APPENDIX
PERFORMANCE MEASUREMENTS

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APPENDIX PERFORMANCE MEASUREMENTS

1. INTRODUCTION

1.1 AT&T Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.

1.2 As used herein, **SBC-13STATE** means the applicable above listed ILEC doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.

1.3 As used herein, **SBC-SWBT** means the applicable above listed ILEC doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.

1.4 As used herein, **SBC-AMERITECH** means the applicable above listed ILEC doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.

1.5 As used herein, **SBC-SNET** means the applicable above listed ILEC doing business in Connecticut.

1.6 As used herein, **PACIFIC** means the applicable above listed ILEC doing business in California.

1.7 As used herein, **NEVADA** means the applicable above listed ILEC doing business in Nevada.

1.8 As used herein, **Service Bureau Provider** means a company which has been engaged by CLEC to act as its agent for purposes of accessing SBC-LEC's OSS application-to-application interfaces.

1.9 The performance measurements contained herein, notwithstanding any provisions in any other appendix in this Agreement, are not intended to create, modify or otherwise affect parties' rights and obligations with respect to OSS access. The existence of any particular performance measure, or the language describing that measure, is not evidence that CLEC is entitled to any particular manner of access, nor is it evidence that **SBC-13STATE** is limited to providing any particular manner of access. The parties' rights and obligations to such access are defined elsewhere, including the relevant laws, FCC and PUC decisions/regulations, tariffs, and within this interconnection agreement.

2. SOLE REMEDY

2.1 These liquidated damages shall be the sole and exclusive remedy of CLEC for **SBC 13-STATE**'s failure to meet specified performance measures and shall be in lieu of any other damages CLEC might otherwise seek for such breach through any claim or suit brought under any contract or tariff.

2.2 In Wisconsin, the Public Service Commission of Wisconsin has ordered a remedy plan in docket in Docket No. 6720 -TI –160, effective September 25, 2001 ("Wisconsin Remedy Plan"). CLEC acknowledges and agrees that if it elects to include this Appendix as a part of its Interconnection Agreement in Wisconsin, the performance measurements, remedy plan, and liquidated damages set forth in this Appendix shall apply in lieu of the Wisconsin Remedy Plan and CLEC expressly waives its rights to receive performance measurements, the remedy plan or liquidated damages under the Wisconsin Remedy Plan.

3. DEFINITIONS

3.1 When used in this Appendix, the following terms will have the meanings indicated:

3.1.1 Performance Criteria

3.1.1.1 The target level of **SBC-13STATE** performance specified for each Performance Measurement. Generally, the Performance Measurements contained in this Appendix specify performance equal to that which **SBC-13STATE** achieves for itself in providing equivalent end user service as the Performance Criterion. Parity exists when the measured results in a single month (whether in the form of means, proportions, or rates) for the same measure, at equivalent disaggregation for both **SBC-13STATE** and CLEC are used to calculate an appropriate test statistic and the resulting test value has an associated probability that is no less than the critical probability indicated in the Table of Critical Values shown in Section 8.

3.1.1.2 Performance Measurements for which parity calculations are not possible have a specified *standard* as the Performance Criterion. Compliance is assessed by comparing the result obtained by the CLEC with the applicable standard using an appropriate statistical test. The result is compliant if the probability associated with the test statistic is no less than the critical probability indicated in the Table of Critical Values shown in Section 8.

3.1.2 Performance Measures

3.1.2.1 The set of measures listed in all of Section 13 of this Appendix.

3.1.3 Non-compliance

3.1.3.1 The failure by **SBC-13STATE** to meet the Performance Criteria for any performance measure identified as an available measurement type in Section 13.

4. OCCURRENCE OF A SPECIFIED PERFORMANCE BREACH

4.1 In recognition of either: 1) the loss of End User opportunities, revenues and goodwill which a CLEC might sustain in the event of a Specified Performance Breach; 2) the uncertainty, in the event of a Specified Performance Breach, of a CLEC having available to its End User opportunities similar to those opportunities available to **SBC-13STATE** at the time of a breach; or 3) the difficulty of accurately ascertaining the amount of damages a CLEC would sustain if a Specified Performance Breach occurs, **SBC-13STATE** agrees to pay the CLEC Liquidated Damages, subject to Section 5.1 below.

5. LIQUIDATED DAMAGES AS FORM OF REMEDY

5.l The Parties agree and acknowledge that a) the Liquidated Damages are not a penalty and have been determined based upon the facts and circumstances known by the Parties at the time of the negotiation and entering into this Agreement, with due consideration given to the performance expectations of each Party; b) the Liquidated Damages constitute a reasonable approximation of the damages the CLEC would sustain if its damages were readily ascertainable; c) neither Party will be required to provide any proof of Liquidated Damages; and d) the Liquidated Damages provided herein will constitute full compensation for any failure of SBC to meet a specified performance commitment in this Attachment and any specific time commitments for the same activity contained in any other Attachments or Appendices.

6. LIQUIDATED DAMAGES PAYMENT PLAN; GENERALLY

6.1 Liquidated damages apply to the available, non-diagnostic measurements of the FCC Merger Conditions designated in Section 13 below, when **SBC-13STATE** delivers non-complaint performance as defined in 3.1.3. In no event shall **SBC-13STATE** be required to pay liquidated damages for any performance which was at parity or in compliance with the applicable benchmark at the time that the performance occurred.

6.2 The Table of Critical Values (Section 8) gives the maximum number, F, of measurements of those required to be reported to the CLEC that may fail the Performance Criteria in any month. Liquidated damages apply to Non-compliant measures that are in excess of the applicable value of F.

6.3 None of the liquidated damages provisions set forth in this proposal will apply during the first three months after a CLEC first purchases the type of service or unbundled network element(s) associated with a particular performance measurement or introduction of a new measure.

6.4 There are two kinds of failures of the Performance Criteria. *Ordinary* failures are failures on a measure for one month or two consecutive months. *Chronic* failures are failures on a measure for three consecutive months. Ordinary failures may be excused up to the applicable value of F from the Table of Critical Values. Chronic failures may not be excused in that manner. $500 is paid for each ordinary failure in excess of F. $2,500 is paid for each Chronic failure. For example, if the value of F is 8 and there are 10 Ordinary failures and 1 Chronic failure in a month, then the Liquidated Damages for that month would be (10-8)*$500 + $2,500 = $3,500. If there were 7 Ordinary failures and no Chronic failures, no Liquidated Damages would be paid.

7. LIQUIDATED DAMAGES; METHOD OF CALCULATION

7.1 **SBC-13STATE** and CLEC agree to use the following as statistical tests for evaluating the compliance of CLEC results with the Performance Criterion. These tests are applicable if the number of data points for each of **SBC-13STATE** and CLEC is greater than or equal to 30 for a given measurement.

7.2 The following list describes the tests to be used in evaluating the performance criterion. In each test, the important concept is the probability that the CLEC's results are significantly worse than either the comparable result for **SBC-13STATE** or the benchmark (whichever is relevant to the test). This probability is compared with the P value from the Table of Critical Values to decide if the measure meets the Performance Criterion. Probabilities that are less than the P value are deemed to have failed the test.

For parity measures that are expressed as Averages or Means, the following (Modified) Z test applies:

$z = (DIFF) / \delta_{DIFF}$

Where;
$DIFF = M_{ILEC} - M_{CLEC}$
M_{ILEC} = ILEC Average
M_{CLEC} = CLEC Average
$\delta_{DIFF} = SQRT\ [\delta^2_{ILEC}\ (1/ n_{CLEC} + 1/ n_{ILEC})]$
δ^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

The probability of the Z statistic is obtained from a standard normal distribution.

For parity measures that are expressed as Percentages or Proportions:

$z = (DIFF) / \delta_{DIFF}$

Where;
$DIFF = P_{ILEC} - P_{CLEC}$
P_{ILEC} = ILEC Proportion
P_{CLEC} = CLEC Proportion
$\delta_{DIFF} = SQRT\ [\delta^2_{ILEC}\ (1/ n_{CLEC} + 1/ n_{ILEC})]$
$\delta^2_{ILEC} = P_{ILEC}\ (1 - P_{ILEC})$.
n_{ILEC} = number of observations or samples used in ILEC measurement
n_{CLEC} = number of observations or samples used in CLEC measurement

The probability of the Z statistic is obtained from a standard normal distribution.

In the event that $P_{ILEC} = 0$ (and low values are associated with good service), the above test cannot be used. In such cases, Fisher's Exact Test is used to calculate the probability, P_{FE}, of the data given the hypothesis of parity.:

$$P_{FE} = 1 - \sum_{x=0}^{H_{CLEC}-1} \frac{\binom{n_{CLEC}}{x}\binom{n_{ILEC}}{H_{CLEC}+H_{ILEC}-x}}{\binom{n_{CLEC}+n_{ILEC}}{H_{CLEC}+H_{ILEC}}}$$

Where;
$H_{CLEC} = P_{CLEC} n_{CLEC}$
$H_{ILEC} = P_{ILEC} n_{ILEC}$.
If $P_{ILEC} = 1$ (and high values are associated with good service), the same formula is used with the following interpretation:

$H_{CLEC} = n_{CLEC} - P_{CLEC} n_{CLEC}$
$H_{ILEC} = n_{ILEC} - P_{ILEC} n_{ILEC}$.

Of course if it is also true that $H_{CLEC} = 0$, then $P_{FE} = 1$ because the results are at parity.

For parity measures that are expressed as Rates or Ratios: a binomial test is used to calculate the probability of the data given the hypothesis of parity:

$$P_{Rate} = 1 - \sum_{x=0}^{H_{CLEC}-1} \binom{N}{x} p^x (1-p)^{N-x}$$

Where;
H_{CLEC} = numerator for the CLEC
H_{ILEC} = numerator for the ILEC
$N = H_{CLEC} + H_{ILEC}$
D_{CLEC} = denominator for CLEC
D_{ILEC} = denominator for ILEC
$p = D_{CLEC} / (D_{CLEC} + D_{ILEC})$

In calculating the difference between the performances the formulae given above apply when a larger CLEC value indicates a higher quality of performance. For cases in which a smaller CLEC value indicates a higher quality of performance the order of subtraction should be reversed (i.e., $M_{CLEC} - M_{ILEC}$, $P_{CLEC} - P_{ILEC}$).

For measures with benchmarks that are expressed as Averages or Means:

$t = (DIFF) / \delta_{DIFF}$

Where;
$DIFF = M_{CLEC} - BM$
M_{CLEC} = CLEC Average
BM = Benchmark
$\delta_{DIFF} = SQRT\ [\delta^2_{CLEC}\ (1/ n_{CLEC})]$
δ^2_{CLEC} = Calculated variance for CLEC.
n_{CLEC} = number of observations or samples used in CLEC measurement

The probability of the t statistic is obtained from Student's distribution with $n_{CLEC} - 1$ degrees of freedom.

For measures with benchmarks that are expressed as Percentages or Proportions:

When high proportions designate good service, the probability of the CLEC result is given by

$$\sum_{x=0}^{K} \binom{N}{x} B^x (1-B)^{N-x}$$

Where

K = PN

P = CLEC proportion

N = number of observations or samples used in CLEC measurement

B = benchmark expressed as a proportion

When low proportions designate good service, the probability of the CLEC result is given by

$$1-\sum_{x=0}^{K-1}\binom{N}{x}B^{x}(1-B)^{N-x}$$

with the same definition of symbols as is given above.

7.3 The following table will be used for determining the critical probabilities that define the Performance Criterion as well as the number of non-compliant measures that may be excused in a given month. The table is read as follows: (1) determine the number of measures to which Liquidated Damages are applicable and which have sample sizes greater than or equal to 30 cases. Let this number be M. (2) Find the value of M in the columns of the table with the heading "M". (3 To the immediate right of the value of M, find the value in the column labeled "F". This is the maximum number of measures that may be failed when there are M measures being evaluated. (4) To the immediate right of F in the column labeled "P" is the critical probability for determining compliance in each statistical test performed on the M measures Statistical tests that yield probabilities less than this value indicate failures for the sub-measure.

8. TABLE OF CRITICAL VALUES

M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P
1	0	0.010	**71**	8	0.051	**141**	14	0.054	**211**	19	0.054	**281**	23	0.051	**351**	28	0.052
2	1	0.100	**72**	8	0.050	**142**	14	0.054	**212**	19	0.053	**282**	23	0.051	**352**	28	0.052
3	1	0.059	**73**	9	0.059	**143**	14	0.054	**213**	19	0.053	**283**	23	0.051	**353**	28	0.052
4	2	0.141	**74**	9	0.058	**144**	14	0.053	**214**	19	0.053	**284**	23	0.050	**354**	28	0.051
5	2	0.106	**75**	9	0.057	**145**	14	0.053	**215**	19	0.053	**285**	23	0.050	**355**	28	0.051
6	2	0.085	**76**	9	0.056	**146**	14	0.052	**216**	19	0.052	**286**	23	0.050	**356**	28	0.051
7	2	0.071	**77**	9	0.055	**147**	14	0.052	**217**	19	0.052	**287**	24	0.053	**357**	28	0.051
8	2	0.061	**78**	9	0.055	**148**	14	0.052	**218**	19	0.052	**288**	24	0.052	**358**	28	0.051
9	2	0.053	**79**	9	0.054	**149**	14	0.051	**219**	19	0.052	**289**	24	0.052	**359**	28	0.051
10	3	0.093	**80**	9	0.053	**150**	14	0.051	**220**	19	0.051	**290**	24	0.052	**360**	28	0.051
11	3	0.084	**81**	9	0.053	**151**	14	0.051	**221**	19	0.051	**291**	24	0.052	**361**	28	0.050
12	3	0.076	**82**	9	0.052	**152**	14	0.050	**222**	19	0.051	**292**	24	0.052	**362**	28	0.050
13	3	0.069	**83**	9	0.051	**153**	15	0.055	**223**	19	0.051	**293**	24	0.052	**363**	28	0.050
14	3	0.064	**84**	9	0.051	**154**	15	0.054	**224**	19	0.050	**294**	24	0.051	**364**	28	0.050
15	3	0.059	**85**	9	0.050	**155**	15	0.054	**225**	19	0.050	**295**	24	0.051	**365**	29	0.052
16	3	0.055	**86**	10	0.057	**156**	15	0.054	**226**	20	0.053	**296**	24	0.051	**366**	29	0.052
17	3	0.052	**87**	10	0.057	**157**	15	0.053	**227**	20	0.053	**297**	24	0.051	**367**	29	0.052
18	4	0.077	**88**	10	0.056	**158**	15	0.053	**228**	20	0.053	**298**	24	0.051	**368**	29	0.052
19	4	0.073	**89**	10	0.055	**159**	15	0.053	**229**	20	0.053	**299**	24	0.050	**369**	29	0.052
20	4	0.069	**90**	10	0.055	**160**	15	0.052	**230**	20	0.052	**300**	24	0.050	**370**	29	0.051

21	4	0.065	**91**	10	0.054	**161**	15	0.052	**231**	20	0.052	**301**	24	0.050	**371**	29	0.051
22	4	0.062	**92**	10	0.053	**162**	15	0.052	**232**	20	0.052	**302**	25	0.053	**372**	29	0.051
23	4	0.059	**93**	10	0.053	**163**	15	0.051	**233**	20	0.052	**303**	25	0.052	**373**	29	0.051
24	4	0.057	**94**	10	0.052	**164**	15	0.051	**234**	20	0.051	**304**	25	0.052	**374**	29	0.051
25	4	0.054	**95**	10	0.052	**165**	15	0.051	**235**	20	0.051	**305**	25	0.052	**375**	29	0.051
26	4	0.052	**96**	10	0.051	**166**	15	0.050	**236**	20	0.051	**306**	25	0.052	**376**	29	0.051
27	5	0.070	**97**	10	0.051	**167**	15	0.050	**237**	20	0.051	**307**	25	0.052	**377**	29	0.050
28	5	0.068	**98**	10	0.050	**168**	16	0.054	**238**	20	0.051	**308**	25	0.052	**378**	29	0.050
29	5	0.065	**99**	11	0.056	**169**	16	0.054	**239**	20	0.050	**309**	25	0.051	**379**	29	0.050
30	5	0.063	**100**	11	0.056	**170**	16	0.053	**240**	20	0.050	**310**	25	0.051	**380**	29	0.050
31	5	0.061	**101**	11	0.055	**171**	16	0.053	**241**	21	0.053	**311**	25	0.051	**381**	30	0.052
32	5	0.059	**102**	11	0.055	**172**	16	0.053	**242**	21	0.053	**312**	25	0.051	**382**	30	0.052
33	5	0.057	**103**	11	0.054	**173**	16	0.053	**243**	21	0.053	**313**	25	0.051	**383**	30	0.052
34	5	0.055	**104**	11	0.054	**174**	16	0.052	**244**	21	0.052	**314**	25	0.051	**384**	30	0.052
35	5	0.054	**105**	11	0.053	**175**	16	0.052	**245**	21	0.052	**315**	25	0.050	**385**	30	0.051
36	5	0.052	**106**	11	0.053	**176**	16	0.052	**246**	21	0.052	**316**	25	0.050	**386**	30	0.051
37	5	0.051	**107**	11	0.052	**177**	16	0.051	**247**	21	0.052	**317**	25	0.050	**387**	30	0.051
38	6	0.065	**108**	11	0.052	**178**	16	0.051	**248**	21	0.052	**318**	26	0.052	**388**	30	0.051
39	6	0.063	**109**	11	0.051	**179**	16	0.051	**249**	21	0.051	**319**	26	0.052	**389**	30	0.051
40	6	0.061	**110**	11	0.051	**180**	16	0.050	**250**	21	0.051	**320**	26	0.052	**390**	30	0.051
41	6	0.060	**111**	11	0.050	**181**	16	0.050	**251**	21	0.051	**321**	26	0.052	**391**	30	0.051
42	6	0.058	**112**	12	0.056	**182**	17	0.054	**252**	21	0.051	**322**	26	0.052	**392**	30	0.051
43	6	0.057	**113**	12	0.055	**183**	17	0.054	**253**	21	0.051	**323**	26	0.052	**393**	30	0.050
44	6	0.055	**114**	12	0.055	**184**	17	0.053	**254**	21	0.050	**324**	26	0.051	**394**	30	0.050
45	6	0.054	**115**	12	0.054	**185**	17	0.053	**255**	21	0.050	**325**	26	0.051	**395**	30	0.050
46	6	0.053	**116**	12	0.054	**186**	17	0.053	**256**	22	0.053	**326**	26	0.051	**396**	31	0.052
47	6	0.052	**117**	12	0.054	**187**	17	0.052	**257**	22	0.053	**327**	26	0.051	**397**	31	0.052
48	6	0.051	**118**	12	0.053	**188**	17	0.052	**258**	22	0.053	**328**	26	0.051	**398**	31	0.052
49	7	0.062	**119**	12	0.053	**189**	17	0.052	**259**	22	0.052	**329**	26	0.051	**399**	31	0.052
50	7	0.061	**120**	12	0.052	**190**	17	0.052	**260**	22	0.052	**330**	26	0.050	**400**	31	0.052
51	7	0.059	**121**	12	0.052	**191**	17	0.051	**261**	22	0.052	**331**	26	0.050	**401**	31	0.051
52	7	0.058	**122**	12	0.051	**192**	17	0.051	**262**	22	0.052	**332**	26	0.050	**402**	31	0.051
53	7	0.057	**123**	12	0.051	**193**	17	0.051	**263**	22	0.052	**333**	27	0.052	**403**	31	0.051
54	7	0.056	**124**	12	0.050	**194**	17	0.051	**264**	22	0.051	**334**	27	0.052	**404**	31	0.051
55	7	0.055	**125**	13	0.056	**195**	17	0.050	**265**	22	0.051	**335**	27	0.052	**405**	31	0.051
56	7	0.054	**126**	13	0.055	**196**	17	0.050	**266**	22	0.051	**336**	27	0.052	**406**	31	0.051
57	7	0.053	**127**	13	0.055	**197**	18	0.054	**267**	22	0.051	**337**	27	0.052	**407**	31	0.051
58	7	0.052	**128**	13	0.054	**198**	18	0.053	**268**	22	0.051	**338**	27	0.052	**408**	31	0.050
59	7	0.051	**129**	13	0.054	**199**	18	0.053	**269**	22	0.050	**339**	27	0.051	**409**	31	0.050
60	7	0.050	**130**	13	0.053	**200**	18	0.053	**270**	22	0.050	**340**	27	0.051	**410**	31	0.050
61	8	0.060	**131**	13	0.053	**201**	18	0.052	**271**	23	0.053	**341**	27	0.051	**411**	31	0.050
62	8	0.059	**132**	13	0.053	**202**	18	0.052	**272**	23	0.053	**342**	27	0.051	**412**	32	0.052
63	8	0.058	**133**	13	0.052	**203**	18	0.052	**273**	23	0.052	**343**	27	0.051	**413**	32	0.052
64	8	0.057	**134**	13	0.052	**204**	18	0.052	**274**	23	0.052	**344**	27	0.051	**414**	32	0.052
65	8	0.056	**135**	13	0.051	**205**	18	0.051	**275**	23	0.052	**345**	27	0.051	**415**	32	0.052
66	8	0.055	**136**	13	0.051	**206**	18	0.051	**276**	23	0.052	**346**	27	0.050	**416**	32	0.051
67	8	0.054	**137**	13	0.051	**207**	18	0.051	**277**	23	0.052	**347**	27	0.050	**417**	32	0.051

68	8	0.053	**138**	13	0.050	**208**	18	0.051	**278**	23	0.052	**348**	27	0.050	**418**	32	0.051
69	8	0.053	**139**	14	0.055	**209**	18	0.050	**279**	23	0.051	**349**	28	0.052	**419**	32	0.051
70	8	0.052	**140**	14	0.055	**210**	18	0.050	**280**	23	0.051	**350**	28	0.052	**420**	32	0.051

9. LIMITATIONS

9.1 **SBC-13STATE** will not be excused from payment of liquidated damages, as calculated by the rules set forth herein, on any grounds, except as provided in Sections 10.2 and 10.3 and 11.6. Any dispute regarding whether a **SBC-13STATE** performance failure is excused under that paragraph will be resolved, through negotiation, through a dispute resolution proceeding under applicable Commission rules or, if the parties agree, through commercial arbitration with the American Arbitration Association.

9.2 **SBC-13STATE** shall not be obligated to pay liquidated damages or assessments for noncompliance with a performance measurement to the extent that such noncompliance was the result of actions or events beyond **SBC-13STATE**'s control, including but not limited to the following: (i) a Force Majeure event; (ii) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with **SBC-13STATE** or law; (iii) environmental events beyond **SBC-13STATE**'s control even though not considered "Force Majeure"; (iv) problems associated with third-party systems or equipment which could not be avoided by **SBC-13STATE** through the exercise of reasonable diligence, regardless of whether or not such third-party systems or equipment were sold to or otherwise being provided to **SBC-13STATE** and (v) delays or other problems resulting from actions of a Service Bureau Provider acting on the CLEC's behalf for connection to SBC-LEC's OSS, including Service Bureau Provider processes, services, systems or connectivity.

9.3 If a Delaying Event (i) prevents a Party from performing an activity, then such activity will be excluded from the calculation of **SBC-13STATE**'s compliance with the Performance Criteria, or (ii) only suspends **SBC-13STATE**'s ability to timely perform the activity, the applicable time frame in which **SBC-13STATE**'s compliance with the Performance Criteria is measured will be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the Delaying Event.

10. RECORDS AND REPORTS

10.1 **SBC-13STATE** will not levy a separate charge for provision of the data to CLEC called for under this Appendix. Notwithstanding other provisions of this Agreement, the Parties agree that such data and associated records will be deemed Proprietary Information.

10.2 Reports are to be made available to the CLEC by the 20th day following the close of the calendar month. If the 20th day falls on a weekend or holiday, the reports will be made available the next business day.

10.3 CLEC will have access to monthly reports through an interactive Website.

10.4 **SBC-13STATE** will provide billing credits for the associated liquidated damages on or before the 30th day following the due date of the performance report for the month in which the obligation arose.

10.5 The measurement data herein shall be collected, reported and used to calculate payments or penalties on a per CLEC operating entity basis. The results of multiple CLEC affiliates shall not be combined for any purpose under this Appendix.

10.6 **SBC-13STATE** will not pay liquidated damages in excess of the monthly maximum amounts listed in the table below. These thresholds are based on the aggregate damages to all CLECs in the designated state.

State	Monthly Maximum
Arkansas	$.072M
California	$1.26M
Connecticut	$.168M
Illinois	$.51M
Indiana	$.165M
Kansas	$.101M
Michigan	$.392M
Missouri	$.189M
Nevada	$.024M
Ohio	$.296M
Oklahoma	$.120M
Texas	$.713M
Wisconsin	$.158M

11. AUDITS

11.1 CLEC and **SBC-13STATE** 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 Appendix. In the event that CLEC requests such consultation and the issues raised by CLEC have not been resolved within 30 days after CLEC's request for consultation, then **SBC-13STATE** will allow CLEC to commence a mini-audit, at CLEC's expense, upon providing **SBC-13STATE** 5 days advance written notice (including e-mail).

11.2 CLEC is limited to auditing three (3) single measures/submeasures during the year (hereafter, "Mini-Audits"). No more than three (3) Mini-Audits will be conducted simultaneously for all CLECs, unless more than one CLEC wants the same measure/sub-measure audited at the same time, in which case, Mini-Audits of the same measure/submeasure shall count as one Mini-Audit for the purposes of this paragraph only.

11.3 CLEC will bear the expense of the mini-audits, unless **SBC-13STATE** is found to be "materially" misreporting or misrepresenting data or to have non-compliant procedures, in which case, **SBC-13STATE** will pay for the costs of the third party auditor. "Materially" at fault means that a reported successful measure changes as a consequence of the audit to a missed measure, or there is a change from an ordinary missed measure to another category, if such exists. Each party to the mini-audit shall bear its own internal costs, regardless of which party ultimately bears the costs of the third party auditor. The major service categories are listed below:

Pre-Ordering/Ordering
Provisioning
Maintenance
Interconnection
Coordinated Conversions
Collocation
Billing

12. INITIAL IMPLEMENTATION

12.1 The Parties agree that none of the liquidated damages provisions set forth in this Appendix will apply during the first three months after first purchases of the a new type of service or unbundled network element(s) associated with a particular Performance Measurement or after the introduction of a new measure. During this three-month period the Parties agree to consider in good faith any adjustments that may be warranted to the Performance Criteria for that Performance Measurement.

13. PERFORMANCE MEASUREMENTS

13.1 **SBC-13STATE** will provide Performance Measurements under this Agreement, in accordance with the Business Rules and associated implementation timelines contained in paragraphs 23 and 24 of the FCC Merger Conditions, and its associated Attachments. Except as otherwise provided herein, the Performance Measure Business Rules contained in the FCC Merger Conditions, including any subsequent additions, modifications and/or deletions to the Business Rules adopted pursuant to FCC Merger Conditions, Attachment A, paragraph 4, shall also be incorporated into this Agreement by reference. As provided in Section 6.1 herein, liquidated damages apply to available, non-diagnostic measurements of the FCC Merger Conditions, when **SBC-13STATE** delivers non-compliant performance as defined in 3.1.3. **SBC-13STATE** will also report results for any measurements that have been ordered

by the state commission that approved this agreement, although liquidated damages shall not apply to such measurements. **SBC-13STATE** performance shall be measured by the Business Rules in effect on the first date of each month in which the activity subject to measurement occurred.