756</td><td>$0</td><td>61,405</td></tr>
<tr><td>Tier II (State)</td><td>$0</td><td>$75,000</td><td>$1,500</td><td>$76,500</td></tr>
</table></td></tr>
<tr><td>CT</td><td>Any sub-standard performance will result in a bill credit to the CLECs. Because the operations are almost identical to New York's, any amount of monetary penalties for unsatisfactory performance will be determined based on the amounts at risk in the New York PAP, scaled down in direct proportion to the number of access lines that Verizon serves in Connecticut.</td></tr>
<tr><td>GA</td><td>Payments go to CLECs or to the state, depending on the classification of the performance measure (Tier I – CLECs, Tier II – State). None to date has been made after the 271 entry.</td></tr>
<tr><td>KS</td><td>Substandard performance automatically results in fines that SWBT pays to the CLECs or to the state, depending on the classification of the measure in Tier I and Tier II. SWBT calculates these amounts itself and makes payments accordingly. Actual dollar amounts of payments are confidential information.</td></tr>
<tr><td>MO</td><td>Tier I Liquidated Damages Payments per Occurrence
<table>
<tr><th>Measurement Group</th><th>Month 1</th><th>Month 2</th><th>Month 3</th><th>Month 4</th><th>Month 5</th><th>Month 6 and successive months</th></tr>
<tr><td>High</td><td>$150</td><td>$250</td><td>$500</td><td>$600</td><td>$700</td><td>$800</td></tr>
<tr><td>Medium</td><td>$75</td><td>$150</td><td>$300</td><td>$400</td><td>$500</td><td>$600</td></tr>
<tr><td>Low</td><td>$25</td><td>$50</td><td>$100</td><td>$200</td><td>$300</td><td>$400</td></tr>
</table>
Tier II Assessments to the State
<table>
<tr><th>Measurement Group</th><th></th></tr>
<tr><td>High</td><td>$500, cap $75,000</td></tr>
<tr><td>Medium</td><td>$300, cap $30,000</td></tr>
<tr><td>Low</td><td>$200 cap $20,000</td></tr>
</table>
Total penalties to CLECs operating in Missouri to date: confidential.<br>
Total penalties to the State of Missouri to date: $621,800.</td></tr>
</table>

**TABLE 7: Continued**

| **Q: What actions have been (or are to be) taken in case of substandard performance (e.g., bill credits to CLECs, fines by the commission, etc.)? If possible, please provide the actual amounts of those penalties that were imposed on the BOC.** | |
|---|---|
| **State** | **Comment** |
| **NY** | The plan is self-executing. If a mode of entry score is greater than a 95 percent confidence level, industry-wide bill credits are awarded. CLEC specific bill credits for critical measures are paid out at approximately the 90 percent confidence level. Finally, if a critical measure does not reach the 90 percent confidence level, individual CLECs can still receive bill credits if they are at the 90 percent confidence level for two consecutive months. |
| **OK** | Tier I is for penalty payments to CLECs. Tier II is for penalty payments to the state.<br>? Tier I: $439,984 (November 2000 – February 2002)<br>? Tier II: $200,624 (February 2001 – February 2002) |
| **PA** | Remedies under the PA PAP are self-executing. They started in the first quarter of 2000 at $2,000 for a two-month miss and $4,000 for a three-month miss. This money flows to the CLECs based upon the performance measures reported as misses. For misses over four months, the CLECs could petition the PUC for an order imposing further remedies up to $25,000. Effective approximately mid-year 2001, the remedies increased by $1,000 each for the two- and three-month misses with the additional funds going to a special educational fund. Also at that time, the $25,000 remedy became a self-executing remedy for misses over 90 days.<br><br>Remedies paid in Pennsylvania in 2001 totaled $10,940,000. Payments to the PUC totaled $1,053,000. |
| **RI** | Not enough time has expired for experience in this area. |
| **TX** | Substandard performance automatically results in fines that SWBT pays to the CLECs or to the state, depending on the classification of the measure in Tier I and Tier II. SWBT calculates these amounts itself and makes payments accordingly.<br><br>?Tier I: $14,723,637 (July 2000 – March 2002)<br>?Tier II: $6,054,100 (July 2000 – March 2002) |

Source: NRRI Survey, June 2002.

Below are some specific data on the payments made by the BOCs either to CLECs or to the states because of missed performance measures.

### New York – Verizon

Among the mode of entry measures, the category of UNEs shows the highest amount of payments and a strongly consistent pattern. Resale and DSL show consistent patterns, too, even though the amounts are less than for UNEs (see figure 5).

For the critical measures, three (percent repeat reports within 30 days, mean time to repair and percent missed appointment) show relatively large bill credits paid to CLECs and indicate fairly consistent occurrence patterns (see figure 6).

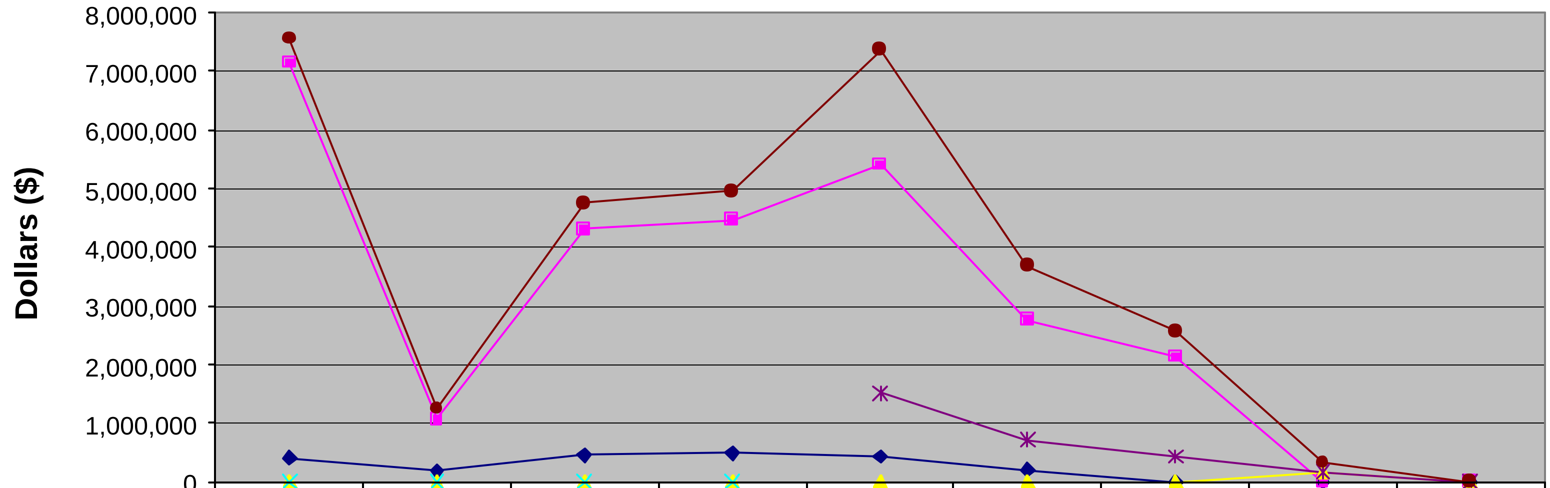
Among the special provisions, there were some bill credits for UNE ordering and UNE flow through, both of which were paid in 2000. However, no payment was made in 2001 or 2002 (through April; see figure 7).

### Oklahoma – SWBT

Figure 8 shows penalty payments for Tier II performance measures in Oklahoma over 16 months from February 2001 through May 2002. Payment for order process percent flow through was made only two times (in July 2001 and September 2001), but the amount is the largest among Tier II payments. In contrast, accuracy of actual loop makeup information provided for DSL orders resulted in relatively less payment but shows a consistent pattern of payment.

### Texas – SWBT

As shown in figure 9, in Texas Tier I payments have been greater than Tier II payments in most months over the period between July 2000 and March 2002, with more fluctuations. Although there are some fluctuations, the payments in the second year after entry under section 271 (July 2001 through March 2002) increased compared to the first year (July 2000 through June 2001).



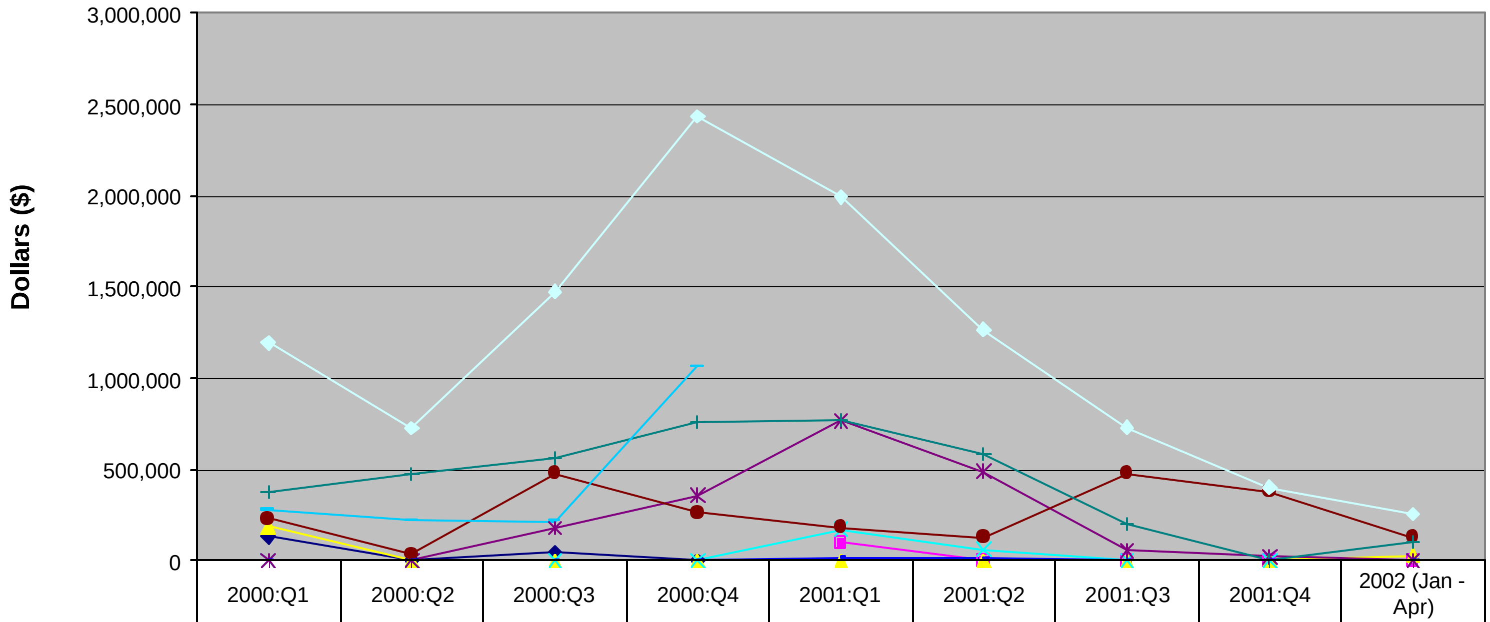

| | 2000:Q1 | 2000:Q2 | 2000:Q3 | 2000:Q4 | 2001:Q1 | 2001:Q2 | 2001:Q3 | 2001:Q4 | 2002 (Jan - Apr) |
|---|---|---|---|---|---|---|---|---|---|
| Resale | 414,474 | 187,500 | 453,948 | 493,421 | 438,596 | 201,754 | 0 | 0 | 0 |
| UNEs | 7,144,736 | 1,065,789 | 4,302,631 | 4,460,526 | 5,407,895 | 2,763,158 | 2,131,578 | 0 | 0 |
| Trunks | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 166,667 | 0 |
| Collocation | 0 | 0 | 0 | 0 | | | | | |
| DSL | | | | | 1,517,544 | 719,388 | 438,596 | 166,667 | 0 |
| MOE Total | 7,559,210 | 1,253,289 | 4,756,579 | 4,953,947 | 7,364,035 | 3,684,250 | 2,570,174 | 333,334 | 0 |

**Year and Quarter**

Notes: * Collocation was eliminated from MOE beginning in January 2001.
* DSL was included as an MOE beginning in January 2001.
* Performance reports were exempted between September 2001 and November 2001 due to 9/11 attacks.

Source: NRRI Survey, June 2002.

**Fig. 5. Bill credits paid to CLECs for the MOE measures (New York – Verizon) January 2000 through April 2002**



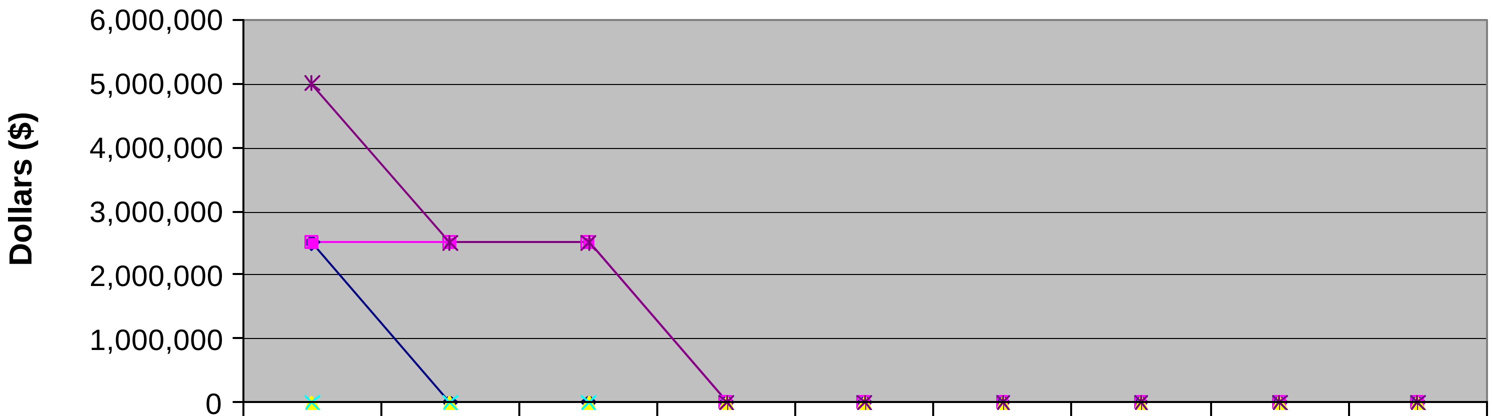

| | 2000:Q1 | 2000:Q2 | 2000:Q3 | 2000:Q4 | 2001:Q1 | 2001:Q2 | 2001:Q3 | 2001:Q4 | 2002 (Jan - Apr) |
|---|---|---|---|---|---|---|---|---|---|
| Response Time OSS Interface | 128,361 | 0 | 44,206 | 0 | | | | | |
| OSS Interface | | | | | 98,718 | 0 | 0 | 0 | 0 |
| % On Time Ordering Notification | 186,404 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 28,571 |
| % Completed | 0 | 0 | 0 | 0 | 169,643 | 59,524 | 0 | 0 | 0 |
| % Missed Appointment | 0 | 0 | 177,083 | 354,166 | 763,889 | 487,103 | 53,571 | 19,841 | 0 |
| Mean Time To Repair | 227,430 | 34,613 | 476,693 | 261,284 | 179,166 | 125,000 | 476,191 | 378,472 | 125,000 |
| % Repeat Reports within 30 Days | 372,807 | 471,224 | 561,849 | 757,812 | 767,857 | 583,333 | 197,917 | 0 | 101,190 |
| Collocation | 0 | 0 | 0 | 0 | 12,256 | 9,254 | 0 | 0 | 0 |
| xDSL | 276,985 | 217,827 | 212,499 | 1,062,501 | | | | | |
| Critical Measures Total | 1,191,987 | 723,664 | 1,472,330 | 2,435,763 | 1,991,529 | 1,264,214 | 727,679 | 398,313 | 254,761 |

**Year and Quarter**

Notes: * Response time OSS interface was eliminated from the critical measures beginning in January 2001.
* OSS interface was included in the critical measures beginning in January 2001.
* Percent completed was included in the critical measures beginning in January 2001.
* xDSL was eliminated from the critical measures beginning in January 2001.
* Performance reports were exempted between September 2001 and November 2001 due to the 9/11 attacks.
* For simplicity, this figure shows only violated critical measures.

Source: NRRI Survey, June 2002.

**Fig. 6. Bill credits paid to CLECs for critical measures (New York – Verizon)**
**January 2000 through April 2002**

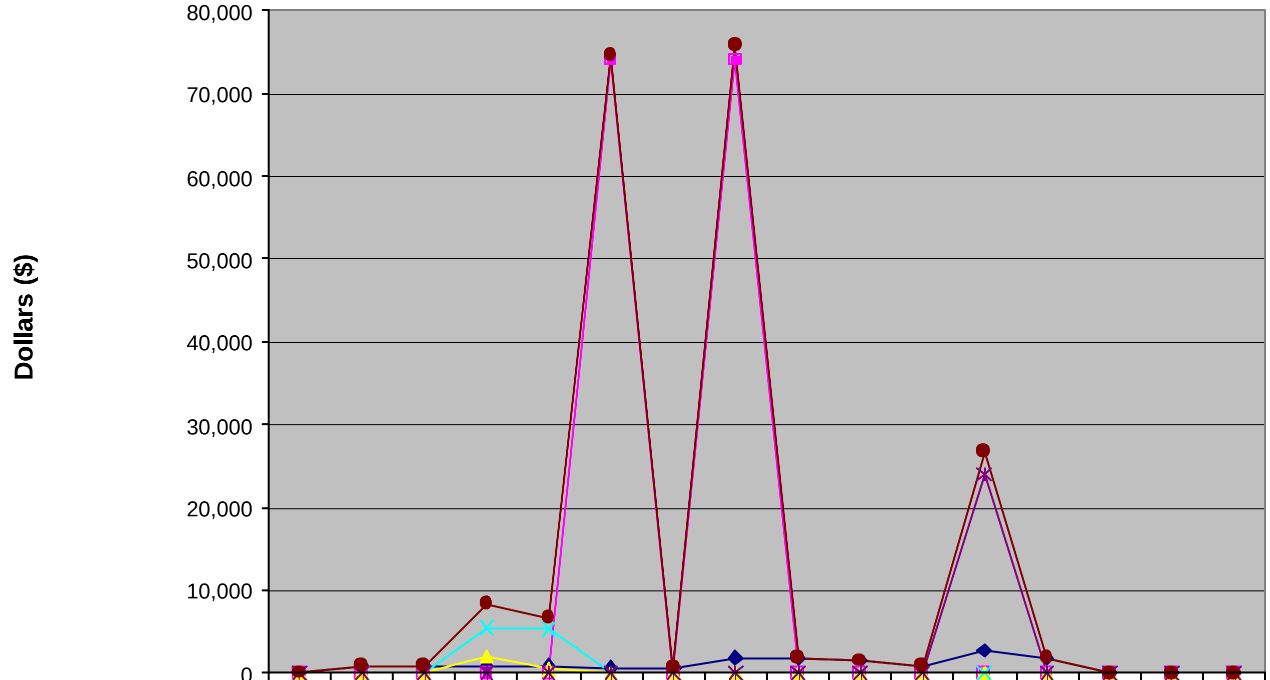



| | 2000:Q1 | 2000:Q2 | 2000:Q3 | 2000:Q4 | 2001:Q1 | 2001:Q2 | 2001:Q3 | 2001:Q4 | 2002 (Jan - Apr) |
|---|---|---|---|---|---|---|---|---|---|
| UNE Ordering | 2,500,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| UNE Flow Through | 2,500,000 | 2,500,000 | 2,500,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| UNE Hot Cut Loop | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| EDI Measures | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Special Provisions Total | 5,000,000 | 2,500,000 | 2,500,000 | 0 | 0 | 0 | 0 | 0 | 0 |

**Year and Quarter**

Note: Performance reports were exempted between September 2001 and November 2001 due to the 9/11 attacks.
Source: NRRI Survey, June 2002.

**Fig. 7. Bill credits paid to CLECs for special provisions (New York – Verizon)**
**January 2000 through April 2002**

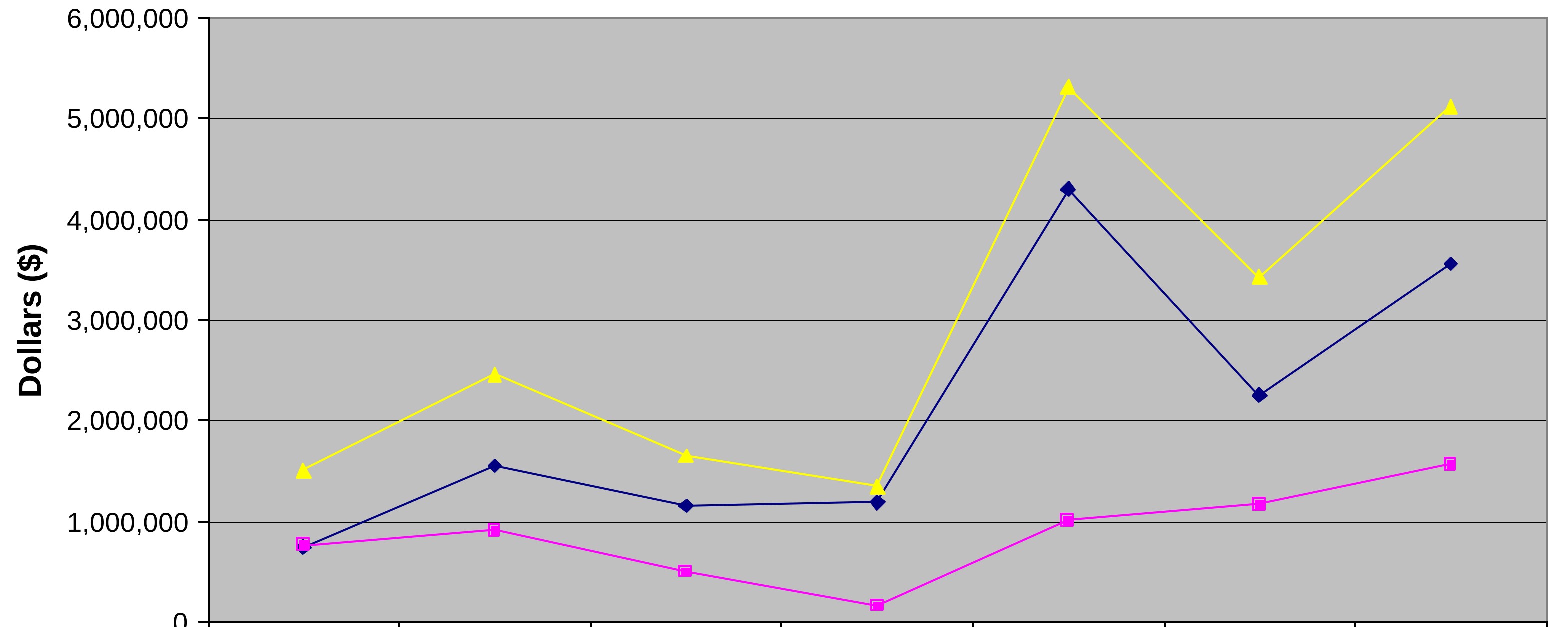



| | Feb-01 | Mar-01 | Apr-01 | May-01 | Jun-01 | Jul-01 | Aug-01 | Sep-01 | Oct-01 | Nov-01 | Dec-01 | Jan-02 | Feb-02 | Mar-02 | Apr-02 | May-02 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Accuracy of Actual Loop Makeup Info Provided for DSL Orders | 24 | 900 | 900 | 900 | 900 | 600 | 600 | 1,800 | 1,800 | 1,500 | 900 | 2,700 | 1,800 | 0 | 0 | 0 |
| Order Process Percent Flow Through | 0 | 0 | 0 | 0 | 0 | 74,000 | 0 | 74,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Percent SWBT Caused Missed Due Dates | 0 | 0 | 0 | 2,000 | 500 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Percent Installation Reports (Trouble Reports) Within 30 Days (I-30) of Installation | 0 | 0 | 0 | 5,500 | 5,300 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Percentage of Time SWBT Applies the 10-digit Trigger Prior to the LNP Order Due Date | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24,000 | 0 | 0 | 0 | 0 |
| Tier II Total | 24 | 900 | 900 | 8,400 | 6,700 | 74,600 | 600 | 75,800 | 1,800 | 1,500 | 900 | 26,700 | 1,800 | 0 | 0 | 0 |

**Year and Month**

Source: NRRI Survey, June 2002.

**Fig. 8.  Tier II penalty payments (Oklahoma – SWBT)**
**February 2001 through May 2002**




| | 2000:Q3 | 2000:Q4 | 2001:Q1 | 2001:Q2 | 2001:Q3 | 2001:Q4 | 2002:Q1 |
|---|---|---|---|---|---|---|---|
| Tier I | 744,000 | 1,549,575 | 1,149,700 | 1,182,345 | 4,295,086 | 2,252,621 | 3,550,310 |
| Tier II | 760,600 | 907,000 | 494,200 | 157,900 | 1,007,900 | 1,164,000 | 1,562,500 |
| Total | 1,504,600 | 2,456,575 | 1,643,900 | 1,340,245 | 5,302,986 | 3,416,621 | 5,112,810 |

**Year and Quarter**

Source: NRRI Survey, June 2002.

**Fig. 9. Tier I and Tier II payments (Texas – SWBT)**
**July 2000 through March 2002**

## Frequency of Performance Reports

Concerning the frequency of performance reports from the BOC to the state commission, most states reported that performance reports are submitted to the state commissions on a monthly basis. The Arkansas Public Service Commission responded that the BOC does not submit its performance reports directly to the commission, but the commission staff has access to the reports on SWBT's web site. State comments are shown in table 8.

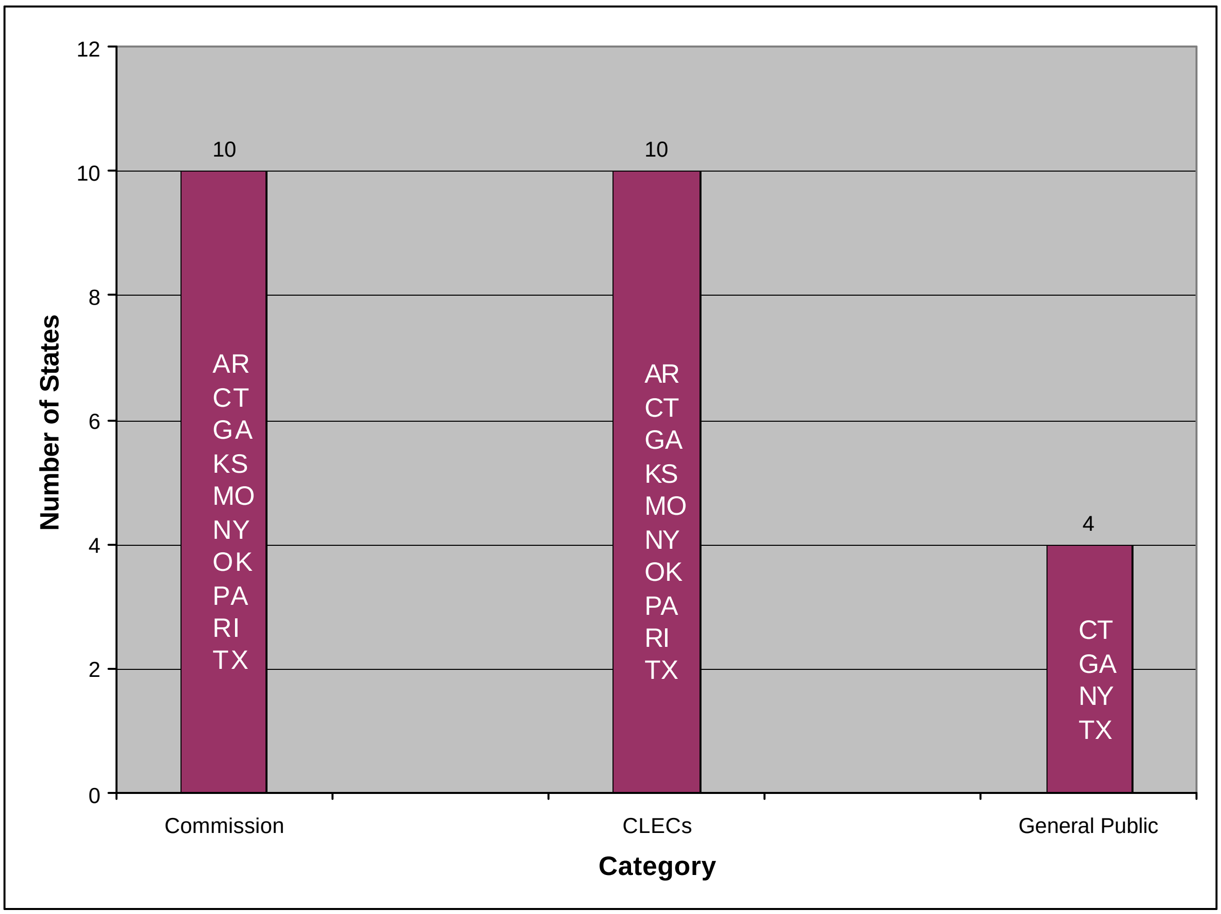
### TABLE 8: FREQUENCY OF PERFORMANCE REPORTS

| **Q: How often must the BOC submit its performance reports to the state commission?** | |
|---|---|
| **State** | **Comment** |
| **AR** | SWBT does not make performance reports directly to the PSC. The PSC staff has access to the performance reports on SWBT's CLEC web site. |
| **CT** | Monthly |
| **GA** | Monthly |
| **KS** | Monthly |
| **MO** | Monthly |
| **NY** | Monthly |
| **OK** | Monthly |
| **PA** | The RBOC is expected to report its performance data every month approximately 25 days after the close of the month. The PUC receives performance data on a CLEC-aggregate basis. CLECs receive that aggregate data and their own specific data. The PUC receives a remedies report after the performance data reports. |
| **RI** | Monthly |
| **TX** | SWBT submits monthly reports to the state, on approximately the 21$^{st}$ of the month. The reports summarize one year of data for each measure, so that trends can be viewed. Results are presented in number form as well as in graphs for each measure. |

Source: NRRI Survey, June 2002.

**Access to Performance Reports/Eligibility for Comments on or Challenge to the Reports**

In all ten responding states, as shown in figure 10, the performance reports or data are available both to the commission and to the CLECs. However, some states such as New York and Pennsylvania indicated that CLEC-specific data are accessible only by the CLECs. In contrast, the Oklahoma commission reported that it has access to all data, both for individual CLECs and in the aggregate. Regarding public access to the performance reports or data, only four states (Connecticut, Georgia, New York and Texas) reported that the general performance reports are open to the public.




Note: New York and Pennsylvania indicated that the commissions get only aggregate data.
Source: NRRI Survey, June 2002.

**Fig. 10. Access to performance reports/data**

According to the state responses, a CLEC can challenge the performance reports or data produced by a BOC. Four states (Connecticut, Kansas, New York and Texas) indicated that comments on the performance reports or measures could be made by the general public. State responses are shown in table 9.

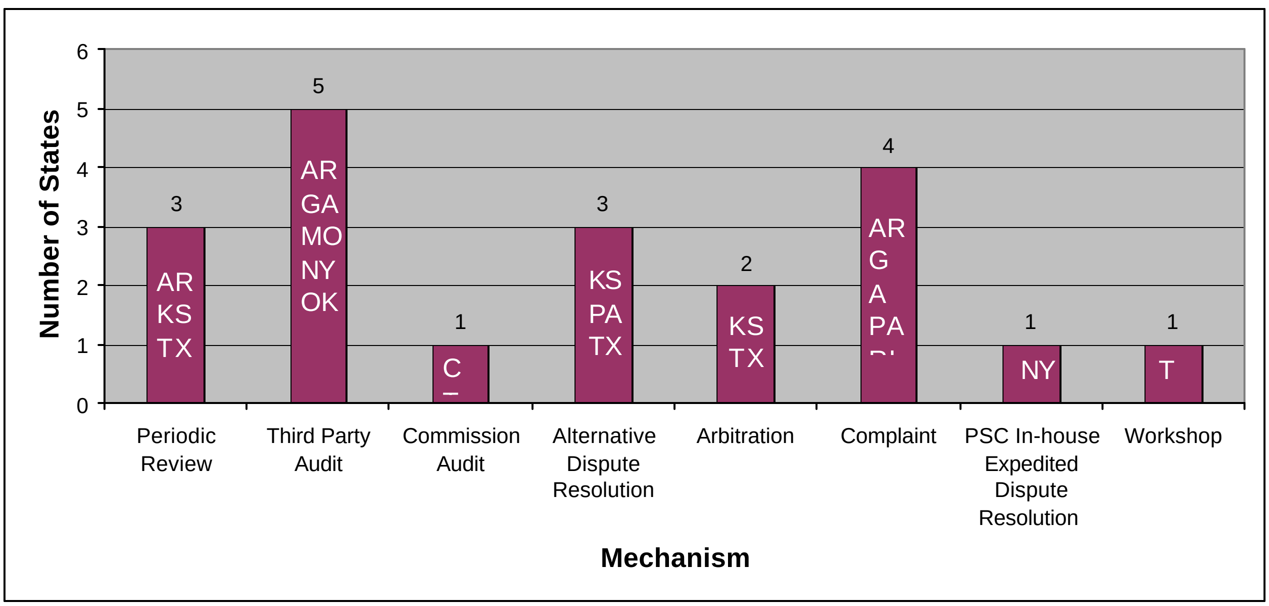
**TABLE 9: ACCESS TO PERFORMANCE REPORTS/ELIGIBILITY FOR COMMENTS ON/OR CHALLENGE TO THE REPORTS**

| Q: Who has access to the performance reports or data filed by the BOC (i.e., are they open to the public)? Who can file comments on/or challenge the performance reports or data (e.g., CLECs)? | |
|---|---|
| **State** | **Comment** |
| **AR** | There are a limited number of PSC staff members who have access to the performance reports on the SWBT CLEC web site. The performance reports and the associated data are generally discussed or challenged in the semi-annual reviews. A CLEC is not precluded from challenging SWBT's performance before the PSC. |
| **CT** | General performance reports are open to the public. CLECs, consumer advocates, Attorney General for the State of Connecticut can file comments. |
| **GA** | The performance measures are a public document. CLECs may file challenges to the performance reports. |
| **KS** | Performance reports are available to the commission and CLECs. Comments and other issues are open to the public in Docket 01-SWBT-999-MIS available on our website. |
| **MO** | The information collected and analysis supplied by SWBT is confidential. CLECs have access to the information regarding their respective companies; however, the extent to which the CLECs have access is unknown. There is a limit to the number of audits conducted per year. (I believe this number is one.) |
| **NY** | General performance reports or the results of aggregate data are open to the public. The aggregate data are available to the commission. However, CLEC-specific data are available only to the CLECs and a CLEC only gets its own results due to competitive nature of the data. Any interested party can file comments. |
| **OK** | Commission staff has access to all data, both for individual CLECs and in the aggregate. CLECs only have access to their own company's data and can challenge the reports. No public access. |
| **PA** | The performance data reports are proprietary. The PUC gets CLEC- aggregate performance data, and the CLECs get their individual data as well as the aggregate data. The CLECs can challenge the results. |
| **RI** | At this time, only the commission and the CLECs have access. |
| **TX** | Performance reports are available to the public, filed under docket 20400. Anyone can file comments on the measures. |

Source: NRRI Survey, June 2002.

### Mechanism for Dispute Resolution

In case of a dispute between a BOC and a CLEC concerning the performance reports or data, several different mechanisms are used in the responding states. These include a third-party audit, a commission audit, a periodic review, an alternative dispute resolution procedure, arbitration, workshops and a formal complaint filed with the state commission. As shown in figure 11, a third-party audit is the most commonly used mechanism in the responding states for dispute resolution concerning performance measurements. Five states (Arkansas, Georgia, Missouri, New York and Oklahoma) explicitly indicated that a third-party audit could be used for dispute resolution in their state; four states (Arkansas, Georgia, Pennsylvania and Rhode Island), for a formal complaint; three states (Kansas, Pennsylvania and Texas), for an alternative dispute resolution procedure; another three states (Arkansas, Kansas and Texas), for a periodic review; and two states (Kansas and Texas), for arbitration. In addition, Connecticut uses a commission audit, and the New York PSC has an in-house, expedited dispute resolution process. The Texas PUC uses workshops as a way to resolve disputes. State responses are shown in table 10.




Note: This figure is based on state responses. It is possible that some states did not explicitly list certain mechanisms, even though those mechanisms are used in their state.
Source: NRRI Survey, June 2002.

**Fig. 11. Mechanism for dispute resolution**

## TABLE 10: MECHANISM FOR DISPUTE RESOLUTION

| Q: What is the mechanism for dispute resolution concerning the performance reports or data (e.g., third-party audit, commission audit, joint audit, etc.)? | |
|---|---|
| **State** | **Comment** |
| **AR** | The performance reports and the associated data are generally discussed or challenged in the semi-annual reviews.<br><br>The Texas PUC, supported by the Arkansas, Kansas, Missouri and Oklahoma commissions, is currently conducting a third party audit of performance reports by SWBT concerning certain performance measurements.<br><br>A CLEC is not precluded from challenging SWBT's performance before the PSC. |
| **CT** | Commission audit |
| **GA** | The commission has an audit provision and a provision for individual CLECs to file complaints with the commission on its individual data. |
| **KS** | There are three mechanisms:<br>? The periodic review of the measures that the PUC has conducted in the summer 2001 and will be conducting in August 2002<br>? Alternative dispute resolution, which any party can elect to enter into<br>? Arbitration |
| **MO** | CLECs may challenge the information at CLEC's expense, however, if the audit reveals errors in the data collected or procedure utilized by SWBT, SWBT will reimburse the CLEC. |
| **NY** | There is a wholesale assurance team staffed by Verizon to review CLEC concerns and answer questions. If a CLEC is not satisfied, then it can challenge the performance results. Verizon hires an independent outside auditor to conduct a review of the challenged material. If no material errors are found, the initiating CLEC is responsible to pay the auditor. If there are errors, Verizon is responsible for the audit costs and any additional bill credits due.<br><br>There is also a PSC in-house, expedited dispute resolution process available for CLECs, and, if desired, CLECs could still petition the commission directly. |
| **OK** | Third-party audit |
| **PA** | Formal complaint filed by a CLEC or alternate dispute resolution requested by a CLEC or the ILEC |
| **RI** | File complaint with the commission |

**TABLE 10: Continued**

| **Q: What is the mechanism for dispute resolution concerning the performance reports or data (e.g., third-party audit, commission audit, joint audit, etc.)?** | |
|---|---|
| **State** | **Comment** |
| **TX** | There are several mechanisms:<br>?The periodic review of the measures that the PUC has conducted in the summers of 2000 and 2001 and will be conducting in August 2002.<br>?A series of workshops the PUC has hosted on various topics. They have not had many meetings lately, but in 2000 and early 2001 there were a number of meetings specifically on DSL issues and OSS (operations support systems) issues.<br>?Alternative dispute resolution, which any party can elect to enter into. Docket 21000 was specifically created for alternative dispute resolution regarding operations support systems.<br>?Arbitration: companies have not elected to hold an arbitration on performance measures yet, although the option is available. |

Source: NRRI Survey, June 2002.

### Performance Review Mechanism

All responding states have periodic performance review mechanisms. In addition to the monthly review of the performance reports filed by a BOC, which is likely to be conducted by the commission staff, more formal reviews are adopted in most states, either a six-month review or an annual review. In practice, however, an annual review seems to be the most common mechanism in the responding states, including those states where a six-month review system was originally adopted. One interesting feature relating to performance review mechanisms is that there are regional cooperation efforts among neighboring states. For example, a five-state collaborative review mechanism is in place in the SWBT service territory (Arkansas, Kansas, Missouri, Oklahoma and Texas). Massachusetts and Rhode Island also have such a cooperation mechanism for the annual review.

Participants in the performance reviews generally include the commission staff, the BOC and the CLECs. In some cases, such as an audit, outside experts and consultants can participate in the process. State responses are shown in table 11.

**TABLE 11: PERFORMANCE REVIEW MECHANISM**

| Q: What is the performance review mechanism? How often (monthly, quarterly, or annually)? Participants? | |
|---|---|
| **State** | **Comment** |
| **AR** | The performance reports and the associated data are reviewed semi-annually at the Texas PUC with the Arkansas, Kansas, Missouri, and Oklahoma commissions. |
| **CT** | Performance reviews are conducted monthly by the department staff. |
| **GA** | We review the data monthly. The commission staff reviews the data that is filed monthly. Additionally, we currently have a third-party test in progress. |
| **KS** | The measures are self-reported. SWBT collects the data, calculates the measures, and files the report with the commission. Staff reviews the data to insure its correctness. If CLECs have concerns about the correctness of the data, they may file comments. One such concern resulted in a five-state audit of several measures, which is occurring at this time. |
| **MO** | CLECs (the industry), the state (commission staff), and SWBT participate in semi-annual reviews of the remedy plan. The reviews are supposed to be semi-annual, however, in actual practice the reviews occur annually. Changes suggested or requested by the collaboration are proposed to the commission who may approve or deny them as previously discussed. |
| **NY** | Annually, unless a crisis situation occur and the 15-day rule is invoked. All parties are able to comment in the annual review. In the 15-day rule, comments may not be possible due to time constraints. However, the 15-day rule may be invoked because of complaints from other parties. |
| **OK** | ? Monthly monitoring – commission staff<br>? Six-month review – all parties (BOC, CLECs, and commission staff) |
| **PA** | The PUC reviews the reports monthly. The original order adopting the C2C guidelines and PAP in Pennsylvania contemplated periodic reviews and audits. To date, these have not yet commenced due to the independent third-party OSS testing throughout 2000; the exception, reconsideration, and appellate processes during which the original metrics and remedies were refined throughout 2000; the market entry of CLECs; the RBOC's 271 state review in 2001; and the presently on-going proceeding to consider whether and, if so, how to migrate to New York-style metrics and remedies. |

**TABLE 11: Continued**

| **Q: What is the performance review mechanism? How often (monthly, quarterly, or annually)? Participants?** | |
|---|---|
| **State** | **Comment** |
| **RI** | There is a general internal review monthly. There should also be an annual review and audit along with Massachusetts. Commission staff and CLECs participate in the reviews. Outside consultants may be used in the annual review. |
| **TX** | The measures are self-reported. SWBT collects the data, calculates the measures and files the report with the commission. Staff reviews the data to insure its correctness. If CLECs have concerns about the correctness of the data, they may file comments. One such concern resulted in an audit of several measures, which is occurring at this time. Documents relating to this audit can be found under Docket 20400. |

Source: NRRI Survey, June 2002.

### Staff Assignments to Section 271 Post-entry Performance Issues

Concerning the staff assignment to section 271 post-entry performance issues, most states reported that there were no staff members exclusively assigned for this matter. Rather, many states assigned a few staff members on a part-time basis to work on section 271 performance issues. The actual number of staff members assigned to this area depends on the individual state’s staffing situation. Some states, such as Kansas, New York, Pennsylvania and Texas, indicated that additional staff members were involved in their annual reviews. State responses are shown in table 12.

## TABLE 12: STAFF ASSIGNMENTS TO SECTION 271 POST-ENTRY PERFORMANCE ISSUES

**Q: How many commission staff are dedicated to section 271 post-entry performance?**

| State | Comment |
|---|---|
| **AR** | One staff member spends about 5-10 percent of his time on this issue. |
| **CT** | One staff member |
| **GA** | There is not a staff member totally dedicated to post-271 performance. We currently have two staff members reviewing the information. |
| **KS** | No staff member is assigned exclusively on this issue. Throughout the past two years, there have typically been one to two staff who spend 25 to 50 percent of their time on performance measures. During the annual review, an additional three to four staff members join the work for one to two months, spending about 10 percent of their time. |
| **MO** | One |
| **NY** | There are seven full time equivalent staff-years devoted to the 271 post-entry. This includes time devoted to the carrier-to-carrier working group where Verizon processes, reviews, and metrics were developed. |
| **OK** | Three |
| **PA** | Three analysts are assigned on a part-time basis to work on such matters. This is equivalent to one full-time analyst; occasionally three additional analysts get involved. One lawyer is assigned, on a part-time basis, to support staff in the internal review process. Another lawyer is assigned, on a part-time basis, to coordinate with the FCC on post-entry matters. The work also involves various supervisors, as well as involvement of the commissioners and their staffs. |
| **RI** | Undetermined at this time |
| **TX** | There are no staff members who work exclusively on performance measures. Throughout the past three years, there have typically been four staff who spend 25 to 50 percent of their time on performance measures. During the annual review, an additional four to eight staff members will work on the review for one to two months, comprising about 10 percent of their time. |

Source: NRRI Survey, June 2002.

## CONCLUSION

Ideally, a plan to assure compliance with the "no backsliding" requirement of approvals of Bell entry into in-region long distance under section 271 would result in no violations and no fines. Violations have been showing up, however, and fines are being incurred. The initial research reported here should be revisited in a year, when more information will be available from more states. There may well be a learning process that reduces penalties over time. In Pennsylvania, for example, metrics missed declined to 83 in December 2001 from 178 in January 2001. In the meantime, implementation of PAPs is an ongoing process, with provision for state reviews, discussion and adjustments that will make sure OSSs of the BOCs are open to competitors. It is hoped that the existence and enforcement of the PAPs are ultimately associated with actual growth of local competition.