

SBC OHIO
Performance Remedy Plan
Description

This Performance Remedy Plan sets forth the terms and conditions under which SBC OHIO will report performance to CLEC and compare that performance to SBC OHIO's own performance ("parity"), benchmark criteria, or both, whichever is applicable. This document further provides for enforcement through liquidated damages and assessments.

1.0 SBC OHIO agrees to provide CLEC a monthly report of performance for the performance measures listed in Appendix 1 – SBC OHIO Performance Measurement User Guide. SBC OHIO 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. SBC OHIO further agrees to use the two-tiered enforcement structure for performance measurements provided for in this document. The Commission-approved performance measurements shown in Appendix 1 hereto identify the measurements that belong to Tier 1 (payable to CLECs) and/or Tier 2 (payable to the State) categories.

1.1. SBC OHIO 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 SBC OHIO on or before the last day of the month for which data is sought, SBC OHIO 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 SBC OHIO after the last day of the month for which data is sought, SBC OHIO 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 Agreement, the Parties agree that such records will be deemed Proprietary Information.

2.0 SBC OHIO will use a statistical test, namely the modified "Z-test," for evaluating the difference between two means (SBC OHIO retail or its affiliate – whichever is better, 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. SBC OHIO agrees to use the modified Z-tests as outlined below as the statistical tests for the determination of parity when the results for SBC OHIO retail or its affiliate (whichever is better, 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 SBC OHIO retail performance or the affiliate performance (whichever is better). If the affiliate data has fewer than 30 observations, the comparison will be to SBC OHIO'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.

- 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 SBC OHIO and/or its affiliate (whichever is better, provided the number of affiliate data points equals 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:

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

For Measurement results that are expressed as Percentages or Proportions:

Step 1:

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

Step 2:

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

Step 3:

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

Where: n = number of observations
 P = Percentage or Proportion

For Measurement results that are expressed as Rates or Ratios:

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

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

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. The minimum sample size for Tier 2 is 10 observations for the aggregate of all CLECs. Sub-measures in Tier 2 with fewer than 10 observations do not have statistical tests conducted on them.
- 4.3. 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., $M_{ILEC} - M_{CLEC}$, $P_{ILEC} - P_{CLEC}$, $R_{ILEC} - R_{CLEC}$).
- 4.4. For measurements where the performance delivered to the CLEC is compared to SBC OHIO performance and for which the number of data points are 29 or less for either the CLEC or SBC OHIO, SBC OHIO will apply the following alternatives for compliance.
 - 4.4.1. Alternative 1 (used only in the following situations: 1) for a measure where results for both the CLEC and SBC OHIO 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):
 SBC OHIO applies the Z-Test as described in section 3.0.
 - 4.4.2. 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.

- 4.5. SBC OHIO and CLECs will provide software and technical support as needed by Commission Staff for purposes of statistical analysis. Any CLEC who opts into this plan agrees to share in providing such support to Commission Staff.

5.0 Overview of Enforcement Structure

SBC OHIO agrees with the following methodology for developing the liquidated damages and penalty assessment structure for Tier 1 liquidated damages and Tier 2 assessments:

- 5.1. SBC OHIO will pay Liquidated Damages to the CLEC according to the terms set forth in this document.
- 5.2. Liquidated damages apply to Tier 1 measurements identified as “Remedied” in the Measurement Type section of the performance measurement business rules documented in Appendix 1.
- 5.3. Assessments are applicable to Tier 2 measures identified as “Remedied” in the Measurement Type section of the performance measurement business rules

documented in Appendix 1, and are payable to the State Fund designated by the Commission.

- 5.4. SBC OHIO will not be liable for the payment of Tier 1 damages until 10 days after receipt by SBC OHIO of an executed (by CLEC) Interconnection Agreement amendment, terms of which have been agreed to by both CLEC and SBC OHIO, referencing this plan; or if CLEC interconnects by tariff, 10 days after receipt by SBC OHIO of the self-identification form posted on the CLEC Onine website (<https://clec.sbc.com/clec>). Tier 1 damages will be accrued, but not paid, effective with the first full month of performance results after that date, and will be payable from and after the date that the Interconnection Agreement Amendment is approved by the Commission. SBC OHIO will not unnecessarily delay filing of the Interconnection Agreement or amendment once both CLEC and SBC OHIO have signed.
- 5.5. SBC OHIO will be liable for the payment of Tier 2 assessments upon formal approval of this plan by the Commission in either a generic proceeding or by approving an Interconnection Agreement amendment referencing this plan. Tier 2 assessments will be paid on the aggregate performance for all CLECs that are operating in Ohio as specified in Section 9.0. To the extent that there are one or more other Commission-approved remedy plan(s) in effect that also require SBC OHIO to make Tier 2 assessments to the State (as opposed to, or in addition to, Tier 1 payments to a CLEC or CLECs), SBC OHIO will be liable for a single Tier 2 assessment for the applicable time period, which payment to the State shall be equal to either the Tier 2 assessment under such other plan(s) or the Tier 2 assessments payable under this plan, whichever is greater.
- 5.6. In order to receive payment by check CLEC must complete the CLEC Identification and Liquidated Damages Information Form located on the CLEC Onine website (<https://clec.sbc.com/clec>). Otherwise, remedy payment will be made via bill credit.

6.0 Procedural Safeguards and Exclusions

- 6.1. SBC OHIO agrees that the application of the assessments and 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, SBC OHIO 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. SBC OHIO and CLEC further agree that liquidated damages payable under this provision are not intended to be a penalty.
- 6.2. SBC OHIO’s agreement to implement these enforcement terms, and specifically its agreement to pay any “liquidated damages” or “assessments” 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. SBC OHIO and

CLEC agree that CLEC may not use: (1) the existence of this enforcement plan; or (2) SBC OHIO's payment of Tier 1 "liquidated damages" or Tier 2 "assessments" as evidence that SBC OHIO 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. SBC OHIO'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 SBC OHIO'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 SBC OHIO under these provisions is not hereby made inadmissible in any proceeding relating to the same conduct where SBC OHIO 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 SBC OHIO has met or continues to meet the requirements of section 271 of the Act.

- 6.3. SBC OHIO shall not be liable for Tier 2 "assessments" under this remedy plan to the extent they are duplicative of any other assessments or sanctions under the Commission's service quality rules relating to the same performance. This section does not limit the Commission's ability to assess remedies, penalties or fines regarding such performance consistent with their lawful authority.
- 6.4. Every six months, CLEC may participate with SBC OHIO, 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, either Tier 1, Tier 2 or both, from Remedied to 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 and this remedy plan 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.
- 6.5. CLEC and SBC OHIO will consult with one another and attempt in good faith to resolve any issues regarding the accuracy or integrity of data collected, generated, and reported pursuant to this document. In the event that CLEC requests such consultation and the issues raised by CLEC have not been resolved within 45 days after CLEC's request for consultation, then SBC OHIO will allow CLEC to have an independent audit conducted, at CLEC's expense, of SBC OHIO's performance measurement data collection, computing, and reporting processes. In the event the subsequent audit

affirms the problem identified by the CLEC, or if any new problem is identified, SBC OHIO shall reimburse the CLEC any expense incurred by the CLEC for such audit. CLEC may not request more than one audit per four 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 Agreement or any applicable Commission Order. SBC OHIO agrees to inform all CLECs via Accessible Letter of any problem identified during an audit initiated by any CLEC.

- 6.6. SBC OHIO agrees to periodic, regional (five-state) audit of the performance measurement data collection, retention, transformation, result and remedy calculation, and result publication processes and systems. The first regional audit shall commence the later of eighteen months after this plan becomes effective or eighteen months after completion of the performance measurement audit of the OSS Third Party Test conducted by KPMG under Case No. 00-942-TP-COI. Subsequent to that initial audit, additional periodic audits will be scheduled as deemed necessary by the Commission. CLECs and the Commission will have input into the design and schedule of the audit. An independent, third party auditor chosen by SBC OHIO and approved by the Commission will conduct these audits at SBC OHIO's expense.
- 6.7. This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with the underlying Agreement. Notwithstanding, the parties agree that the PERFORMANCE REMEDY PLAN will expire December 31, 2006 and therefore will be included in any successor agreements until December 31, 2006 regardless of the term of such successor agreements.

7.0 Exclusions Limited

- 7.1. SBC OHIO will not be excused from payment of liquidated damages or assessments on specific grounds (e.g. Force Majeure, third party systems or equipment problems), unless SBC OHIO prevails in a waiver of liability filed with the Commission seeking expedited resolution. SBC OHIO bears the burden of proof and must pay the remedies in advance of the expedited hearing, subject to refund, including interest, if it prevails. SBC OHIO will not be excused from payment of liquidated damages or assessments on any other grounds except as addressed in Section 7.2 or by application of the procedural threshold provided for 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 SBC OHIO's ability to timely perform an activity subject to performance measurement, the applicable time frame in which SBC OHIO'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, SBC OHIO shall not be obligated to pay liquidated damages or assessments 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

SBC OHIO or under the Act or Ohio 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 SBC OHIO 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 SBC OHIO or under the Act or Ohio law or tariff and that has caused noncompliance with a performance measurement, and a dispute occurs, SBC OHIO shall pay one-half of the Tier 1 remedies to the CLEC while disputes are referred to the Commission for resolution, subject to refund, including interest, if SBC OHIO prevails. If SBC OHIO does not prevail, the remaining one-half of the Tier 1 remedies will be paid, with interest, within 30 days of a final, non-appealable resolution by the Commission. SBC OHIO shall pay Tier 2 remedies to the State Fund designated by the Commission after the disputes are resolved. SBC OHIO 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.
- 7.4. SBC OHIO and CLEC agree that a procedural annual threshold will apply to the aggregate total of any Tier 1 liquidated damages (including any such damages paid pursuant to this Agreement or to any other Ohio interconnection agreement with a CLEC) and Tier 2 assessments or voluntary payments made by SBC OHIO pursuant to any Ohio interconnection agreement or tariff with a performance remedy plan for the calendar year. The annual threshold amounts will be determined by SBC OHIO, based on the formula of 36% of Net Return as set forth at ¶ 436 and footnote 1332 of the FCC’s December 22, 1999 Memorandum Opinion and Order in CC Docket No. 99-295. The annual threshold shall be re-calculated on the first business day of the calendar year when updated ARMIS data is made publicly available. For purposes of applying the threshold, the calendar year shall apply. Once the annual threshold is established, a maximum monthly threshold will be determined by dividing the amount of the annual threshold by twelve. CLEC further acknowledges that a maximum monthly threshold of one-twelfth of the annual threshold for Tier 1 liquidated damages and Tier 2 assessments will apply to all performance payments made by SBC OHIO under all SBC OHIO interconnection agreements and tariff. To the extent in any given month the monthly threshold is not reached, the subsequent month’s total threshold will be increased by an amount equal to the unpaid portion of the previous month’s threshold. At the end of the year, if the aggregate total of Tier 1 liquidated damages and Tier 2 assessments under all SBC OHIO interconnection agreements and Performance Measurements and Remedy Plan tariff equals or exceeds the annual threshold, but SBC OHIO has paid less than that amount due to the monthly threshold, SBC OHIO shall be required to pay an amount equal to the difference between the annual threshold and the amount paid. In such event, Tier 1 liquidated damages shall be paid first on a pro rata basis to CLECs, and any remainder within the annual threshold shall be paid as a Tier 2 assessment. In the event the total calculated amount of damages and assessments for

the year is less than the annual threshold, SBC OHIO shall be obligated to pay ONLY the actual calculated amount of damages and assessments.

- 7.5. Whenever SBC OHIO Tier 1 payments to an individual CLEC in a given month exceed 12.5% of the monthly threshold amount, or the Tier 1 payments to all CLECs in a given month exceed the monthly threshold, then SBC OHIO may request a hearing before the Commission. Upon timely commencement of this proceeding, SBC OHIO must pay one-half of the damages owed to the individual CLEC (subject to refund, including interest, if it prevails), and the balance of damages owed into escrow to be held by a third party pending the outcome of the hearing. To invoke these escrow provisions, SBC OHIO must file with the Commission, not later than the due date of the affected damages payments, an application to show cause why it should not be required to pay any amount in excess of the threshold amount. SBC OHIO's application will be processed in an expedited manner under the process set forth in the Procedural Rules. SBC OHIO will have the burden of proof to demonstrate why, under the circumstances, it should not be required to pay liquidated damages in excess of the applicable threshold amount. If SBC OHIO reports non-compliant performance to the CLEC for three consecutive months on 20% or more of the measures reported to the CLEC, but SBC OHIO has incurred no more than 4.2% of the monthly threshold amount in liquidated damages obligations to the CLEC for that period under the enforcement terms set out here, then the CLEC may commence an expedited dispute resolution under this paragraph pursuant to the Commission's Procedural Rules to request that SBC OHIO should have to pay an amount of damages in excess of the amount calculated under these enforcement terms. In any such proceeding the CLEC will have the burden of proof to demonstrate why SBC OHIO should have to pay any amount of damages in excess of the amount calculated under these enforcement terms.
- 7.6. SBC OHIO's Tier 1 remedy liability to any individual CLEC in any month will not exceed (will be capped at) the total billed revenue due SBC OHIO for services provided to the CLEC in the same month for which the remedy liability was incurred.
- 7.7. SBC OHIO will post on its Internet website the aggregate payments of any liquidated damages or assessments paid during the current calendar year.
- 7.8. With respect to any interconnection agreement, SBC OHIO or any CLEC may request an expedited dispute resolution proceeding before the Commission pursuant to sections 7.4 and 7.5 above.

8.0 Tier 1 Damages Payable to CLECs:

- 8.1. Tier 1 liquidated damages apply to measures designated in Appendix 1 as Remedied when SBC OHIO delivers “non-compliant” performance as defined in Section 3 above.
- 8.2. Liquidated damages in the amount specified in TABLE 1: Per Occurrence Liquidated Damage Amount Index 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 SBC OHIO has reported noncompliance for the sub-measure and on the overall percentage of sub-measures subject to remedies for which SBC OHIO met or exceeded the performance standard. For those measures listed in Appendix 1 as “Measurements That Are Subject to Per Occurrence Damages or Assessments 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 “Measurements That Are Subject to Per Measure Damages or Assessments,” 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 and Assessment 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 SBC OHIO 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 or assessments payable to the State are included. This formula is provided below.

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

Where

RSM_{passed} = Total number of Remedied Sub-Measure results where performance met or exceeded the standard of comparison

RSM_{total} = Total count of Remedied Sub-Measure results

- 8.4. Upon completion of each twelve-month period of performance reporting under this plan beginning October 2002, performance for the previous twelve months in total shall be calculated in the same fashion as defined in Section 8.3. Should the IV result calculated for that entire twelve-month period, by averaging the individual month's IV values, not meet or exceed 92%, the liquidated damages remedy amounts applicable in Tables 1 and 2 will step back to the previous level for the next twelve months, unless the level of payments is already at the highest payment schedule whereby it would remain at that level for the next twelve months.
- 8.5. For measures identified in Attachment A and defined in Appendix 1 as subject to a Tier 1 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. 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 SBC OHIO 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 SBC OHIO was out of compliance for four consecutive months for a given performance measurement reported for CLEC, SBC OHIO will have to provide CLEC three consecutive months of compliant performance for this same submeasure before it can begin paying the "Month 1" liquidated damage amount.
- 8.7. During this "proof of compliance" period, SBC OHIO 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 SBC OHIO provides "compliant" performance for the number of consecutive months identified in TABLE

4: “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 4.

- 8.8. SBC OHIO is obligated to correctly and completely report performance results for CLEC and the aggregate of all CLECs. On occasion, it may be necessary for SBC OHIO to restate previously published performance results to comply with this obligation where the originally published results were materially different from actual performance. SBC OHIO 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.
- 8.9. In the event that performance measurement results need to be restated, SBC OHIO 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.
- 8.10. If it is determined through restatement of performance results or other means that SBC OHIO underpaid liquidated damages due a CLEC, or assessments due the State, SBC OHIO will make additional payment/bill credit to the CLEC and/or payments to the State to the extent that it underpaid. All underpayments will be credited with interest. Beginning October 1, 2003, in the event that determination is made through restatement of performance results or other means that SBC OHIO overpaid, current and/or future monthly liquidated damages remedy payments/bill credits to CLEC and/or assessments to the State will be offset by the amount of overage.
- 8.11. SBC OHIO shall be able to apply any liquidated damages remedy payments due toward those charges that the CLEC owes SBC OHIO for services rendered (or facilities provided) so long as such charges are undisputed and are past due for not less than 90 days.
- 8.12. If performance for any sub-measure fails to meet the standard of performance (parity or benchmark) defined in Appendix 1 for three consecutive months, SBC OHIO 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 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.

TABLE 1: Per Occurrence Liquidated Damage Amount Index Table						
Index Value ("IV")	Consecutive Months Missed					
	One	Two	Three	Four	Five	Six or More
Effective Beginning With The Twenty-Fifth Month's Results Reported Under This Plan						
IV >= 92.0%	\$25	\$50	\$100	\$200	\$300	\$400
86.0% <= IV < 92.0%	\$35	\$60	\$125	\$250	\$350	\$450
80.0% <= IV < 86.0%	\$50	\$75	\$150	\$300	\$400	\$500
74.0% <= IV < 80.0%	\$100	\$125	\$250	\$500	\$600	\$700
IV < 74%	\$150	\$175	\$350	\$700	\$800	\$900

TABLE 2: Per Measure/Cap Liquidated Damage Amount Index Table						
Index Value ("IV")	Consecutive Months Missed					
	One	Two	Three	Four	Five	Six or More
Effective Beginning With The Twenty-Fifth Month's Results Reported Under This Plan						
IV >= 92.0%	\$5,000	\$10,000	\$15,000	\$20,000	\$25,000	\$30,000
86.0% <= IV < 92.0%	\$7,500	\$15,000	\$22,500	\$30,000	\$37,500	\$45,000
80.0% <= IV < 86.0%	\$10,000	\$20,000	\$30,000	\$40,000	\$50,000	\$60,000
74.0% <= IV < 80.0%	\$15,000	\$30,000	\$45,000	\$60,000	\$75,000	\$90,000
IV < 74%	\$25,000	\$50,000	\$75,000	\$100,000	\$125,000	\$150,000

TABLE 3: Assessment Amounts For Tier 2 Measures	
Per Occurrence	\$200
Per Measure / Cap*	\$20,000

TABLE 4: "Step-Down" Table Of Liquidated Damages For Tier 1 Measures				
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

8.13. 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 4 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 Tier 2 Assessments to the State:

- 9.1. Assessments payable to the State Fund designated by the Commission apply to the Tier 2 measures designated in Appendix 1 as “Remedied” when SBC OHIO and/or its affiliate (whichever is better, provided the affiliate data points equal or exceed 30) performance is out of parity or does not meet the benchmarks for the aggregate of all CLEC data. Specifically, if the Z-test value is greater than the Critical Z, the performance for the reporting category is out of parity or below standard. Assessments will be paid when the aggregate of all CLECs has at least 10 observations.
- 9.2. For those measurements where a per occurrence assessment applies, an assessment as specified in TABLE 3: Assessment Amounts for Tier 2 Measures shown above for each occurrence is payable to the State Fund designated by the Commission for each sub-measure that exceeds the Critical Z-value for three consecutive months. For those measurements listed in Appendix 1 as measurements subject to per occurrence with a cap, an assessment as shown in TABLE 3: Assessment Amounts for Tier 2 Measures shown above for each occurrence within the applicable cap is payable to the State Fund designated by the Commission for each sub-measure that exceeds the Critical Z-value for three consecutive months. For those Tier 2 measurements listed in Appendix 1 as subject to a per measurement assessment, an assessment amount as shown in TABLE 3: Assessment Amounts for Tier 2 Measures shown above is payable to the State Fund designated by the Commission for each sub-measure that exceeds the Critical Z-value for three consecutive months.

10.0 Posting of Results and Provision of Liquidated Damages and Assessment Payments:

- 10.1. If SBC OHIO fails to submit performance reports by the last business day of the month following actual performance, the following assessments payable to the State Fund

designated by the Commission apply unless excused for good cause by the Commission:

- If no reports are filed, \$5,000 per day past due;
 - If incomplete reports are filed, \$1,000 per day for each performance measurement listed in the User Guide for which results are not posted, but not to exceed \$5,000 per day past due.
- 10.2. If SBC OHIO alters previously reported data for a CLEC, and after discussions with SBC OHIO 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.”
- 10.3. When SBC OHIO performance creates an obligation to pay liquidated damages to a CLEC or an assessment to the State under the terms set forth herein, SBC OHIO shall make payment by check, bill credit or other direct payment method 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 SBC OHIO performance through March is such that SBC OHIO owes liquidated damages to CLECs for March performance, or assessments to the State for January – 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). (In order to receive payment by check CLEC must complete the CLEC Identification and Liquidated Damages Information Form located on the CLEC website.) For each day after the due date that SBC OHIO fails to pay the required amount, SBC OHIO will pay interest to the CLEC at the maximum rate permitted by law for a past due liquidated damages obligation and will pay an additional \$3,000 per day to the State Fund designated by the Commission for a past due assessment.
- 10.4. SBC OHIO may not withhold payment of liquidated damages to a CLEC unless SBC OHIO has commenced a Commission arbitration proceeding on or before the payment due date, asserting that noncompliance was the result of an act or omission by a CLEC as more fully described in Section 7.2 and 7.3.
- 10.5. 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 SBC OHIO.
- 10.6. The thresholds more fully described in Section 7.4. do not apply to assessments under Section 10 of this document.

11.0 Methods of Calculating Liquidated Damages and Assessment Amounts

The following methods apply in calculating per occurrence liquidated damage and assessments:

11.1. Calculating Tier 1 Liquidated Damages

11.1.1. 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 for Tier 1 Measures to determine the applicable liquidated damages for the given month for that sub-measure.

11.1.2. 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.

11.1.3. 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 for Tier 1 Measures to determine the applicable liquidated damages for the given month for that sub-measure.

11.2. Calculating Tier 2 Assessments

11.2.1. Determine the Tier 2 measurement results that are non-compliant for three consecutive months for the aggregate of all CLECs. If the non-compliant classification continues for three consecutive months, an additional assessment will apply in the third month and in each succeeding month as calculated below, until SBC OHIO reports performance that meets the applicable criterion. That is, Tier 2 assessments will apply on a “rolling three month” basis, one assessment for the average number of occurrences for months 1-3, one assessment for the average number of occurrences for months 2-4, one assessment for the average number of occurrences for months 3-5, and so forth, until satisfactory performance is established.

11.2.2. Measures for Which the Reporting Dimensions are Averages or Means

- Step 1: Calculate the average or the mean for the sub-measure for the CLECs that would yield the Critical Z-value for each of the three non-compliant months. 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 each of the three non-compliant months. For benchmark measures, calculate the percentage difference between the actual average and the benchmark for each of the three non-compliant months. This percentage is capped at 100%.
- Step 3: Multiply the total number of data points for each month by the percentage calculated in the previous step. Calculate the average for three months of these numbers rounding up the result to the next highest integer. Then multiply the result by the per occurrence dollar amount specified in the Assessment Table for Tier 2 Measures to determine the applicable assessment payable to the State Fund designated by the Commission for that sub-measure.

11.2.3. Measures for Which the Reporting Dimensions are Percentages

- Step 1: Calculate the percentage for the sub-measure for the CLECs that would yield the Critical Z-value for each of the three non-compliant months. 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 CLECs and the calculated percentage for each of the three non-compliant months. For benchmark measures, calculate the difference between the actual percentage and the benchmark for the three non-compliant months.
- Step 3: Multiply the total number of data points for each month by the difference in percentage calculated in the previous step. Calculate the average for three months of these numbers rounding up the result to the next highest integer. Then multiply the result by the per occurrence dollar amount specified in the Assessment Table for Tier 2 Measures to determine the applicable assessment payable to the State Fund designated by the Commission for that sub-measure.

11.2.4. Measures for Which the Reporting Dimensions are Ratios or Rates

- Step 1: Calculate the ratio for the sub-measure for the CLECs that would yield the Critical Z-value for each of the three non-compliant months. 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 CLECs and the calculated ratio for each month of the non-compliant three-month period. For benchmark measures calculate the difference between the actual ratio and the benchmark for the three non-compliant months. This difference is capped at 100%.
- Step 3: Multiply the total number of service orders by the percentage calculated in the previous step for each month. Calculate the average for three months of these numbers rounding up the result to the next highest integer. Then multiply the result by the per occurrence dollar amount specified in the Assessment Table for Tier 2 Measures to determine the applicable assessment payable to the State Fund designated by the Commission for that sub-measure.

12.0 Attached hereto, and incorporated herein by reference, are the following Appendices:

Appendix 1: SBC Midwest Performance Measurement User Guide (a document available from CLEC Account Managers or found on the **SBC OHIO** Performance Measurement website <https://CLEC.SBC.COM/CLEC/>)

In addition, Appendix 1 shall be supplemented by Attachment A hereto