

# APPENDIX PERFORMANCE MEASUREMENTS

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## APPENDIX PERFORMANCE MEASUREMENTS

### 1. INTRODUCTION

- 1.1 **AT&T Inc. (AT&T)** means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, Nevada Bell Telephone Company d/b/a AT&T Nevada, The Ohio Bell Telephone Company d/b/a AT&T Ohio, Pacific Bell Telephone Company d/b/a AT&T California, The Southern New England Telephone Company, Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin.
- 1.2 **AT&T NEVADA** - As used herein, **AT&T NEVADA** means Nevada Bell Telephone Company d/b/a AT&T Nevada, the applicable AT&T-owned ILEC doing business in Nevada.
- 1.3 The Public Utilities Commission of Nevada (the "PUCN"), pursuant to NRS 704.281 and NAC 704.6803 et seq., has adopted a Performance Measurement Plan and Performance Incentives Plan ("PMP/PIP") for **AT&T NEVADA**. Under the PMP/PIP, **AT&T NEVADA** is obligated to make payments ("Incentive Payments") to CLECs in the event **AT&T NEVADA** does not satisfy its performance measurement standards set forth in the PMP/PIP. The Commission has determined that the amount of each Incentive Payment is reasonable and sufficient to encourage competition or discourage discriminatory conduct. Incentive Payments are self-executing. That is, CLEC need not engage in either protracted or contentious litigation in order to enforce its ability to obtain inputs from **AT&T NEVADA** in a manner that affords CLEC a meaningful opportunity to compete.
- 1.4 As used herein, "**Service Bureau Provider**" means a company that has been engaged by CLEC to act on behalf of the CLEC for purposes of accessing AT&T-owned ILEC's OSS application-to-application interfaces.
- 1.5 The performance measurement contained in the PMP/PIP, notwithstanding any provisions in any other appendix in this Agreement, are not intended to create, modify or otherwise affect Parties' rights and obligations. The existence of any particular service 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 **AT&T NEVADA** 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.
- 1.6 Except as otherwise provided herein, the PMP/PIP, including any subsequently Commission-ordered additions, modifications and/or deletions thereof, shall be incorporated into this Agreement by reference and shall supersede and supplant all performance measurements previously agreed to by the Parties. In the event that the PUCN orders **AT&T NEVADA** to make liquidated damage/remedies payments to CLEC for failure to meet any service performance measurement in a proceeding binding on both Parties, the Parties agree to incorporate Commission-ordered liquidated damage/remedies payments into this Agreement once the decision approving such remedies becomes final and any appeals are exhausted (unless otherwise agreed by the Parties). The Parties expressly reserve all of their rights to challenge any liquidated damage/remedies payment, including but not limited to the right to oppose any such order and associated contract provision because liquidated damage/remedies provisions must be voluntarily agreed to and **AT&T NEVADA** does not at this time so agree.
- 1.7 In addition to the exclusions described in the PMP/PIP, **AT&T NEVADA** shall not be obligated to pay liquidated damages/remedies 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 on behalf of the CLEC for connection to AT&T-owned ILEC's OSS, including Service Bureau Provider provided processes, services, systems or connectivity.

## 2. EXCLUSIVE REMEDY

- 2.1 Incentive Payments shall be the sole and exclusive remedy of CLEC for AT&T NEVADA failure to meet the performance obligations set forth in the PMP/PIP; provided, however, that this provision shall not be construed to prevent CLEC from seeking relief under federal or state antitrust laws, applicable consumer protection statutes, or Section 271(d)(6) of the Telecommunications Act of 1996 (the "Act").