

LEVEL 3–SBC Performance Measures DPL

Iss. No.	Section	Issue Description	Level 3 Language	Level 3 Communications Position/Support	SBC Language	SBC Position/Support	Status
SBC PM-1	11STATE CALIFORNIA 1.2  NEVADA ONLY 1.1	Should SBC reserve its rights to contend that terms and conditions for liquidated damages and remedy plans are not subject to mediation or arbitration under Sections 251 and 252 of the Act?	<i>NONE</i>	Level 3’s position is unknown.	<u>The agreement by SBC-13STATE to include the Appendix PM in this Agreement should not and cannot be interpreted as a waiver of its right to argue and contend in any forum, in the future, that sections 251 and 252 of the Telecommunications Act of 1996 impose no duty or legal obligation to negotiate and/or mediate or arbitrate a self-executing liquidated damages and remedy plan.</u>	It is SBC’s position that liquidated damages/remedies issues are not arbitrable because Section 251 (b) and (c) of the Act do not require ILECs to pay liquidated damages in the form of performance remedies. Pursuant to the Fifth Circuit’s recent decision in <i>Coserv LLC v. Southwestern Bell Telephone Co.</i> , 350 F.3d 482 (5 <sup>th</sup> Cir. 2003) (“ <i>Coserv</i> ”), non-251(b) and (c) items are not arbitrable, unless both parties voluntarily consent to the negotiation/arbitration of such items. SBC has not and does not voluntarily consent to negotiate/arbitrate remedies for performance measures. Accordingly, the Commission does not have jurisdiction to arbitrate this issue.	

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SBC language Arial Narrow bold underlined

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						<p>However, because SBC had begun negotiating remedies for performance measures before the issuance of the Coserv, SBC is willing to include such language in its Interconnection Agreement with Level 3, provided however, that the agreement includes SBC's reservation of rights as to its obligations to negotiate and arbitrate self-executing liquidated damages and remedy plans in the future</p>	
SBC PM-2	TEXAS ONLY 1.2	In Texas, should SBC reserve its rights to contend that terms and conditions for liquidated damages and remedy plans are not subject to mediation or arbitration under Sections 251 and 252 of the Act and additionally should the Parties abide by the results of the T2A proceedings on this	<i>NONE</i>	Level 3's position is unknown.	<u>The agreement by SBC-13STATE to include the Appendix PM in this Agreement should not and cannot be interpreted as a waiver of its right to argue and contend in any forum, in the future, that sections 251 and 252 of the Telecommunications Act of 1996 impose no duty or legal obligation to negotiate and/or mediate or arbitrate a self-executing liquidated damages and remedy plan. In addition, subject to each Party's right to appeal, the Parties agree to be bound by the results of the arbitration of the T2A Performance Measures Appendix in Docket No. 28821.</u>	See SBC PM-1  Since this issue is already being addressed in the Texas T2A successor arbitration, it is not necessary to litigate the issue here as well. The Parties should be bound by the Commission's ruling in that proceeding.	This is only an issue in Texas.

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		subject?			<u>where the issue of lawfulness and arbitrability of the liquidated damages/remedy plan is currently being litigated.</u>		
SBC PM-3	<p align="center">SBC 11STATE Performance Measures</p> <p align="center">SBC NEVADA Performance Measures</p> <p align="center">SBC CALIFORNIA Performance Measures</p>	Should all definitions be removed from the appendix and placed in the GT&C of the ICA?				SEE GLOBAL DPL	

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