

AT&T MIDWEST  
PERFORMANCE REMEDY PLAN  
DESCRIPTION

This Performance Remedy Plan sets forth the terms and conditions under which AT&T MIDWEST<sup>1</sup> will report performance to «CLECLegalName» (CLEC) and compare that performance to AT&T MIDWEST's own performance (parity), benchmark criteria, or both, whichever is applicable. This document further provides for enforcement through liquidated damages. Subject to Section 12, "Reservations of Rights", this Remedy Plan is being provided under the Section 251/252 Interconnection Agreement between AT&T MIDWEST and CLEC.

- 1.0 AT&T MIDWEST agrees to provide CLEC a monthly report of performance for the performance measures listed in Appendix 1 – AT&T MIDWEST Performance Measurement User Guide. AT&T MIDWEST will collect, analyze, and report performance data for these measures in accordance with the business rules defined in Appendix 1, as approved by the Commission. Both the performance measures and the business rules in Appendix 1 are subject to modification in accordance with Section 6.4 below regarding six-month reviews. AT&T MIDWEST further agrees to use the remedy structure for performance measurements provided for in this document. The Commission-approved performance measurements shown in Appendix 1 hereto identify the measurements for which remedies are provided to CLECs should performance fail to meet or exceed the defined standard for the specific performance measurement and submeasure.
  - 1.1 AT&T MIDWEST will not levy a separate charge for provision of the data to CLEC called for under this document. Upon CLEC's request, data files of CLEC's raw data, or any subset thereof, will be transmitted to CLEC. If CLEC's request is transmitted to AT&T MIDWEST on or before the last day of the month for which data is sought, AT&T MIDWEST shall provide the data to CLEC on or before the last day of the following month pursuant to mutually acceptable format, protocol, and transmission media. If CLEC's request is transmitted to AT&T MIDWEST after the last day of the month for which data is sought, AT&T MIDWEST shall provide the data to CLEC within 30 days of receipt pursuant to mutually acceptable format, protocol, and transmission media. Notwithstanding other provisions of this Remedy Plan, the Parties agree that such records will be deemed Proprietary Information.
- 2.0 AT&T MIDWEST will use a statistical test, namely the modified "Z-test," for evaluating the difference between two means (AT&T MIDWEST retail (or its affiliate, whichever is better, where applicable per the performance measures specified in Attachment A, provided the number of affiliate data points equal or exceed 30) and CLEC) or percentages, or the difference between two ratios for purposes of this document. AT&T MIDWEST agrees to use the modified Z-tests as outlined below as the statistical tests for the determination of parity when the results for AT&T MIDWEST retail (or its affiliate, whichever is better, where applicable per the performance measures specified in Attachment A, provided the number of affiliate data points equal or exceed 30) and the CLEC are compared. This statistical test will compare the CLEC performance to the AT&T MIDWEST retail performance (or its affiliate performance, whichever is better, where applicable per the performance measures specified in Attachment A). If the affiliate data has fewer than 30 observations, the comparison will be to AT&T MIDWEST's retail performance. The modified Z-tests are applicable if the number of data points are greater than or equal to 30 for a given disaggregation category. In cases where benchmarks are established, the determination of compliance is through a comparison to the applicable Commission-approved benchmark. For testing compliance for measures for which the number of data points is 29 or less, the use of permutation tests as outlined below may be used.

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<sup>1</sup> The term "AT&T MIDWEST" refers to any of the individual AT&T incumbent local exchange operating companies located in the five midwestern states of Illinois, Indiana, Michigan, Ohio and/or Wisconsin.

3.0 For purposes of this document, performance for the CLEC on a particular sub-measure (disaggregated level) will be considered in compliance with the parity requirement when the measured results in a single month (whether in the form of means, percents, or ratios) for the same sub-measurement, at equivalent disaggregation, for both AT&T MIDWEST retail (or its affiliate, whichever is better, where applicable per the performance measures specified in Attachment A, provided the number of affiliate data points are equal to or exceeds 30) and CLEC are used to calculate a Z-test statistic and the resulting value is no greater than Critical-Z value that would maintain 95% confidence that the difference in results reflects disparity. That Critical-Z value is 1.645.

Z-Test:

AT&T MIDWEST will utilize the following formulae for determining parity using Z-Test:

For Measurement results that are expressed as Averages or Means:

$$Z = (\text{DIFF}) / \sigma_{\text{DIFF}}$$

Where:  $\text{DIFF} = M_{\text{ILEC}} - M_{\text{CLEC}}$   
 $M_{\text{ILEC}} = \text{ILEC Average}$   
 $M_{\text{CLEC}} = \text{CLEC Average}$   
 $\sigma_{\text{DIFF}} = \text{SQRT} [\sigma^2_{\text{ILEC}} (1 / n_{\text{CLEC}} + 1 / n_{\text{ILEC}})]$   
 $\sigma^2_{\text{ILEC}} = \text{Calculated variance for ILEC}$   
 $n_{\text{ILEC}} = \text{number of observations or samples used in ILEC measurement}$   
 $n_{\text{CLEC}} = \text{number of observations or samples used in CLEC measurement}$

For Measurement results that are expressed as Percentages or Proportions:

Step 1:

$$p = \frac{(n_{\text{ILEC}} P_{\text{ILEC}} + n_{\text{CLEC}} P_{\text{CLEC}})}{n_{\text{ILEC}} + n_{\text{CLEC}}}$$

Step 2:

$$\sigma_{P_{\text{ILEC}}-P_{\text{CLEC}}} = \text{SQRT} \{ [p(1-p)] / n_{\text{ILEC}} + [p(1-p)] / n_{\text{CLEC}} \}$$

Step 3:

$$Z = (P_{\text{ILEC}} - P_{\text{CLEC}}) / \sigma_{P_{\text{ILEC}}-P_{\text{CLEC}}}$$

Where:  $n = \text{number of observations}$   
 $P = \text{Percentage or Proportion}$

For Measurement results that are expressed as Rates or Ratios:

$$Z = (\text{DIFF}) / \sigma_{\text{DIFF}}$$

Where:  $\text{DIFF} = R_{\text{ILEC}} - R_{\text{CLEC}}$   
 $R_{\text{ILEC}} = \text{num}_{\text{ILEC}} / \text{denom}_{\text{ILEC}}$   
 $R_{\text{CLEC}} = \text{num}_{\text{CLEC}} / \text{denom}_{\text{CLEC}}$   
 $\sigma_{\text{DIFF}} = \text{SQRT} \{ [(\text{num}_{\text{CLEC}} + \text{num}_{\text{ILEC}}) \div (\text{denom}_{\text{CLEC}} + \text{denom}_{\text{ILEC}})] \cdot (1 / \text{denom}_{\text{CLEC}} + 1 / \text{denom}_{\text{ILEC}}) \}$

4.0 Qualifications to use Z-Test:

- 4.1 The proposed Z-tests are applicable to reported measurements that contain 30 or more data points. The Z-test is not applied to measures with benchmark standards.
- 4.2 In calculating the difference between the performances, the formulas defined above apply when a larger CLEC value indicates a higher quality of performance. In cases where a smaller CLEC value indicates a higher quality of performance the order of subtraction should be reversed (i.e.,  $M_{\text{ILEC}} - M_{\text{CLEC}}$ ,  $P_{\text{ILEC}} - P_{\text{CLEC}}$ ,  $R_{\text{ILEC}} - R_{\text{CLEC}}$ ).

4.3 For measurements where the performance delivered to the CLEC is compared to AT&T MIDWEST performance and for which the number of data points are 29 or less for either the CLEC or AT&T MIDWEST, AT&T MIDWEST will apply the following alternatives to determine compliance.

4.3.1 Alternative 1 (used only in the following situations: 1) for a measure where results for both the CLEC and AT&T MIDWEST Retail or affiliate (whichever is used) both show perfect compliance (no failures), and 2) where the individual transaction detail required to conduct permutation testing is not available):

AT&T MIDWEST applies the Z-Test as described in Section 3.0.

4.3.2 Alternative 2 (used in all situations except those defined above for Alternative 1):

For Percentages, the Fisher Exact Permutation Test will be used.

For Averages and Ratios, the following Permutation analysis will be applied to calculate the Z-statistic using the following logic:

- (1) Choose a sufficiently large number T.
- (2) Pool and mix the CLEC and ILEC data sets.
- (3) Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC data set ( $n_{CLEC}$ ) and one reflecting the remaining data points, (which is equal to the size of the original ILEC data set, or  $n_{ILEC}$ ).
- (4) Compute and store the Z-test score ( $Z_S$ ) for this sample.
- (5) Repeat steps 3 and 4 for the remaining T-1 sample pairs to be analyzed. (If the number of possibilities is less than 1 million, include a programmatic check to prevent drawing the same pair of samples more than once).
- (6) Order the  $Z_S$  results computed and stored in step 4 from lowest to highest.
- (7) Compute the Z-test score for the original two data sets and find its rank in the ordering determined in step 6.
- (8) To calculate P, divide the rank of the Z-test score as determined in step 7 by the number of total runs executed. ( $P = \text{rank} / T$ ).
- (9) Using a cumulative standard normal distribution table, find the value  $Z_A$  such that the probability (or cumulative area under the standard normal curve) is equal to P calculated in step 8.

Compare  $Z_A$  with the Critical Z-value. If  $Z_A >$  the Critical Z-value, then the performance is non-compliant.

4.4 AT&T MIDWEST and CLECs will provide software and technical support as needed by Commission Staff for purposes of statistical analysis. Any CLEC who enters into this Plan agrees to share in providing such support to Commission Staff.

## 5.0 Overview of Remedy Structure

AT&T MIDWEST agrees with the following methodology for developing the liquidated damages payable to CLEC:

- 5.1 AT&T MIDWEST will pay Liquidated Damages to the CLEC according to the terms set forth in this document.
- 5.2 Liquidated damages apply to measurements identified as "Remedied" in the Measurement Type section of the performance measurement business rules documented in Appendix 1.
- 5.3 AT&T MIDWEST will not be liable for the payment of liquidated damages until 10 days after receipt by AT&T MIDWEST of an executed (by CLEC) Interconnection Agreement, or an amendment to an existing Interconnection Agreement ("Receipt Date"), terms of which have been agreed to by both CLEC and AT&T MIDWEST, referencing this Plan. Liquidated damages will be accrued, but not paid, effective with the first full month of performance results after the Receipt Date, and will be payable from and after the date that the

Interconnection Agreement or amendment is approved by the Commission. AT&T MIDWEST will not unnecessarily delay filing of the Interconnection Agreement or amendment once both CLEC and AT&T MIDWEST have signed.

- 5.4 In order to receive payment by check for any liquidated damages due herein CLEC must complete the CLEC Identification and Liquidated Damages Information Form located on the CLEC On-Line website (<https://clec.AT&T.com/clec>). Otherwise, liquidated damages payment will be made via bill credit. AT&T MIDWEST shall retain the CLEC information for the duration of this Remedy Plan, and the CLEC shall notify AT&T MIDWEST of any relevant changes in the information.

## 6.0 Procedural Safeguards and Exclusions

- 6.1 AT&T MIDWEST agrees that the application of the liquidated damages provided for herein is not intended to foreclose other non-contractual legal and regulatory claims and remedies that may be available to a CLEC. By incorporating these liquidated damages terms into an Interconnection Agreement and tariff, AT&T MIDWEST and CLEC agree that proof of damages from any “noncompliant” performance measure would be difficult to ascertain and, therefore, liquidated damages are a reasonable approximation of any contractual damage resulting from a non-compliant performance measure. AT&T MIDWEST and CLEC further agree that liquidated damages payable under this provision are not intended to be a penalty.
- 6.2 AT&T MIDWEST's agreement to implement these enforcement terms, and specifically its agreement to pay any “liquidated damages” hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating to the same performance. AT&T MIDWEST and CLEC agree that CLEC may not use: (1) the existence of this Remedy Plan; or (2) AT&T MIDWEST's payment of “liquidated damages” as evidence that AT&T MIDWEST has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any State or Federal law or regulation. AT&T MIDWEST's conduct underlying its performance measures, and the performance data provided under the performance measures, however, are not made inadmissible by these terms. Any CLEC accepting this Performance Remedy Plan agrees that AT&T MIDWEST's performance with respect to this Remedy Plan may not be used as an admission of liability or culpability for a violation of any State or Federal law or regulation. Further, any liquidated damages payment by AT&T MIDWEST under these provisions is not hereby made inadmissible in any proceeding relating to the same conduct where AT&T MIDWEST seeks to offset the payment against any other damages a CLEC might recover. Whether or not the nature of damages sought by the CLEC is such that an offset is appropriate will be determined in the related proceeding. The terms of this paragraph do not apply to any proceeding before the Commission or the FCC to determine whether AT&T MIDWEST has met or continues to meet the requirements of Section 271 of the Act.
- 6.3 Every six months, CLEC may participate with AT&T MIDWEST, other CLECs, and Commission representatives to review the performance measures to determine (a) whether measurements should be added, deleted, or modified; (b) whether the applicable benchmark standards should be modified or replaced by parity standards, or vice versa; and (c) whether to move a classification of a measure from Remedied to Non-Remedied or Diagnostic, or vice versa. Criteria for review of performance measures, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement. Any changes to existing performance measures shall be by mutual agreement of the parties and approval of the Commission. Should disputes occur regarding changes, additions and/or deletions to the performance measurements, the dispute shall be referred to the Commission for resolution. The current measurements and benchmarks will be in effect until modified hereunder through this review process or expiration of the Interconnection Agreement.
- 6.4 CLEC and AT&T MIDWEST will consult with one another and attempt in good faith to resolve any issue(s) regarding the accuracy or integrity of data collected, generated, and reported pursuant to this document. In the event that CLEC requests such consultation, and resolution of such issue(s) has not been agreed to

between AT&T MIDWEST and CLEC within 45 days after CLEC's request for consultation, then AT&T MIDWEST will allow CLEC to have an independent audit conducted by an independent third-party recognized as an auditing firm, at CLEC's expense. Such audit will be of AT&T MIDWEST's performance measurement data collection, computing, and reporting processes regarding the issue(s) initially presented by CLEC. In the event the subsequent audit affirms the issue initially presented by the CLEC and denied by AT&T MIDWEST, as materially affecting reported performance results, AT&T MIDWEST shall reimburse CLEC any payments made to the independent third-party auditor. AT&T MIDWEST shall have the opportunity to review the independent third-party auditor's proposed fees for the audit, and the audit approach and schedule, prior to commencement of the audit. Any concerns between the parties regarding the proposed audit costs, approach and schedule are to be negotiated in good faith. Should multiple CLECs consult with AT&T MIDWEST as described above with respect to the same issue(s) regarding accuracy or integrity of reporting, and individually or as a group not be able to reach resolution, and those CLECs jointly engage an auditor, arrangements for AT&T MIDWEST reimbursement of individual CLECs in the event the audit confirms the issue presented by the group of CLECs materially affects performance for each are to be made in advance of commencing the audit. CLEC may not request more than one audit per trimester (four (4) calendar months) under this Section, and may not request an audit of the same performance measurement more than once in a twelve calendar month period. This Section does not modify CLEC's audit rights under other provisions of this Remedy Plan or any applicable Commission Order. AT&T MIDWEST agrees to inform all CLECs via Accessible Letter of any problem identified during an audit initiated by any CLEC. Should an audit identify any problems where AT&T MIDWEST agrees to apply changes determined necessary to properly report performance for previously-published results (restate results), or determine and pay liquidated damages based upon previously-reported results ("true-up" payments based on restated results), such changes will be applied to all CLEC data, and accordingly all CLECs, affected by the issue.

- 6.5 Notwithstanding the parties' continued operation under the Interconnection Agreement or any "evergreen clause," AT&T MIDWEST's obligation for liquidated damages pursuant to this Performance Remedy Plan will automatically cease on December 31, 2010, unless the parties agree to extend this Plan via an amendment to their Interconnection Agreement or successor Agreement. Upon request of CLEC, AT&T shall commence negotiations, which may include multiple CLECs, for a successor Remedy Plan no later than June 30, 2010.

## 7.0 Exclusions Limited

- 7.1 AT&T MIDWEST will not be excused from payment of liquidated damages on specific grounds (e.g. Force Majeure, third party systems or equipment problems not under control of AT&T MIDWEST, its affiliates, or its agents), unless AT&T MIDWEST prevails in a waiver of liability filed with the Commission seeking expedited resolution, which waiver request shall be served on all CLECs that have executed an interconnection agreement amendment that incorporates or implements this AT&T Performance Remedy Plan and would be affected should the requested waiver be granted. AT&T MIDWEST bears the burden of proof and must pay the liquidated damages in advance of the expedited hearing, subject to refund, including interest, if it prevails. Should AT&T prevail upon formal Commission resolution, or in a settlement stipulation with CLEC participant(s) that resolves the dispute after resort to the Commission, CLEC shall refund the liquidated damages within 30 days of the final, non-appealable resolution by the Commission or the effective date of the settlement stipulation. A settlement stipulation may provide for a different refund due date. Should CLEC fail to timely make such repayment, AT&T shall incur no liquidated damages liability to CLEC for any future performance until the repayment is made. If a settlement agreement is reached between AT&T MIDWEST and participating CLECs, the Commission acceptance of such agreement would apply to all CLECs participating in the Remedy Plan provided that AT&T applies the identical settlement terms to all non-participating CLECs, where applicable, such that equitable treatment is provided. AT&T MIDWEST will not be excused from payment of liquidated damages on any other grounds except as addressed in Section 7.2 or Section 8.4 below. Neither party will be required to pay attorneys

- fees to the prevailing party. If an event which is the subject of a waiver of liability only suspends AT&T MIDWEST's ability to timely perform an activity subject to performance measurement, the applicable time frame in which AT&T MIDWEST's compliance with the parity or benchmark criterion is measured will be extended on an hour for hour or day for day basis, as applicable, equal to the duration of the excusing event.
- 7.2 In addition to the provisions set forth herein, AT&T MIDWEST shall not be obligated to pay liquidated damages for noncompliance with a performance measure to the extent that such noncompliance was the result of an act or omission by a CLEC that is contrary to any of the CLEC's obligations under its Interconnection Agreement with AT&T MIDWEST or under the Act or State law or tariff. An example of a potential act or omission could include, inter alia, unreasonably holding orders and/or applications and "dumping" such orders or applications in unreasonably large batches, at or near the close of a business day, on a Friday evening or prior to a holiday.
- 7.3 In any event where AT&T MIDWEST believes there has been an act or omission by a CLEC that is contrary to any of the CLEC's obligations under its Interconnection Agreement with AT&T MIDWEST or under the Act or State law or tariff, and AT&T MIDWEST believes such act or omission has caused noncompliance with a performance measurement, as defined in Section 7.2 above, and AT&T MIDWEST initiates the ICA dispute process, AT&T MIDWEST shall pay one-half of the applicable liquidated damages to the CLEC while disputes are referred to the Commission for resolution, subject to refund, including interest, at the conclusion of the dispute process, if AT&T MIDWEST prevails. If AT&T MIDWEST does not prevail, the remaining one-half of the applicable liquidated damages will be paid, with interest, within 30 days of a final, non-appealable resolution by the Commission. Should AT&T prevail in the dispute process, either prior to or as a result of formal Commission resolution, or in a settlement stipulation with CLEC participant(s) that resolves the dispute after resort to the Commission, CLEC shall refund the liquidated damages within 30 days of the final, non-appealable resolution by the Commission or the effective date of the settlement stipulation. A settlement stipulation may provide for a different refund due date or remedy. Should CLEC fail to timely make such repayment, AT&T shall incur no liquidated damages liability to CLEC for any future performance until the repayment is made. AT&T MIDWEST will have the burden in any such proceeding to demonstrate that its noncompliance with the performance measurement is due to such acts or omissions by a CLEC. If such an agreement is reached between AT&T MIDWEST and CLECs who choose to participate in such discussions, the Commission acceptance of such agreement would apply to all CLECs participating in the Remedy Plan, where applicable, such that equitable treatment is provided.
- 7.4 AT&T MIDWEST's liquidated damages liability to any individual CLEC in any month will not exceed (will be capped at) the total billed revenue due AT&T MIDWEST for services provided to the CLEC in the same month for which the remedy liability was incurred.
- 7.5 AT&T MIDWEST will post on its Internet website the aggregate payments of any liquidated damages paid during the current calendar year.
- 8.0 Liquidated Damages Payable to CLECs:
- 8.1 Liquidated damages apply to measures designated in Appendix 1 as Remedied when AT&T MIDWEST delivers "non-compliant" performance as defined in Section 3 above.
- 8.2 Liquidated damages in the amount specified in TABLE 1: Liquidated Damage Amount Table below apply to all "non-compliant" sub-measures subject to remedies. Liquidated damages apply on a per occurrence basis, using the amount per occurrence taken from the table below, based on the number of consecutive months for which AT&T MIDWEST has reported noncompliance for the sub-measure and on the overall percentage of sub-measures subject to liquidated damages for which AT&T MIDWEST met or exceeded the performance standard. For those measures listed in Appendix 1 as "Subject to Per Occurrence Damages With a Cap," the amount of liquidated damages in a single month for a disaggregation category

shall not exceed the amount listed in TABLE 2: Per Measure/Cap Liquidated Damage Amount Index Table. For those measures listed in Appendix 1 as “Subject to Per Measure Damages,” liquidated damages will apply on a per disaggregation category basis, at the amounts set forth in the TABLE 2: Per Measure/Cap Liquidated Damage Amount Index Table below. The methodology for determining the number of occurrences is addressed in “Methods of Calculating Liquidated Damages Amounts,” below.

- 8.3 TABLE 1 and TABLE 2 utilize an Index Value (“IV”) that establishes the single level of liquidated damages assessment amount to be paid to all CLECs participating in the Plan in the case of a failure to meet or exceed a performance standard. This Index Value is uniquely established for each month’s results based on the overall performance AT&T MIDWEST provided to the CLECs as a whole on remedied sub-measures. The IV is calculated by (1) determining the number of reported sub-measure results subject to remedies for which performance met or exceeded the standard of comparison; (2) determining the total number of reported sub-measures subject to remedies; and (3) dividing (1) by (2) and multiplying by 100. The number of sub-measures is intended to reflect all CLEC activity within the State that is subject to remedy as defined in the performance measurement user guide. More specifically, a sub-measure is defined as a fully disaggregated (e.g. by product, by geography, by CLEC) performance measurement result. For determining the IV, the denominator is the total number of sub-measures reported, across all CLECs with activity, that are subject to liquidated damages remedy payments payable to CLECs. This formula is provided below.

$$IV = (RSM_{passed} \div RSM_{total}) \times 100$$

Where

RSM<sub>passed</sub> = Total number of Remedied Sub-Measure results where performance met or exceeded the standard of comparison

RSM<sub>total</sub> = Total count of Remedied Sub-Measure results

- 8.4 In the event AT&T MIDWEST’s performance falls below any defined threshold level as listed in Tables 1 & 2, this Section shall apply.

- 8.4.1 Should the calculated Index Value result fall below a defined threshold, and AT&T MIDWEST believes that the calculated Index Value result was attributable to events outside AT&T MIDWEST control, including but not limited to, force majeure events, act or omission by a CLEC that is contrary to any of the CLEC’s obligations under its Interconnection Agreement with AT&T MIDWEST or under the Act or State law or tariff, or changes in AT&T MIDWEST’s obligations under Section 251/252 (collectively referred to as “Index Value Events”), AT&T MIDWEST may initiate a request for waiver of liability for the additional liquidated damages directly attributable to the Index Value Event(s) with the specific Commission(s) in the affected State(s). Contemporaneous with the filing of the request for waiver, AT&T MIDWEST shall provide direct notice to the CLEC(s) affected of the request, along with a copy of the filed request, including all non-confidential or non-proprietary documents filed with the request. The direct notice shall be provided to the Notices Contact identified in the Interconnection Agreement. Upon initiating such a request, AT&T MIDWEST shall pay one-half of the additional liquidated damages directly attributable to the Index Value Event(s) to the CLEC while disputes are referred to the Commission for resolution, subject to refund, including interest, if AT&T MIDWEST prevails. In such a request AT&T Midwest will have the burden to prove that absent the specified Index Value Event the calculated Index Value would have exceeded the specific threshold level and the additional liquidated damages liability resulting would not have been incurred. Should AT&T MIDWEST not prevail on the request for waiver in accordance with this Section 8.4.1, AT&T MIDWEST will pay the remaining one-half of the applicable liquidated damages to all affected CLECs, with interest accruing from the original payment due date, within 30 days of the Commission’s initial decision or, if appealed, within 30 days of a final, non-appealable resolution.

- 8.5 For measures identified in Attachment A and defined in Appendix 1 as subject to remedy, liquidated damages apply as indicated in Section 8.2 whenever the following occurs:

- Performance is below the ceiling performance level and equal to or above the floor performance level and not in parity; or
- Performance is below the floor performance level, whether or not in parity.

Performance above the ceiling performance standard is deemed to have met the performance standard regardless of the result of a parity comparison.

When performance for the CLEC is below the floor, liquidated damages will be calculated against the better of the floor level of performance or the parity comparison performance.

Should the Commission order the implementation of retail performance standards applicable to all carriers providing retail local exchange services, or order changes to existing retail performance standards applicable to all carriers providing retail local exchange service, the parties will negotiate whether or not to create new, or modify existing, floor and ceiling performance standards.

- 8.6 For provisioning and maintenance performance measurements associated with DS1 capacity or higher UNE Loops/EELs, the per-occurrence liquidated damage will start at the month three level for the first month performance failure.
- 8.7 Following at least two consecutive months of non-compliance for a given sub-measure, liquidated damages will be subject to a “proof of compliance” period for that individual metric. This process will require AT&T MIDWEST to return to compliance for a specified number of months, based on the number of consecutive months non-compliant performance, before the liquidated damages amount is reduced to the lowest, or single month of non-compliance, level. For example, if AT&T MIDWEST was out of compliance for four consecutive months for a given performance measurement reported for a specific CLEC, AT&T MIDWEST will have to provide this CLEC three consecutive months of compliant performance for this same submeasure before it can begin paying the “Month 1” liquidated damage amount.
- 8.8 During this “proof of compliance” period, AT&T MIDWEST will make liquidated damages payments *only* for those months during which the performance result for a specific sub-measure is determined to be “non-compliant” for a CLEC. This remedy payment amount will return to the lowest level of payment when AT&T MIDWEST provides “compliant” performance for the number of consecutive months identified in TABLE 3: “Step-Down” Table Of Liquidated Damages For Tier 1 Measures where the payment amount is “Month One Amount”. Until the performance result has met or exceeded the standard of comparison for three consecutive months, liquidated damages amounts will be determined using the number of months defined in Table 3.
- 8.9 AT&T MIDWEST is obligated to correctly and completely report performance results for CLEC and the aggregate of all CLECs. On occasion, it may be necessary for AT&T MIDWEST to restate previously published performance results to comply with this obligation where the originally published results were materially different from actual performance. AT&T MIDWEST will provide notice, via the CLEC OnLine web site, to CLEC and the Commission of each restatement, indicating the performance measurements restated, which months’ performance the measurements were restated for, and why the restatement was necessary.
- 8.10 In the event that performance measurement results need to be restated, AT&T MIDWEST will restate those results as soon as possible for a period not to exceed the three months prior to the month for which results have most recently been reported at time of the restatement. In a case where restatement is required to address an audit finding, the restatement will be applied for the period of time necessary to resolve the finding.
- 8.11 If it is determined through restatement of performance results or other means that AT&T MIDWEST underpaid liquidated damages due a CLEC, AT&T MIDWEST will make additional payment to the CLEC (via the standard method of payment for each CLEC) to the extent that it underpaid. All underpayments will be credited with interest. In the event that determination is made through restatement of performance



- results or other means that **AT&T MIDWEST** overpaid, current and/or future monthly liquidated damages remedy payments/bill credits to CLEC will be offset by the amount of overage.
- 8.12 Notwithstanding CLEC election under Section 5.4 above, **AT&T MIDWEST** shall be permitted to apply any liquidated damages payments due toward those charges that the CLEC owes **AT&T MIDWEST** for services rendered (or facilities provided) so long as such charges are undisputed and are past due for not less than 90 days and, provided that the amount applied shall not exceed the total undisputed amount that is 90 days past due.
- 8.13 If performance for any sub-measure fails to meet the standard of performance (parity or benchmark) defined in Appendix 1 for three consecutive months, **AT&T MIDWEST** will, at request of the CLEC, initiate a “gap closure” effort. For a measure to which a floor applies, “gap closure” can be initiated when performance is below the floor for two consecutive months. The “gap closure” effort will (1) identify the root cause for the failure to meet the performance standard, and (2) develop an action plan to improve performance to a level where it is meeting the standard of performance. Documentation of the root cause and the action plan to address it will be provided to the CLEC requesting “gap closure” within 30 days of CLEC request. If requesting CLEC assesses the action plan as inadequate, the issue will be escalated to senior management responsible for the CLEC account and the operational area(s) impacted. A response will be provided to CLEC senior management within 10 business days of receipt of the escalation from the CLEC.

Index Value (“IV”) Thresholds	Consecutive Months Missed					
	One	Two	Three	Four	Five	Six or More
IV ≥ 87.0%	\$30	\$65	\$130	\$260	\$390	\$520
82.0% ≤ IV < 87.0%	\$36	\$78	\$163	\$325	\$455	\$585
77.0% ≤ IV < 82.0%	\$60	\$98	\$195	\$390	\$520	\$650
72.0% ≤ IV < 77.0%	\$120	\$163	\$325	\$650	\$780	\$910
IV < 72.0%	\$180	\$228	\$455	\$910	\$1,040	\$1,170

Index Value (“IV”) Thresholds	Consecutive Months Missed					
	One	Two	Three	Four	Five	Six or More
IV ≥ 87.0%	\$6,000	\$13,000	\$19,500	\$26,000	\$32,500	\$39,000
82.0% ≤ IV < 87.0%	\$9,000	\$19,500	\$29,250	\$39,000	\$48,750	\$58,500
77.0% ≤ IV < 82.0%	\$12,000	\$26,000	\$39,000	\$52,000	\$65,000	\$78,000
72.0% ≤ IV < 77.0%	\$18,000	\$39,000	\$58,500	\$78,000	\$97,500	\$117,000
IV < 72.0%	\$30,000	\$65,000	\$97,500	\$130,000	\$162,500	\$195,000

Consecutive Months Compliant Performance Before Subsequent Non-Compliant Month	Consecutive Months Non-Compliant Performance Prior to First Month of Compliant Performance			
	Three Months	Four Months	Five Months	Six Months or More
Per Occurrence and Per Measure/Cap				
One Month	Month Two Amount	Month Three Amount	Month Four Amount	Month Five Amount
Two Months	Month One Amount	Month Two Amount	Month Two Amount	Month Three Amount
Three Months or More	Month One Amount	Month One Amount	Month One Amount	Month One Amount

#### 8.14 Example Application of “Step-Down” Table

Assume a measurement result is deemed non-compliant for four consecutive months. Performance is then deemed compliant with the measurement standard in the fifth month. Further assume that in the sixth month performance is again deemed non-compliant, resulting in four consecutive months missed, followed by one month (month five) met and the next month (month six) missed. Using Table 3 above, remedies for performance in month six would be at the level of three consecutive months missed. This can be confirmed by looking at the column for “Consecutive Months Non-Compliant Performance Prior to First Month of Complaint Performance”, or the “Four Months” column in this example, then looking at the row for “Consecutive Months Complaint Performance Before Subsequent Non-Compliant Month”, or the “One Month” row in this example. The intersecting cell indicates that remedies would be paid at the “Month Three Amount”, or the level corresponding to three consecutive months misses for the measure from Table 1 or Table 2 (as applicable to the specific measure).

#### 9.0 Posting of Results and Provision of Liquidated Damages Payments:

- 9.1 If AT&T MIDWEST fails to submit performance reports or make payment of liquidated damages by the last business day of the month following actual performance, AT&T MIDWEST is required to post notice of such delay on the “News Page” of its web site where performance results are made available. Such notice must describe the extent to which results or payments are not provided, and an expected timeframe in which the situation will be corrected such that results or payments will be posted or provided correctly and completely. CLEC has the ability to take any concerns with a delay in posting of performance results or payment of liquidated damages to the Commission for resolution. For each day after the due date that AT&T MIDWEST fails to pay the required amount, AT&T MIDWEST will pay interest to the CLEC at the maximum rate permitted by law for a past due liquidated damages obligation.
- 9.2 If AT&T MIDWEST alters previously reported data for a CLEC, and after discussions with AT&T MIDWEST the CLEC disputes such alterations, then the CLEC may ask the Commission to review the submissions and the Commission may take appropriate action. This does not apply to the limitation stated under the Section titled “Exclusions Limited.”
- 9.3 When AT&T MIDWEST performance creates an obligation to pay liquidated damages to a CLEC under the terms set forth herein, AT&T MIDWEST shall make payment in the required amount on or before the last business day of the month following the due date of the performance measurement report for the month in which the obligation arose (e.g., if AT&T MIDWEST performance through March is such that AT&T MIDWEST owes liquidated damages to CLECs for March performance, then those payments will be due the last business day of May, the last business day of the month following the month (April) in which results were posted). For each day after the due date that AT&T MIDWEST fails to pay the required amount, AT&T MIDWEST will pay interest to the CLEC at the maximum rate permitted by law for a past due liquidated damages obligation.
- 9.4 AT&T MIDWEST may not withhold payment of liquidated damages to a CLEC other than through the processes described in Sections 7.3 and 8.4.1.
- 9.5 CLEC will have access to monthly reports on performance measures and business rules through an Internet website that includes performance results for individual CLECs, the aggregate of all CLECs, and AT&T MIDWEST.

## 10.0 Methods of Calculating Liquidated Damages Amounts

The following methods apply in calculating per occurrence liquidated damage:

### 10.1 Calculating Liquidated Damages

#### 10.1.1 Measures for Which the Reporting Dimensions are Averages or Means

- Step 1: Calculate the average or the mean for the sub-measure for the CLEC that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (There are no Critical Z-values calculated for Benchmark measures.)
- Step 2: Calculate the percentage difference between the actual average and the calculated average. For benchmark measures or floors (for measures that have floors and the floor applies to the result), calculate the percentage difference between the actual average and the benchmark. This percentage is capped at 100%.
- Step 3: Multiply the total number of data points by the percentage calculated in the previous step and round this number up to the next integer. Then multiply the result by the per occurrence dollar amount taken from the Liquidated Damages Table to determine the applicable liquidated damages for the given month for that sub-measure.

#### 10.1.2 Measures for Which the Reporting Dimensions are Percentages

- Step 1: Calculate the percentage for the sub-measure for the CLEC that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (There are no Critical Z-values calculated for Benchmark measures.)
- Step 2: Calculate the difference between the actual percentage for the CLEC and the calculated percentage. For benchmark measures or floors (for measures that have floors and the floor applies to the result), calculate the difference between the actual percentage and the benchmark.
- Step 3: Multiply the total number of data points by the difference in percentage calculated in the previous step and then round this number up to the next integer. Then multiply the result by the per occurrence dollar amount taken from the Liquidated Damages Table to determine the applicable liquidated damages for the given month for that sub-measure.

#### 10.1.3 Measures for Which the Reporting Dimensions are Ratios or Rates

- Step 1: Calculate the ratio for the sub-measure for the CLEC that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (There are no Critical Z-values calculated for Benchmark measures.)
- Step 2: Calculate the difference between the actual ratio for the CLEC and the calculated ratio. For benchmark measures or floors (for measures that have floors and the floor applies to the result) calculate the difference between the actual ratio and the benchmark. This difference is capped at 100%.
- Step 3: Multiply the total number of data points by the percentage calculated in the previous step and then round this number up to the nearest integer. Then multiply the result by the per occurrence dollar amount taken from the Liquidated Damages Table to determine the applicable liquidated damages for the given month for that sub-measure.

## 11.0 The following document is incorporated herein by reference:

Appendix 1: AT&T MIDWEST Performance Measurement User Guide (a document available from CLEC Account Managers or found on the AT&T MIDWEST Performance Measurement website)

Appendix 1 is updated periodically through the collaborative described in Section 6.3 above. Upon completion of the collaborative discussions, agreed changes are submitted for State Commission approval in accordance with each State Commission's desired procedure. Disputes on changes are also submitted for State Commission resolution according to this procedure. The proceeding under which Appendix 1 is submitted for approval, and under which disputes are resolved, in each state is listed below (unless replaced by a successor proceeding or docket). Upon approval of the State Commission, the new version of Appendix 1 is to be used in reporting performance for all CLECs doing business in the particular state.

- Illinois – 83 ILL. Admin. Code 731 (Rule Part 731)
- Indiana – Cause No. 41657
- Michigan – Case No. U-11830
- Ohio – Case No. 00-942-TP-COI
- Wisconsin – Docket No. 6720-TI-198

In the event of any inconsistency between Appendix 1 and this Performance Remedy Plan, this Performance Remedy Plan shall supersede and control. In addition, Appendix 1 shall be supplemented by Attachment A hereto.

#### 12.0 Reservation of Rights:

By offering this Plan in the context of an Interconnection Agreement, AT&T is not waiving the right to assert that a State Commission does not have jurisdiction to create or impose remedies/liquidated damages that are beyond the scope of the remedies/liquidated damages that may result from application of this negotiated Remedy Plan. Notwithstanding this Reservation of Rights, both parties acknowledge that a Commission may enforce the provisions of this Remedy Plan and resolve disputes that may arise with respect to the implementation and application of this Remedy Plan unless the general dispute resolution provisions of the ICA provides for another venue or process.

**Maximum/Minimum Levels of Service:**

The following table represents “Maximum Level of Service (Ceilings)” and “Minimum Level of Service (Floors)” for each respective measure/sub-measure. Without regard to parity, AT&T Midwest will not pay remedies to a CLEC if the result for that CLEC meets or exceeds the ceiling and AT&T Midwest will pay remedies to a CLEC if the result for that CLEC does not meet the floor. Parity applies when the result for that CLEC falls between the ceiling and the floor. Floors and Ceilings do not apply to any product subject to a benchmark standard, and do not apply to Interconnection Trunks, Resold Specials, DSL Loops, and LNP Only products.

AT&T Midwest will be excused from application of the Floor for determination of any liquidated damages liability should performance fall below the Floor as a result of specific events beyond the control of AT&T. Examples of such events are cable cuts by a third-party (not contracted by AT&T) and severe weather. In such situations AT&T will calculate any liquidated damages liability against the parity comparison, and pay any such liability on or before the due date of such payment. Any additional amount that might be owed for a calculation to the Floor will be withheld while AT&T pursues a waiver of liability with the particular State Commission. Should the Commission rule against AT&T in such a filing, any additional liquidated damages will be paid to the CLEC within 30 days with interest.

Measure #:	Measure:	Sub-measure:	Ceiling:	Floor:
PM – 29	Percent AT&T Midwest Missed Due Dates	Each	≤ 2%	> 10%
PM – 30	Percent AT&T Midwest Missed Due Dates Due to Lack of Facilities	Each	≤ 2%	> 10%
PM – 35	Percent Trouble Reports within 30 Days (1-30) of Installation	Each	≤ 4%	> 20%
PM – 37.1	Trouble Report Rate Net of Installation and Repeat Reports	Each	≤ 4/100 lines (≤4%)	> 20/100 lines (>20%)
PM – 38	Percent Missed Repair Commitments	Each	≤ 5%	> 15%
PM – 39	Mean Time to Restore Interval	Resale POTS - OOS	≤ 8 hours	> 30 hours
PM – 39	Mean Time to Restore Interval	Resale POTS - AS	≤ 8 hours	> 60 hours
PM – 39	Mean Time to Restore Interval	UNE Loops < DS1	< 8 hours	> 36 hours
PM – 39	Mean Time to Restore Interval	UNE Loops ≥ DS1	≤ 4 hours	> 10 hours
PM – 40	Percent Out of Service (OOS) < 24 Hours	Each	≥ 96%	< 85%
PM – 41	Percent Repeat Reports	Each	≤ 4%	> 20%