

ARTICLE XXXII
PERFORMANCE MEASUREMENTS

32.0 Performance Measurements.

The Parties acknowledge that the Public Service Commission of Wisconsin (“Commission”) in Case No. 6720-TI-160 adopted performance measurements and a remedy plan. The Parties also acknowledge that in Case No. 01-CV-011200 (“Stay Order”), the Wisconsin Circuit Court of Milwaukee County stayed the implementation of portions of the Order issued by the State Commission.

Accordingly, CLEC and SBC-AMERITECH agree that:

- 32.1 Expressly subject to **Section 32.5**, SBC-AMERITECH shall implement Performance Measurements and a remedy plan approved by the Commission in Case No. 6720-TI-160 or any relevant successor dockets, as well as the state-specific Business Rules developed in relation to such Performance Measurements and remedy plan on the earliest of the following dates: (a) the date when SBC-AMERITECH voluntarily agrees to implement a Performance Measurement and Remedy Plan that is approved by the State Commission or (b) the date when the Stay Order has been lifted or a court of law with competent jurisdiction has affirmed the Commission’s decision in Case No. 6720-TI-160 (“Implementation Date”). No further Amendment of this Agreement shall be necessary in order to implement the Performance Measures and Remedy Plan. To the extent the FCC issues an order related to Performance Measurements and remedies that expressly preempts the Commission’s authority on these issues, either party may invoke its rights under **Article XXIX**. SBC-AMERITECH agrees to post the Business Rules on SBC-AMERITECH’s Internet website.
- 32.2 The Performance Measurements and remedy plan referred to herein, notwithstanding any provisions in any other Article or Schedule of 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-AMERITECH 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 Commission decisions/regulations, tariffs, and within this interconnection agreement.
- 32.3 In addition to the exclusions described in the performance measures and Remedy Plan ordered by the Commission, SBC-AMERITECH shall not be obligated to pay remedies, liquidated damages or assessments for

noncompliance with a performance measurement to the extent that such noncompliance was the result of delays or other problems resulting from actions of a Service Bureau Provider acting as CLEC's agent for connection to SBC-AMERITECH's OSS, including Service Bureau Provider provided processes, services, systems or connectivity.

- 32.4 The Parties agree that Performance Measurements, remedy plan and Business Rules may be revised through the Collaborative Process, and the Parties agree to incorporate such changes that are voluntarily agreed to by all parties to the Collaborative Process when finalized, and on a going forward basis unless otherwise ordered by the Commission. In the event a Party disputes the adoption of a proposed revision in the Collaborative Process, the Party seeking such adoption may raise the issue with the Commission for resolution. Until a final Commission order resolving the issue is effective, the Parties agree to abide by the performance measures, Remedy Plan and Business Rules previously agreed to, adopted in the Collaborative Process, or ordered by the Commission. Nothing in this Article limits the rights of either Party to seek changes to Performance Measurements, Remedy Plan or Business Rules.
- 32.5 Each Party reserves its rights, notwithstanding anything to the contrary, to seek appropriate legal and/or equitable review and relief from any Commission order in regard to Performance Measurements, Remedy Plan or Business Rules. It is SBC-AMERITECH'S position that compliance with and implementation of any such order shall not represent voluntary agreement to pay liquidated damages nor a voluntary or negotiated agreement under Section 252 of the Act or otherwise, and does not in any way constitute a waiver by such Party of its position with respect to such order, or of any rights and remedies it may have to seek review of such order or otherwise contest the applicability of the Performance Measures and remedy plan.
- 32.6 Any payment by SBC-AMERITECH pursuant to the remedy plan described in this **Article XXXII** may be by either direct payment (such as a check) or by bill credit. If CLEC selects the direct payment option, CLEC shall submit the attached form. If CLEC does not submit the attached form, any payment shall be by bill credit.