

Indiana Utility Regulatory Commission

Indiana Performance Assurance & Remedy Plan Principles for SBC/Ameritech¹: Areas of Apparent Agreement and Disagreement, and Guidance from the IURC

¹ For convenience, the title of this plan will be shortened to “Indiana Remedy Plan” throughout the remainder of this Attachment. However, it is important to note that the plan may contain elements of a performance assurance plan, as well as elements of a remedy plan. The plan is designed to provide incentives (both positive and negative) to Ameritech to reach and maintain compliance with state-approved standards governing its performance toward CLECs; to provide a fair and reasonable framework for compensating individual CLECs that are harmed when Ameritech does not, in fact, reach and maintain those standards; and to help facilitate the development of more robust competition, in general. This list of behaviors that the Commission is attempting to encourage is not intended to be exhaustive and should not be construed as such.

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1. GENERAL COMMENTS TO THE INDIANA COLLABORATIVE

This attachment is designed to provide assistance to the parties in reaching a settlement agreement on the Indiana Remedy Plan, either in whole or in part. The 44 Principles are divided into four categories. In the first two categories, the parties' [SBC/Ameritech vs. CLECs] respective positions appear to be fairly close (Sections 2 and 3), and the parties are encouraged to provide specific language to implement those areas of agreement. In the third category (Section 4), there appears to be a substantial amount of disagreement between the parties; the IURC is asking the parties to: (1) determine an appropriate solution in light of the Commission's 44 Principles (as modified), as well as the IURC's general guidance, and (2) provide specific language to implement that solution. In the final category, the IURC has, by taking certain issues and the associated "guidance" off the table, provided a desired outcome (Section 5); any agreement should reflect both those principles and the IURC's guidance.

As indicated above, the IURC urges the parties to reach a settlement. The IURC's guidance and comments throughout this document, whether explicitly labeled "guidance" or not, are meant to assist the parties in narrowing their disagreements. The parties are expected to follow the 44 principles (as modified in the instant Attachment A). To the extent that the settlement departs from the IURC's guidance or comments on the implementation of those principles, however, the IURC will look favorably on that settlement agreement so long as it does not conflict with applicable federal and state law - *e.g.*, Sections 251, 271, 272 of the Telecommunications Act of 1996, and the FCC's SBC/Ameritech merger order and conditions; or other IURC decisions or requirements in Cause No. 41657² - and subject to the Commission's obligation to review the settlement agreement to determine if it is consistent with the public interest.

1.1 Definitions of "Performance Measure" and "PM"

As used in this document, "performance measures" or "PM" is used expansively to include the various components that currently make up the approved performance measures and business rules for Ameritech Indiana: "definition," "exclusions," "business rules," "levels of disaggregation," "calculation," "report structure," "measurement type," and "benchmark." To the extent that this reporting format changes, the Commission will evaluate whether the items included in this definition may also need to change.

² This list of "applicable federal and state law" is not intended to be exhaustive and should not be construed as such.

1.2 Reasons for Changes To the Remedy Plan Principles

Developments since the initial 44 remedy plan principles were presented to the Indiana Collaborative have provided the IURC with an opportunity to learn more about ILEC performance toward CLECs and associated performance assurance/remedy plans. As a result, there have been some changes to the principles. The principles have been modified in two ways: some directly by changing the text and some indirectly by the guidance the IURC has provided to the Collaborative. This section provides some background information; additional detail can be found in the later sections.

1.3 Z-Tel's Zone Parity Plan

The ZTel zone parity remedy plan will not be further considered by the IURC, primarily due to its lack of precedent and the practical difficulty in defining the zones and specifying how seasonal variation will be accommodated.

The core of zone parity plan is the definition of three zones. In Z-Tel's submission 70-25-5 is used to illustrate the plan, but as Z-Tel posits, and SBC/Ameritech points out, these numbers are for illustration only. There is little, if any, specific information on the process and criteria used to define the zones. Might the zones be different for different PMs? What criteria would be used to decide? How would seasonal adjustments be done? Would data from previous years be used?

While conceptually simple and easy to illustrate with specific zonal bands, the practical difficulty of dealing with these issues outweighs the conceptual attractiveness of the zone parity plan.

1.4 Useful Ideas from the Colorado Remedy Plan

The remedy plan submitted to the Colorado PUC by Phil Weiser (Special master) contains many good ideas. The Colorado Special Master's Report and Appendix A are attached to the Commission's September 11, 2001, Initial Order in Cause No. 41657 as Attachment B and C, respectively.

The Colorado penalty structure is different from that in other remedy plans. There are really three tiers: Tier I.X, payable to the CLEC suffering harm; Tier I.Y, 50% payable to the CLEC harmed and 50% to a special fund; and Tier II, payable to the State of Colorado. The special fund supports an Independent Monitor, technical experts, consultants, auditors, etc.

These are some features of this plan that the IURC anticipates will be incorporated into the Indiana Remedy Plan:

- ?? Splitting Tier I penalties into two parts: Tier I.X penalties, which will be paid exclusively to the CLEC harmed; and Tier I.Y.³ penalties, which are split 50%/50% between the CLEC and the state.⁴
- ?? Tier I.X payments involve carrier-to-carrier obligations that relate to the nature of the harm imposed by the deficient wholesale performance. Tier I.Y payments result from the escalation of Tier I.X payments when the relevant area of performance continues to be deficient.
- ?? For Tier I.X. penalties and the portion of Tier I.Y. penalties payable directly to CLECs, per occurrence penalties are used, with a larger minimum penalty that will be paid to small CLECs, if the accumulated per-occurrence penalties are smaller than the accumulated per-measure penalties, for a given “High” or “Medium” measure and for a given reporting period.
- ?? The portion of Tier I.Y. payments to the state (50% of Total Tier I.Y. penalties) go into a special fund that can be used to pay for audits of SBC/Ameritech’s performance in Indiana; and to support a technical advisor(s) to the IURC, statisticians and consultants for the regular reviews, auditors, etc. This special fund can also be used to pay for an Independent Monitor empowered to resolve disputes and evaluate the adequacy of audits over the life of the remedy plan. Sufficient monies may not be immediately available to this fund. Parties should discuss “bridge” funding and procedures for disbursement.
- ?? No cap on Tier I.X damages paid to CLECs and a “soft” cap on other penalties. Exceeding the annual procedural cap (which will be based on a minimum of 36% of Indiana revenues) two years in a row or hitting 1/3 the annual cap two months in a row triggers an expedited proceeding
- ?? A multiplier that is applied to Tier I.X. penalties (and grows) as measures are missed by wider margins to account for severely deficient performance
- ?? For Tier I.Y.1. penalties, a stepup/stepdown penalty level for prolonged deficient performance that accounts for the duration of prolonged deficiency while allowing the bar to ratchet down (but not below the originally established level) for sustained improved performance

³ For the Indiana Remedy Plan, the two portions of the Tier I.Y. penalties would be referred to as Tier I.Y.1. (payable directly to CLECs) and Tier I.Y.2. (payable to a dedicated fund of some sort). This is a modification of the nomenclature recommended by the Colorado Special Master for the Tier structure but is consistent with the substantive features of his recommendations.

⁴ The IURC is exploring the ramifications of establishing a dedicated state fund. To the extent this is not possible or practical, it may be possible to establish an escrow account or other type of dedicated fund.

Tier II penalties include measures and benchmarks that will be necessary to support competition as a whole and are not measured on a carrier-to-carrier basis, except for certain payments to small CLECs, as discussed elsewhere in this Attachment.

See Table 1 at the end of this section for an overview of how these Tiers are structured.

?? The Colorado plan is careful to categorize PMs in ways that appear to be entry-strategy neutral. While accepting the idea of weighted PMs, the IURC will not at this time attempt to categorize them. If the parties are not able to resolve a weighting scheme, then the IURC will devise one on the following principles: A) the categorization shall be entry strategy neutral and B) the categorization should be such that meaningful and significant penalties are at risk if PMs are missed.

?? The IURC believes that the statistical plan to be used for remedy purposes need not be the same as the statistical methodology used for the OSS tests. As guidance for the remedy plan statistical methodology, the IURC is inclined toward a statistical methodology that is a combination of the ROC stepwise modified z-test for medium and low importance PMs (see comments on Principle 18) and an approach that uses 6-month averages modified by a slack factor for PMs of high importance. The resulting plan is not notably simpler than any other statistical methodology on the table but it does address some of the problems inherent in both small and large sample sizes.

For those Principles that would be directly affected by applying Mr. Weiser's proposals, parties are directed to review the applicable "IURC Guidance" language.

Table 1: Structure of Tier I and Tier II Penalties

	Base Penalty	Severity Factor	Duration Factor	Offsets	Cap
Tier I.X (100% to CLEC)	For small CLECs: For Tier I.A. (high) and Tier I.B. (low) measures - the LARGER OF the	Multiplier applied for severe misses on Tier I.A. (high) and Tier I.B. (medium) PMs. This multiplier increases as the	See I.Y	May offset penalties set by interconnection agreements, <u>consistent with criteria</u>	Not capped

	<p>accumulated per-occurrence and per-measure penalties, calculated per measure for a given reporting period.</p> <p>For Tier I.C. (“low”) measures – per-occurrence penalties</p> <p>For large CLECs: only per-occurrence penalties (for Tier I.A., I.B., and I.C. measures).</p>	severity of the “miss” increases.		<u>developed for Principle 37.</u>	
Tier I.Y.1. (50% to CLEC)	<p>For small CLECs: For “high” and “medium” measures - the LARGER OF the accumulated per-occurrence and per-measure penalties, calculated per measure for a given reporting period</p>	Severity multiplier is not included in Tier I.Y calculations	Penalty escalates by stepping up from previous month for bad performance and stepping down for improved performance until base level reached.	May offset penalties set by interconnection agreements, <u>consistent with criteria developed for Principle 37.</u>	Tier I.Y. (Applicable to all of Tier I.Y.) and Tier II together are capped monthly at 1/12 of the annual cap.

<p>Tier I.Y.2. (50% of penalty payments would go to a special state fund or to an escrow account or other dedicated fund or account)</p>	<p>period.</p> <p>For Tier I.C. (“low”) measures – per-occurrence penalties</p> <p>For large CLECs: only per-occurrence penalties (for “high,” “medium,” and “low” measures).</p> <p>Per Measure-penalties</p>		<p>N/A</p>	<p>Tier I.Y.2. and Tier II penalties shall not offset penalties payable to a CLEC under IURC-approved interconnection agreements.</p> <p>Tier I.Y.2. and Tier II penalties will not be offset by federal penalties assessed or paid pursuant to the FCC’s SBC-</p>	
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				Ameritech merger order or conditions, absent compelling justification from SBC/Ameritech to support such a claim.	
Tier II (all penalty payments would go to the state)	Per measure	<p>Penalty paid increases with more deficient performance.</p> <p>An additional Tier II penalty is levied when an individual submeasure in either Tier I.A. (High) or Tier I.B. (Medium) measures is missed by 50% for two or more months.</p>	N/A	<p>Does not offset penalties set by interconnection agreements.</p> <p>Will not be offset by federal penalties assessed or paid pursuant to the FCC's SBC-Ameritech merger order or conditions, absent compelling justification from SBC/Ameritech to support such a claim.</p>	<p>Tier I.Y. (applicable to all of Tier I.Y.) and Tier II together are capped monthly at 1/12 of the annual cap.</p>

1.5 Development of the Indiana Remedy Plan

The IURC finds that neither the SBC/Ameritech nor the CLEC remedy plans, as filed, completely satisfies the requirements or expectations of the IURC. The IURC expects the parties to work together to devise an acceptable plan. The structure of the plan to be developed shall generally follow the structure of the Ameritech plan and related documents, filed on February 9, 2001, in Cause No. 41657, and as discussed below. The IURC chose to use Ameritech Indiana's February 9, 2001, remedy plan as the starting point for discussions because the structure and format of the Ameritech plan appear to be easier to edit than the structure and format of the CLEC plan; the Commission's decision is not intended as an assessment or evaluation of the specific content of either plan. More to the point, while the IURC generally supports the structure and format of the SBC/Ameritech remedy plan as a starting point for discussion, the Commission does not necessarily support the content of that plan. This does not preclude the use of section or subsection headings from the CLEC plan, if consistent with this Attachment, and the Commission's Orders and guidance.

The parties should begin their discussion from the structure and format of the SBC/Ameritech plan as embodied in the following attachments to Ameritech Indiana's Submission of Performance Remedy Plan [February 9, 2001], subject to the explanatory comments shown below:

- ?? **AIT Indiana Remedy Plan Description - Ex. A** (The Commission generally believes that the subject headings, and the headings of some of the subsections, may provide a convenient way to organize the structure of the Indiana Remedy Plan that it is asking the parties to develop. The Commission expects parties to add new sections and subsections for which no section or subsection headings currently exist, in order to accommodate the IURC's 44 Principles and guidance. Parties may also need to delete or modify existing headings.)
- ?? **Appendix 1 - Indiana 271 Performance Measure Business Rules** [as modified to reflect their current status, and subject to further modification. See Principles No. 4 and 5 for further guidance.]
- ?? **Appendix 1/Appendix Three** [Remedy Document for Collocation]: Parties should discuss whether, and to what extent, this should be applicable to SBC/Ameritech for the Indiana Remedy Plan.
- ?? **Appendix 1/Appendix Four** [Flow-Through]: Parties should discuss whether, and to what extent, this should be applicable to SBC/Ameritech for the Indiana Remedy Plan, in light of their recent agreement to delete this appendix from the 5-state business rules. In the event parties agree to also delete this appendix from the Indiana Remedy Plan, they should discuss and recommend a replacement mechanism for making the CLECs (and other parties) and the Commission aware of the historical and current flow-through requirements and agreements for SBC/Ameritech in, or for, the state of Indiana.
- ?? **AIT Remedy Plan Appendix 2** (Tier I, Tier II, and PM weighting categorization)
Parties should discuss whether, and to what extent, this should be applicable to SBC/Ameritech for the Indiana Remedy Plan, including possible modifications.

?? AIT Remedy Plan Appendix 3 (per measure and per occurrence categorization)

Parties should discuss whether, and to what extent, this should be applicable to SBC/Ameritech for the Indiana Remedy Plan, including possible modifications.

The intent of the IURC is that the parties take the skeletal structure of the SBC/Ameritech plan and modify it in light of the revised principles and, where applicable, in light of the Commission's guidance in this Attachment and other related IURC remedy plan requirements or guidance (if any). Where all parties believe that a section or subsection of the SBC/Ameritech remedy plan complies with the Commission's requirements and, as applicable, with the Commission's guidance, they may incorporate that section(s) or subsection(s) into the parties' recommended Indiana Remedy Plan. Where parties cannot reach agreement to use an existing section or subsection "as is," they should modify it in light of the Principles and, as applicable, the guidance provided in this document until all parties agree. Where issues arise that cannot be readily incorporated into the existing structure and format of the proposed SBC/Ameritech remedy plan, new section or subsection headings shall be added and the agreed-upon language incorporated into those sections or subsections of the Indiana Remedy Plan. In the event that parties are unable to reach agreement on certain specific language for the proposed Indiana Remedy Plan, they shall so notify the Commission, subject to the procedural schedule to be set later by the Commission.

More explicit directions and a non-exhaustive list of the tasks to be performed may be found in section 6 of this document.

1.6 A Trial Run of the Indiana Remedy Plan

1.6.1 The Need for a "Trial Run" of the Remedy Plan

The complexity of the plans filed by both Ameritech Indiana and the CLECs makes it very difficult to gauge if the plans provide adequate incentives to perform well and adequately compensate CLECs that are harmed by Ameritech's poor performance, or if they would result in excessive penalties. For this reason, the IURC requires that the calculation-related aspects of the Indiana Remedy Plan be implemented sufficiently to quantitatively and empirically gauge the possible financial results of the remedy plan, prior to implementation of the actual Indiana Remedy Plan. Based upon the results of the trial run, the parties may wish to modify the proposed methodology(ies) for calculating penalties (including baseline penalties, step up/step down factors and tables, and/or multiplier factors and tables). In order to have a common level for evaluation of all the remedy plan payment consequences, the parties shall meet and agree on a common implementation of a "trial run" plan that satisfies the criteria and guidance provided in this document. If parties are not able to reach agreement on a single remedy plan to use during the trial run, it is possible that parties may need to conduct a trial run on some or all portions of the SBC/Ameritech and/or the

CLEC plan. The Commission will revisit this issue later, if necessary. Since both sides assert their respective plans are simple (*i.e.*, they can be run on a PC using Excel), the analysis of this empirical evidence should not be a stumbling point.

It is not the intent of the Commission that the trial run process must produce a fully detailed remedy plan. However, parties will need to agree upon those aspects of the plan that would affect the calculation methodology and the implementation of that methodology prior to producing the “trial run plan.”

Specific factors to be examined in conjunction with the trial run include, but are not necessarily limited to:

- ?? Categorization/weighting of PMs into high, medium, and low and their associated baseline penalty levels, for each Tier
- ?? Effect of severity and duration factors
- ?? Effect of escalation factors on Tier I.Y.1. penalties
- ?? Size of Tier I.Y.2. and Tier II penalties
- ?? Impact on small CLECs of minimum per-measure penalties in lieu of per-occurrence penalties
- ?? Development of a conceptual understanding of the events or circumstances that might (or might not) trigger mitigation

Other procedural details, *e.g.* change management processes or precise language for events or circumstances deserving mitigation, need not be resolved prior to the trial run. See Table 3 (Section 6.3.6) for the Commission’s best initial estimate of which tasks should be completed before, during, or after the trial run.

In evaluating the trial run plan, parties will use the same Ameritech “retail” and “wholesale” data sets, covering at least three recent months’ performance and drawn from SBC/Ameritech systems. Therefore, parties will need to agree on which data sets everyone shall use. They shall devise non-disclosure and other appropriate safeguards to maintain confidentiality. The data need not be as well-scrubbed as it will be for actual remedy plan purposes; however, unscrubbed or poorly scrubbed data may lead to contentious arguments. A balance needs to be reached to allow the expeditious quantitative evaluation of the trial run plan while avoiding unproductive controversy. The intent of this process is not to produce precise results, but to get an idea of the size of penalties generated by representative data.

1.7 Additional Guidance for Principles Relating to the Change Management Process for the Remedy Plan

Principles 38-44 of the remedy plan dealt with the change management process as applied to the remedy plan and its associated PMs. At the outset, the “SBC Competitive Local Exchange Carrier (CLEC) 13-State Interface Change Management Process” - Version 1.1, dated December 12, 2000 (“FCC Thirteen State CMP”) shall be the baseline CMP to be applied to the Indiana Remedy Plan, subject to the following modifications:

- ?? If the FCC Thirteen State CMP changes, the IURC will evaluate whether and how to incorporate those changes into the Indiana Remedy Plan.
- ?? CMP-related principles for the Indiana Remedy Plan shall apply to both the SBC/Ameritech joint test environment as well as to the SBC/Ameritech production environment. Parties should advise the Commission on the results of those discussions, and make recommendations for appropriate change management performance measures, penalty mechanisms, and penalty levels (if any).
- ?? The FCC Thirteen State CMP does not appear to specifically address Maintenance & Repair and Billing issues in its change management structure. The Indiana Remedy Plan CMP shall include these functional areas as well as pre-ordering, ordering, and provisioning. The parties may discuss any other omission to the FCC Thirteen State plan they believe should be included in the Indiana Remedy Plan CMP. Parties should advise the Commission on the results of those discussions, and make recommendations for appropriate change management performance measures, penalty mechanisms, and penalty levels (if any).
- ?? Updates to the PMs used in the remedy plan will need to be agreed to in a forum under IURC control. The IURC invites comments from the parties on the structure and governance of this forum as well as the specific mechanism whereby PMs will be added to or dropped from the remedy plan. For example, should the six-month review process be used?⁵ Must changes be reached by mutual agreement? The IURC wishes the Collaborative to be aware that if there is a default assumption that changes are to be made by mutual agreement, there must be an alternative dispute resolution mechanism that the IURC can use in the absence of mutual agreement. Parties should advise the Commission on the results of those discussions, and make recommendations for appropriate change management performance measures, penalty mechanisms, and penalty levels (if any).
- ?? The IURC will also consider the impact of other change management issues on the remedy plan (for example, network or facility changes), if applicable.

⁵ See Principle No. 5 (“IURC Guidance”) for additional questions related to the six-month review process.

- ?? Parties should discuss the relationship, if any, that exists between Ameritech's obligation to provide CLECs "notice of changes" [under Section 251(c)(5) of TA-96 and related FCC requirements] and OSS change management requirements and procedures. Is SBC/Ameritech providing CLECs with adequate and timely notice of network or facility changes that might lead to, or require changes in either ILEC or CLEC OSSs? Parties should advise the Commission on the results of those discussions, and make recommendations for appropriate change management performance measures, penalty mechanisms, and penalty levels (if any).
- ?? The parties are directed to discuss in a collaborative setting what additional CMP documents, guidelines, or requirements (other than the FCC Thirteen State CMP) should also be given "baseline" status – *e.g.*, accessible letters, CLEC User Forum documents or requirements, etc. The parties should advise the Commission of the results of those discussions and of any recommendations, and disputed issues. The parties should also discuss, and advise the Commission, whether and how to incorporate changes to these other CMP documents, guidelines, or requirements in the baseline CMP for the Indiana performance assurance & remedy plan. Parties should advise the Commission on the results of those discussions, and make recommendations for appropriate change management performance measures, penalty mechanisms, and penalty levels (if any).
- ?? Parties should review and discuss change management measures and performance assurance plans/remedy plans from other jurisdictions and ILECs to determine which if any measures, business rules, penalty structures, etc., should be included in the Indiana Remedy Plan.
- ?? The parties should discuss and advise the Commission of the impact of the nature of the performance assurance and remedy plan, itself, on the change management mechanism of that plan. For example, would Ameritech's change management obligations be different under a voluntary plan than under a non-voluntary plan?

1.8 Categorization of the Principles

The IURC believes that each of the 44 original Principles can be placed in one of four categories

- ?? Principles on which the Commission believes there is substantial agreement between the SBC/Ameritech and CLEC plans, as currently filed. Based upon this assumption, the Commission believes the parties should be able to agree on implementation language very quickly [More detailed information may be found in Section 2].

- ?? Principles on which the Commission believes there is minor disagreement between the SBC/Ameritech and CLEC plans, as currently filed. Based upon this assumption, the Commission believes the parties should be able to agree on implementation language relatively quickly [More detailed information may be found in Section 3].
- ?? Principles on which the Commission believes there are significant disagreements between the SBC/Ameritech and CLEC plans, as currently filed, and where the IURC has provided an indication of its initial expectations of how the principles should be incorporated into the remedy plan. The parties are invited to attempt to reach a consensus recommendation on the specific language for how these principles will be incorporated into the remedy plan with the understanding that if the Collaborative cannot do so in a limited amount of time, the IURC is prepared to define a solution in line with the principles (as modified) and with the guidance provided regarding those principles [More detailed information may be found in Section 4].
- ?? In a few cases, the IURC has taken both the principles and the associated guidance off the table. Parties are directed to incorporate both the principles and the guidance, as is, into the Indiana Remedy Plan, recognizing that there may still be a need to discuss related “implementation issues” – e.g., see Task No. 22. If they cannot do so, the IURC is prepared to define a solution in line with the principles (as modified) and with the guidance provided regarding those principles. [More detailed information may be found in Sections 5 and 6].

1.8.1 Principles on Which The Commission Believes There Is Substantial Agreement Between the SBC/Ameritech and CLEC plans, as Currently Filed.

The IURC believes there is substantial agreement between the SBC/Ameritech and CLEC plans on principles 1, 2, 3, 5, 8, 9, 10, 11, 14, 15, 16, 20, 21, 25, 26, 27, 32, 36, 38, 39, 41. All parties should review these principles and the various filings and raise any issues they believe prevent agreement within five business days.

1.8.2 Principles on Which The Commission Believes There Is Minor Disagreement Between the SBC/Ameritech and CLEC plans, as Currently Filed, Allowing for Relatively Quick Resolution Between the Parties.

The IURC believes that there is only minor disagreement on principles 22, 23, 35, 40, 42, 43, 44 that these remaining disagreements can be resolved relatively quickly. All parties should review these principles and the various filings and raise any issues they believe prevent agreement within five business days from the date of the initial, organizational remedy plan collaborative meeting.

1.8.3 Principles on Which the Commission Believes There is Significant Disagreement between the SBC/Ameritech and CLEC plans, as

Currently Filed

The major areas of apparent significant disagreement are:

- ?? Meaningful and significant remedies at risk, self-executing nature (principle 4)
- ?? Neutrality with respect to entry method, Weighting of PMs (principles 6, 7, 12)
- ?? Mitigation (– NOTE: Principle 19 has been split into Principles 19a and 19b.)
- ?? Treatment of affiliate (principle 24)
- ?? Caps, annual/monthly and absolute/procedural (principle 29)
- ?? Method (credits vs. check), visibility, and trackability of payments (principle 31)
- ?? Escalation of remedies for duration and severity of poor performance (principles 33, 34)
- ?? Offsetting penalties (principle 37)

For each of these the IURC has summarized the parties' positions and has also indicated guidance as to how the IURC expects to see the issue resolved and incorporated into a remedy plan. Each party should review the summaries and advise the IURC within five business days of the initial organizational collaborative meeting if it believes the summaries are incomplete or inaccurate.

1.8.4 Principles for Which the Commission Has Taken Both the Principles and the Guidance off the Table

In a few cases, the IURC has taken both the principles and the associated guidance off the table:

- ?? PMs regarding SBC/Ameritech's ability to handle commercial volumes of CLEC traffic prior to the granting of 271 authority (principle 13)
- ?? Parity with a floor (principle 17)
- ?? Statistical methodology including statistical tests vs. stare-and-compare on benchmarks (principle 18)
- ?? When penalties begin to apply (principle 28)
- ?? Entry method (amendment to interconnect agreement vs. written notice) (principle 30)

Parties are directed to incorporate both the principles and the guidance, as is, into the Indiana Remedy Plan, recognizing that there may still be a need to discuss related “implementation issues” – *e.g.*, see Task No. 22. If they cannot do so, the IURC is prepared to mandate a solution in line with these principles (as modified) and with the associated guidance. [More detailed information may be found in Sections 5 and 6].

1.8.5 Principles that Have Been Modified

Table 2 summarizes the principles that have changed and the nature of the change. A complete list of all the principles as they currently stand can be found in section 7.

Table 2 Summary of Changes

Principle No.	Summary of Change
6	In general, per-occurrence penalties will be used; however, a per-measure penalty applied to high and medium PMs in the case of “small” CLECs, if the per-measure penalty exceeds the per-occurrence penalty. The intent is to assess the LARGER of the two penalties, for small CLECs.
7	Delete “and the sample size” in the first sentence. If the Collaborative is unable to agree on the categorization of PMs the IURC will devise one.
9	Clarified to indicate that PMs used in the Indiana Remedy Plan will include, but not be limited to, PMs developed for the Indiana 3 rd -party OSS test.
10	Clarified to indicate PMs and penalties pertain to the FCC’s five functional areas as applied to facilities, equipment, systems, software, processes, etc.
15	Clarified to apply to performance, penalty, and remedy data.
18	The remedy plan statistical methodology will not use a k-table. A modified stepwise z-test for medium and low PMs will be used. High PMs will use 6-month averages modified by a “slack” factor.
19	Split into two principles. Principle 19a deals with mitigation of events over which SBC/Ameritech has no control

	<p>(although the Company's response to those events is under its control, at least to some extent); principle 19b deals with statistical mitigation.</p> <p>19a: Three factors recognized as possibly deserving mitigation. Withheld funds to be deposited in escrow pending resolution. Burden of proof on SBC/Ameritech to establish need for mitigation.</p> <p>19b: If competition develops in a robust manner, Type I and type II errors are of less concern for remedy plan purposes than for OSS testing purposes. Parties are invited to review the approaches developed in the ROC (available at http://www.nrri.ohio-state.edu/oss/Post271/sixth_workshop_materials.htm) and the Colorado Special Master's report (Attachment B) to dealing with z-scores to avoid concerns about materiality. Should competition not develop and the resulting transaction numbers imply potential problems with Type I and Type II errors, there will be a review process to determine what, if any, action needs to be taken for statistical mitigation.</p>
20	Changed the initial geographic disaggregations for resale performance measures in the Indiana Remedy Plan to be consistent with the proposed (revised) geographic disaggregations to be used for the 3 rd party OSS test for Indiana.
21	Changed the initial geographic disaggregations for UNE, interconnection, and collocation performance measures in the Indiana Remedy Plan to be consistent with the proposed (revised) geographic disaggregations to be used for the 3 rd party OSS test for Indiana.
24	Clarified to apply to performance, penalty, and remedy data.
28	Changed to indicate that the Commission is leaning toward allowing accrual of penalties to begin 20 days after a CLEC gives notice to SBC/Ameritech and the CLEC (for Tier I.Y.2. and Tier II. Penalties, 20 days after the first CLEC gives notice), but no earlier than completion of the PM Audit (Tests PMR 1 through PMR 5) in the independent 3 rd party OSS test. However, also indicates that the Commission needs more information on the process and timing of SBC/Ameritech's collection and analysis of metrics data to determine if this is feasible.
29	No cap on Tier I.X and Tier I.Y.1. penalties to CLECs and a soft (procedural) cap on other penalties.
33	Step up/step down penalties that rise for protracted deficient performance and drop (but not below the original level) for improved performance.
34	A multiplier that is applied to deficient performance. The multiplier grows as the performance becomes more deficient.

37	Clarified to indicate that payments under the SBC-Ameritech merger order and conditions do not offset, and are not offset by, any payments under the Indiana Remedy Plan. Clarified to indicate that Indiana Remedy Plan penalties would not preclude a CLEC from collecting remedies as required under other agreements or legal frameworks - , <i>e.g.</i> collecting damages penalties required under antitrust actions.
40	Added “orders, as well commercial volumes of pre-ordering, provisioning, maintenance & repair, and billing inquiries” to make it clear that this principle applies to all five types of OSS. Also added more specific language requiring capacity and volume tests – again, for all five types of OSS.
38-44	<p>?? The FCC Thirteen State CMP shall be the baseline CMP subject to certain modifications, including:</p> <p>?? The IURC will consider, and the Collaborative should discuss, whether and how other types of change management documents, forums, or procedures should be incorporated in the Indiana Remedy Plan – <i>e.g.</i>, accessible letters, documentation or agreements from SBC CLEC Users Forums, etc.</p> <p>?? If the FCC Thirteen State CMP changes, the IURC will evaluate whether and how to incorporate the changes into the Indiana Remedy Plan.</p> <p>?? The Indiana Remedy Plan will include change management standards and procedures for all five types of OSS: pre-ordering, ordering, provisioning, maintenance & repair, and billing.</p> <p>?? CMP-related principles for the Indiana Remedy Plan shall apply to both the SBC/Ameritech joint test environment as well as to the SBC/Ameritech production environment. Parties should advise the Commission on the results of those discussions, and make recommendations for appropriate change management performance measures, penalty mechanisms, and penalty levels (if any).</p> <p>?? Updates to the PMs used in the remedy plan will need to be agreed to in a forum under IURC control. The IURC invites comments from the parties on the structure and governance of this forum as well as the specific mechanism whereby PMs will be added to or dropped from the remedy plan. Parties should advise the Commission on the results of those discussions, and make recommendations for appropriate change management performance measures, penalty mechanisms, and penalty levels (if any).</p>

	<p>?? The IURC will also consider the impact of other change management issues on the remedy plan (for example, network or facility changes), if applicable.</p> <p>?? Parties should discuss the relationship, if any, that exists between Ameritech's obligation to provide CLECs "notice of changes" [under Section 251(c)(5) of TA-96 and related FCC requirements] and OSS change management requirements and procedures. Is SBC/Ameritech providing CLECs with adequate and timely notice of network or facility changes that might lead to, or require changes in either ILEC or CLEC OSSs? Parties should advise the Commission on the results of those discussions, and make recommendations for appropriate change management performance measures, penalty mechanisms, and penalty levels (if any).</p> <p>?? Parties should review and discuss change management measures and performance assurance plans/remedy plans from other jurisdictions and ILECs to determine which if any measures, business rules, penalty structures, etc., should be included in the Indiana Remedy Plan.</p> <p>?? The parties should discuss and advise the Commission of the impact of the <u>nature</u> of the performance assurance and remedy plan, itself, on the change management mechanism of that plan. For example, would Ameritech's change management obligations be different under a voluntary plan than under a non-voluntary plan?</p> <p>?? Clarifies principles to indicate that payments under the FCC SBC-Ameritech merger order do not offset, and are not offset by, any payments under the CMP portion of the Indiana Remedy Plan. Clarified to indicate that Indiana Remedy Plan penalties would not preclude a CLEC from collecting remedies as required under other agreements or legal frameworks - , e.g. collecting damages required under antitrust actions.</p>
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2. PRINCIPLES ON WHICH THE COMMISSION BELIEVES THERE IS SUBSTANTIAL AGREEMENT BETWEEN THE SBC/AMERITECH AND CLEC PLANS AS CURRENTLY FILED [PRINCIPLES NO. 1, 2, 3, 5, 8, 9, 10, 11, 14, 15, 16, 20, 21, 25, 26, 27, 32, 36, 38, 39, AND 41]

This section lists the principles on which the IURC believes there is substantial agreement and, thus, the relevant portions of either the SBC/Ameritech plan or the CLEC plan could be used. Any party disagreeing with these categorizations should identify the disagreement(s) and provide support its reasons to the Commission within 5 business days.

Principle No. 1 Oversight of the remedy plan and the performance measures supporting the plan will ultimately rest with the IURC.

Principle No. 2 The remedy plan should adjust in a timely and efficient way to changing market conditions.

Principle No. 3 The remedy plan should contain measures and penalties for all relevant points of the 14-point checklist.

Principle No. 5 The remedy plan should not include a fixed termination date. The remedy plan should not assume an unchanging list of performance measures (“PMs”) over the life of the plan. The plan will include criteria and procedures to add, delete, or modify the PMs used in the plan. No PMs will be automatically phased out. Any reduction in the number of PMs is subject to discussion in the regular “six-month” PM review process⁶ and approval by the IURC.

IURC Guidance to Parties: The parties should discuss and propose a process for modifying the set of performance measures to be included in the Indiana Remedy Plan. At a minimum, parties should address the following questions and should provide a response to the Commission:

- (1) What items from the Section 271 checklist and from Section 251 (and applicable FCC orders and rules, and judicial opinions) are relevant to the Indiana Remedy Plan?
- (2) How will the Indiana Remedy Plan PMs be mapped to the 271 checklist items and to Section 251 requirements?

⁶ This statement is not intended to foreclose discussions in other forums. Depending upon the ultimate status of the six-month review process, this may be necessary. See, also, Task No. 37.

- (3) Should the regional six-month review process (including both the three-month status discussions and the more comprehensive six-month review meetings) be used to develop and implement possible modifications to this list of performance measures for the Indiana Remedy Plan?
- (4) If the regional six-month review process is maintained, is there a need for separate, Indiana-specific collaborative meetings or discussions?
- (5) For how long is each party willing to commit to actively participating in this process?
- (6) What procedures are appropriate for developing and implementing possible modifications to this list of performance measures to be used for the Indiana Remedy Plan, in the event that the regional six-month review process is discontinued or modified?
- (7) Parties should discuss whether the three-month and six-month processes provide adequate notification to parties other than SBC/Ameritech of possible changes to performance measures and business rules and adequate opportunity for all interested parties other than SBC/Ameritech to participate in developing and implementing those changes, or whether one or both processes need to be supplemented or modified for use with the Indiana Remedy Plan.

Principle No. 8 The Indiana Remedy Plan should give the IURC explicit authority to reallocate the monthly distribution of penalty payments between the change management/change control portion of the plan and other portions of the plan.

Principle No. 9 The remedy plan will include, but not be limited to, the Indiana-specific performance measures and metrics that support this performance remedy plan, as well as other measures and metrics that are developed, tested, and audited as part of the third party testing of operational support systems for SBC/Ameritech. These measures will be clearly articulated and encompass a comprehensive range of carrier-to-carrier performance. Where Indiana-specific goals and criteria are not compromised, performance measures or metrics may be common across SBC/Ameritech states. The remedy plan should specify how, if two or more PMs measure the same underlying performance or function, the PMs should be counted for penalty calculations.

Principle No. 10 The remedy plan should include performance measures and penalties regarding the availability, functionality, and quality of SBC/Ameritech's pre-ordering, ordering, provisioning, maintenance & repair, and billing facilities, equipment, systems, software, processes, etc.

Principle No. 11 The remedy plan will establish standards and measurements for "network performance." There should be at least two broad categories of measurements and associated penalties: (1) insufficient trunk capacity, high trunk blockage levels, or excessive trunk provisioning intervals and (2) excessive collocation provisioning intervals.

Principle No. 14 Raw data underlying a performance measure should be stored in a secure, stable, redundant, and auditable manner – *e.g.*, as regards format and storage medium. All raw data files (both original and back-up(s)) should be maintained for at least three years.

Principle No. 15 The remedy plan will contain a quality control/quality assurance mechanism(s) to ensure that the reported data and results are accurate. At a minimum, this quality control/quality assurance mechanism(s) will include a well-defined method to permit auditing of both data and results. All such audit data and results will be disclosed publicly, subject to appropriate procedures (as required under Indiana law) to protect any data or results that the Commission finds to be confidential, proprietary, or a trade secret.

Principle No. 16 The remedy plan may contain diagnostic measures, where appropriate, to further identify problem areas and to allow for fine tuning of the performance measure standards in future proceedings.

Principle No. 20 Initially, the resale performance measurements to be used in the Indiana Remedy Plan will include the same geographic disaggregations that are used in the independent 3^d party OSS test for Indiana. [NOTE: This Principle has been modified.]

Principle No. 21 Initially, the UNE, interconnection, and collocation performance measurements to be used in the Indiana Remedy Plan will include the same geographic disaggregations that are used in the independent 3rd party OSS test for Indiana. [NOTE: This Principle has been modified.]

Principle No. 25 The remedy plan should propose a mechanism for resolving disagreements regarding the format of the raw data to be shared between SBC/Ameritech and the CLECs in a timely and efficient way.

Principle No. 26 The remedy plan will have a manageable enforcement structure for the IURC.

Principle No. 27 The remedy plan and its associated penalties must be legally enforceable and under the control of the IURC.

Principle No. 32 The remedy plan will include a procedure to determine the cause(s) of, or reasons(s) for poor performance. The cause(s) or reason(s) will be publicly disclosed. The plan will include a trigger to initiate this procedure.

Principle No. 36 The remedy plan will contain methods to ensure that penalties are not passed on to, or recovered from, SBC/Ameritech's customers or ratepayers.

Principle No. 38 The remedy plan will have a method to measure performance and assess penalties in the area of change management/ change control.

Principle No. 39 The remedy plan will contain a mechanism to permit adjustments to the plan to accommodate changes in the OSS systems, processes, or procedures.

Principle No. 41 Change control authority over the remedy plan and the performance measures supporting the plan will ultimately rest with the IURC. There should be an explicit process or mechanism for the Commission, on its own motion, to identify problems and make changes to the remedy plan or the performance measures that support the plan.

3. PRINCIPLES ON WHICH THE COMMISSION BELIEVES THERE IS MINOR DISAGREEMENT BETWEEN THE SBC/AMERITECH AND CLEC PLANS, AS CURRENTLY FILED [PRINCIPLES NO. 22, 23, 35, 40, 42, 43, AND 44]

This section lists the principles on which the IURC believes there is some disagreement, but not of such severity that agreement cannot be reached quickly by the parties. Any party disagreeing with these categorizations should provide its reasons to the Commission within 5 business days, following the initial organizational collaborative meeting.

If the parties cannot reach agreement on how to incorporate a particular principle into the remedy plan, the Commission will mandate the final terms for that principle.

Principle No. 22 The remedy plan must contain measures and penalties for xDSL and other advanced services.
Principle No. 23 The remedy plan will contain a mechanism to permit changes to the plan to accommodate nascent or emerging services, elements, and functionalities provided to CLECs.
Principle No. 35 The remedy plan should be a separate agreement from other agreements entered into between SBC/Ameritech and the CLECs.
Principle No. 40 The remedy plan should contain performance measures and penalties pertaining to the post-271 scalability of SBC/Ameritech's facilities, equipment, systems, software, processes, etc., in the context of the ability of SBC/Ameritech to handle commercial volumes of CLEC traffic following the granting of 271 authority for Indiana. For major releases or upgrades (as defined in the IURC's August 29, 2001, Order [in Cause No. 41657 ⁷], change management and change control tests should include volume tests at "normal," "peak," and "stress" levels.

⁷ In addition, the LSOG 4 release (which is considered a "major software release"), and certain scheduled changes to Ameritech OSS functions and interfaces related to this release, have been described in the Joint Reports filed in this proceeding. See Joint Report dated July 28, 2000, Section III, par. 8; Joint Response Clarification of Paragraph 8 of the Joint Progress Report dated September 22, 2000, Second Joint Progress Report dated October 23, 2000 at Section B, par. 1, and Third Joint Progress Report dated January 26, 2001 at Section II A.

Principle No. 42 The remedy plan will include an explicit, predictable, flexible, and public mechanism for SBC/Ameritech and other parties to identify problems to the IURC and permit changes to the remedy plan and the performance measures used to support the plan.

Principle No. 43 The change management/change control remedy plan for SBC/Ameritech may contain diagnostic measures, where appropriate, to further identify problem areas and to allow for fine tuning of the performance measure standards in future proceedings.

Principle No. 44 The penalties set forth in the change management/change control portion of this remedy plan shall not offset, nor shall they be offset by, penalties that are: (1) contained in, and/or required or permitted by any other portion of this remedy plan; (2) contained in and/or required or permitted by any other IURC-approved plan, agreement, amendment, rule, order, or other mandate; or (3) contained in and/or required or permitted by any other ILEC-to-CLEC contract or performance/remedy plan affecting SBC/Ameritech or into which SBC/Ameritech has entered and that is not approved by a regulatory agency. Penalties paid under the SBC-Ameritech merger agreement shall not offset penalties paid under this remedy plan.

4. PRINCIPLES ON WHICH THE COMMISSION BELIEVES THERE IS SIGNIFICANT DISAGREEMENT BETWEEN THE SBC/AMERITECH AND CLEC PLANS, AS CURRENTLY FILED

For each of the principles on which there is significant disagreement, the tables below summarize the parties' positions and provide guidance from the IURC on the direction in which the Commission expects the parties to move in order to reach agreement. In general, absent a compelling argument to the contrary, if agreement cannot be reached by the parties within 90 calendar days following the date of the initial organizational remedy plan collaborative meeting, the Commission will mandate a solution consistent with the applicable Principles and associated guidance and comments.

4.1 Principle No. 4

Principle No. 4 The remedy plan will clearly and unambiguously support the five factors identified by the FCC in its Bell Atlantic New York and SBC Texas orders. These five factors are: (1) Potential liability that provides a meaningful and significant remedy to comply with the designated performance standards; (2) Clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) A reasonable structure that is designed to detect and sanction poor performance when it occurs; (4) A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and (5) Provide reasonable assurances that the reported data are accurate. The remedy plan should not include a fixed termination date. The remedy plan should not assume an unchanging list of PMs over the life of the plan. The plan will include criteria and procedures to add, delete, or modify the PMs used in the plan.

Ameritech Plan	CLECs' Plan
(1) Financial liabilities calculated using Texas formula	CLEC plan cites to and incorporates the FCC's criteria:
(2) PMs based on collaboratives. All agree they are comprehensive	(1) Penalties not less than 36%
(3) Detailed procedures for reporting and review of performance data. Modeled on Texas approach	(2) PM-related issues settled between parties
	(3) Type I and Type II error balancing used to detect and sanction

data. Modeled on Texas approach	poor performance
(4) Protects both CLEC interest in prompt payment and SBC/Ameritech's rights to due process, and the public interest	(4) Application and payment of remedies designed to be self executing
(5) CLECs can request one mini audit per year per CLEC. Ameritech pays for audit if CLEC allegations have merit, CLECs pay if no merit found	(5) Provides for audits and mini audits to assure data are accurate

IURC Guidance to Parties

The Texas model is not the only acceptable model for a remedy plan. The IURC will consider other models and indeed expects that lessons learned from other states can be incorporated to produce a better plan.

All the plans submitted are complex. The degree of actual (as opposed to theoretical) risk is difficult to discern in all the plans.

The set of PMs to be initially included in the Indiana Remedy Plan includes those measures and business rules filed with the IURC on December 27, 2000, and approved by the IURC on March 19, 2001, and for which the Measurement Type is currently shown as either "High," "Medium," or "Low" for either Tier 1, Tier 2, or both; as well as any changes to those measures and business rules that were included in the June 8, 2001, Joint Motion for Expedited Amendment of [March 19], 2001 Order⁸ and approved in the Presiding Officers' June 18, 2001, Docket Entry. This list is not exhaustive. First, it is possible that, over time, performance measurements for which the Measurement Type is currently shown as "None" for both Tier 1 and Tier 2 will be reclassified, such that a Measurement Type of "High," "Medium," or "Low" will be reflected where none is reflected now (or vice versa). Second, the Commission is administratively aware that parties recently engaged in an extensive set of "six-month review" discussions regarding possible changes to the existing baseline performance measures for all five Ameritech states. The Commission anticipates receiving one or more motions or petitions to adopt certain modifications, based upon those discussions. The Commission will determine, after reviewing the forthcoming motion(s) or petition(s), which of these proposed changes to the existing baseline performance measures should be included in the Indiana Remedy Plan. Third, the IURC's inclusion in the Indiana Remedy Plan of performance measures for which weights are listed ("high," "medium," and "low") is not meant to indicate either support or lack of support for the weights, themselves. Indeed, the parties are expected to discuss and recommend a PM weighting framework for Indiana.⁹ The Commission will defer making any findings regarding the substance of those weights until it reviews that recommendation(s). Fourth, and consistent with Principles No. 4 and 5, it is reasonable to assume that this list of performance measures to be included in the Indiana Remedy Plan will continue to change over time, even beyond the potential changes alluded to here. The baseline (potential) remedy and penalty amounts under the various tiers may need to be changed at some point in the future, to reflect the goals of the plan, which include compensating CLECs that are harmed by Ameritech's poor performance; providing a stable source of funding for ongoing monitoring and auditing efforts; compensating the State of Indiana and the citizens thereof for any lessening of competition due to Ameritech's poor performance; and providing incentives to Ameritech to provide nondiscriminatory service to the CLECs.¹⁰ Accordingly, parties should discuss and propose a process for reviewing and, if appropriate, proposing changes (either increases or decreases) to the Commission regarding baseline remedy and penalty amounts.

The Commission believes that CLECs should have the right to request mini-audits. The parties should discuss Ameritech's proposed limitations and conditions [See Item (5), above], as well as other pertinent issues raised in the parties' various filings, and attempt to reach a compromise. The IURC reserves the right to require comprehensive audits, should the need arise.

SBC/Ameritech and the CLECs will use the same, recent Ameritech retail and "wholesale" performance data, drawn from SBC/Ameritech systems (subject to appropriate non-disclosure or confidentiality safeguards) and run the data through the "trial run plan" mechanisms to determine the amount of SBC/Ameritech monies actually at risk. Lack of competition in Indiana, far from being an obstacle to this approach, will give an indication of what is actually at risk in SBC/Ameritech's Indiana market environment.

Parties shall devise mechanisms for selecting the data, ^{Page A-29} assuring the data are reasonably (but not perfectly) clean, performing the calculations, and analyzing the results. Parties shall also provide an estimated time frame for completion.

4.2 Principle No. 6

Principle No. 6 The remedy plan should be neutral as to the various entry strategies (resale, UNEs, interconnection, collocation, and other non-UNE facilities) that competitive carriers are likely to use in entering the local exchange market.

Ameritech Plan	CLECs' Plan
Explicitly neutral with regard to UNEs, interconnection, and resale. Less explicit with regard "individualized strategies" Penalties based on a per-occurrence criterion See also principle 12	Plan does not include PM "weighting" (high, medium, low) as this could be a vehicle for SBC/Ameritech to favor one entry strategy over another Penalties based on a per-measure criterion

IURC Guidance to Parties

The IURC is leaning toward weighting of PMs. The IURC also recognizes that, if not done carefully, the selection of high, medium, and low importance PMs might affect the entry strategy of a CLEC. For that reason, the IURC requires that PMs be categorized in a way that is entry strategy neutral. If this categorization cannot be done expeditiously by the Collaborative, the IURC will consider devising a categorization framework on the following principles: A) the categorization shall be neutral with respect to CLEC entry strategies and B) the categorization should be such that meaningful and significant amounts of money for SBC/Ameritech are at risk if PMs are missed.

For Tier I.X. and Tier I.Y. performance data and penalties, the IURC is leaning toward per-occurrence rather than per-measure remedies with a modification to account for the concern of small CLECs. To address the concerns of small CLECs and to take into account the undeveloped nature of competition in Indiana, the IURC is favorably impressed by the portion of the Colorado plan that adopts a minimum penalty applicable (per measure) to small CLECs only. That is, high and medium PMs would have a minimum per-measure penalty as well as a per-occurrence penalty associated with them. For a small CLEC, if the accumulated per-occurrence penalties for a given measure classified as "high" or "medium" are less than the accumulated per-measure penalties for that measure,

and for a given reporting period, the penalty assessed for that measure would be the larger one (i.e., the accumulated per-measure penalties for that reporting period). Large CLECs would always receive per-occurrence penalty payments.

In Colorado, the minimum per-measure penalty for high PMs is \$600 and for medium PMs is \$300. In Colorado, a small CLEC was defined as one with less 100,000 lines of whatever type in service in Colorado. The parties should indicate how a “small” CLEC should be defined in Indiana and what the minimum per-measure penalties for these small CLECs should be.

There are certain products and services - *e.g.* collocation, DS-1s and DS-3, which, though the demand is small (if calculated by simply counting the number of collocation spaces or circuits requested by an individual CLEC), represent critical areas for the CLECs. The Indiana Remedy Plan, however it is finally structured, should take these into proper account.

4.3 Principle No. 7

Principle No. 7 The remedy plan will treat the selection of PMs and the weight of the PMs, in such a way as to maintain neutrality with respect to mode of entry (resale, UNEs, interconnection, collocation, and other non-UNE facilities). If a mode of entry is not represented in the set of PMs then anti-competitive behavior with respect to that mode of entry might not be detected. Similarly, the way the PMs are weighted and the way their populations are sampled should be structured to not discriminate against a mode of entry.

Ameritech Plan	CLECs' Plan
Refers to comments on principle 6	All sub-measures weighted equally. This avoids favoring one entry strategy over another (see principle 6) and simplifies calculations

IURC Guidance To Parties

The IURC is leaning toward weighting of PMs. The IURC also recognizes that, if not done carefully, the selection of high, medium, and low importance PMs might impact the entry strategy of a CLEC. However, the Commission is not fully persuaded that all performance measures and disaggregations are equally important. For those reasons, the IURC requires that PMs be categorized into three categories (high, medium, and low), but in a way that is entry strategy neutral. Parties should use the discussion of remedies that occurred in the recent six-month PM review meetings and through subsequent e-mails (including attachments) as a starting point for their Indiana-specific discussions. If this categorization cannot be done expeditiously by the Collaborative, the IURC will devise a categorization framework on the following principles: A) the categorization shall be entry strategy neutral and B) the categorization should be such that meaningful and significant amounts of money for SBC/Ameritech are at risk if PMs are missed. Parties are invited to bring specific concerns about the impact of specific PM weightings on competitive entry to the attention of the Collaborative and of the Commission. PM weightings, and their impact, should be analyzed as a part of the "trial run." The results of this analysis should provide all parties, and the Commission, with empirical evidence of discrimination against a particular CLEC mode of entry and based upon PM weightings.

The IURC is leaning toward per-occurrence rather than per-measure remedies, but with a modification to account for the concern of small CLECs. To address those concerns of small CLECs and to take into account the undeveloped nature of competition in Indiana,

the IURC is favorably impressed by the portion of the Colorado plan that adopts a minimum penalty applicable (per measure) to small CLECs only. That is, high and medium PMs would have a minimum per-measure penalty as well as a per-occurrence penalty associated with them. For a small CLEC, if the accumulated per-occurrence penalties were less than the accumulated per-measure penalties for a given measure and for a given reporting period, the penalty assessed for that measure would be equal to the accumulated per-measure penalties, for that reporting period. Large CLECs would always receive per-occurrence penalty payments.

In Colorado, the minimum per-measure penalty for high PMs is \$600 and for medium PMs is \$300. In Colorado, a small CLEC was defined as one with less 100,000 lines of whatever type in service in Colorado. The parties should indicate how a “small” CLEC should be defined in Indiana and what the minimum per-measure penalties for these small CLECs should be.

There are certain products and services - *e.g.* collocation, DS-1s and DS-3, which, though the demand is small (if calculated by simply counting the number of collocation spaces or circuits requested by an individual CLEC), represent critical areas for the CLECs. The Indiana Remedy Plan, however it is finally structured, should take these into proper account.

The Commission is leaning toward requiring SBC/Ameritech to develop performance measurements and business rules (and, perhaps, penalties and remedies) for special access to include in the Indiana Remedy Plan. However, the Commission does not have enough information to reach a final decision. Parties are required to discuss, at a minimum: (1) issues pertaining to Ameritech’s performance in providing special access to CLECs, (2) appropriate performance measures and business rules, and (3) appropriate remedies and penalties for missing those standards. In addition, CLECs should be prepared to discuss specific concerns or complaints regarding Ameritech’s allegedly poor performance. SBC/Ameritech, in turn, should be prepared to discuss specific ways of resolving those concerns or complaints. The Commission will consider the results of these discussions in deciding whether to formally require the development and implementation of performance standards for SBC/Ameritech’s provision¹¹ of special access and remedies for poor performance associated with such provision. This list of issues is for illustrative purposes and is not exhaustive.

4.4 Principle No. 12

Principle No. 12 The remedy plan will contain penalties for discrimination against any CLEC or class of CLECs based upon mode of entry (resale, UNEs, collocation, interconnection, or other non-UNE facilities). These penalties should be in addition to any other penalties contained in the remedy plan.

Ameritech Plan	CLECs' Plan
See answer to principle 6	Does not weight PMs, in order not to favor one entry strategy over another.

IURC Guidance To Parties

Parties are invited to propose mechanisms to assure this type of discrimination is detected and sanctioned.

4.5 Principle No. 19a

Principle No. 19a Where mitigation or “forgiveness” for Acts of God is desired, the remedy plan should identify and fully explain, at a minimum: (1) specific measurements, metrics, or other circumstances to which or under which mitigation or forgiveness would be applied; (2) clearly stated rationale and assumptions for why mitigation is appropriate; (3) the amount or level of mitigation/forgiveness to be applied; and (4) what criteria will be used to determine what that level of mitigation or “forgiveness” should be.

Ameritech Plan	CLECs’ Plan
Acts of God or faulty CLEC performance are mitigated through an expedited dispute resolution process	No comments on “events” mitigation

IURC Guidance To Parties

Based upon the Bell Atlantic (Verizon) New York remedy plan - available at <http://www.dps.state.ny.us/39212.pdf> - the IURC recognizes three generic scenarios beyond SBC/Ameritech’s control that may be grounds for mitigation. . First, “clustering” of data caused by a cable cut or other such event or problem described in Appendix D of the Bell Atlantic - New York remedy plan (“Category 1”). Second, unusual CLEC behavior may be a mitigating factor (“Category 2”). Third, situations beyond SBC/Ameritech’s control -e.g., “Acts of God,” such as floods, natural disasters, or emergencies may be grounds for mitigation (“Category 3”).

The parties should define, either generally or by example, what would constitute “clustering” (Category 1); “unusual CLEC behavior” (Category 2); and “Acts of God” (Category 3). The “CLEC caused misses” exclusions in the business rules for certain PMs may be a useful starting point for these discussions regarding Category 2 events. In evaluating possible requests for mitigation by Ameritech, the Commission may consider such factors as Ameritech’s response to a particular event (as distinct from the event, itself); whether other telecommunications providers exhibit similar responses under similar circumstances; and “lessons learned” from Ameritech’s poor performance toward its retail customers and the Company’s efforts to improve that performance. This list of factors that the Commission may consider in evaluating whether to grant a request for mitigation is not exhaustive.

SBC/Ameritech may withhold payments from CLECs only by establishing reasonable grounds with the IURC for such withholding. Payments withheld from CLECs are to be deposited into an interest-bearing escrow account pending resolution of SBC/Ameritech’s

assertion that penalties should be withheld. **The burden of proof shall be on SBC/Ameritech to establish the existence and the magnitude of the mitigating circumstances, for all three categories of events and circumstances listed above. SBC/Ameritech shall be required to provide written documentation to support its request to withhold payments. SBC/Ameritech shall also have the burden of demonstrating the adequacy and timeliness of its response.**

Based on this guidance and the details of the Bell Atlantic New York remedy plan and other relevant sources, the Collaborative is invited to devise acceptable language to account for events or circumstances that may deserve mitigation, and to specify generic types of documentation that SBC/Ameritech would be required to provide.

4.6 Principle No. 19b

Principle No. 19b Where mitigation or “forgiveness” for statistical artifacts is desired, the remedy plan should identify and fully explain, at a minimum: (1) specific measurements, metrics, or other circumstances to which or under which mitigation or forgiveness would be applied; (2) clearly stated rationale and assumptions for why mitigation is appropriate; (3) the amount or level of mitigation/forgiveness to be applied; and (4) what criteria will be used to determine what that level of mitigation or “forgiveness” should be.

Ameritech Plan	CLECs’ Plan
Would use a K-Table to identify the number of measurements for which no remedy is to be assessed (cites source of K-Table as MCI in Texas) Mitigation applies only to Tier 1 penalties Excluded misses would be lowest priority measures, included misses would be highest priority measures	Error balancing (see principle 18) eliminates requirement for mitigation

IURC Guidance To Parties

In addition to the comments for this principle, see also guidance on principle 18.

The parties appear to be significantly apart on the appropriate manner of dealing with mitigation within the statistical approach. Two problems are apparent. First is the effect of using statistics themselves and the inherent concern for random error. This problem, while significant in the 271 OSS test, may be less so in the context of the performance plan. In the context of the test, there is a relatively limited opportunity to get the “right” answer and statistical variation guarantees that some sampling will provide the wrong answer to one of the parties. Given the possible effect of a wrong answer in the test on the outcome of the test and the possible need for further testing, some additional assurances, as outlined in Appendix C for the Indiana Master Test Plan, were necessary. In the context of the remedy plan, however, an increased level of local competition may provide a leveling influence. Over time, if this increased level of local competition materializes, one would expect a correspondingly increased number of transactions that could be

included in the statistical calculations. This, in turn, could lead to a leveling of false positives and negatives – again, assuming a sufficient level of competition (and, hence, a sufficient amount of data). If this scenario does not occur (increased competition, leading to increased transactions, leading to a leveling of false positives and negatives), or does not occur to the degree expected or desired, a party can request that the Commission review the implementation of Principle 19b.

The second concern is one of materiality of differences. Here the question is one of under and over-inclusion of cases that are significant. This situation is particularly apparent as total transactions become quite large: the effect of setting a relatively low z-score may result in fines when the difference between ILEC and CLEC performance is small. As background, the CLECs have asserted here and elsewhere that poor performance is more significant to them because of the small number of customer contacts they have; they have asserted that poor performance not properly identified and checked (Type II errors, assuming a Null Hypothesis that Ameritech-Indiana is meeting or exceeding the standard) thus is more detrimental to them than false accusations of poor performance are to the ILEC (Type I errors, assuming a Null Hypothesis that Ameritech-Indiana is meeting or exceeding the standard). The Commission requests that the parties attempt to find some sort of accommodation for this concern. As there is no apparent agreement on the proper approach to statistical mitigation currently, the parties are encouraged to review the proposed statistical approaches contained in the ROC 11-state collaboration at http://www.nrri.ohio-state.edu/oss/Post271/sixth_workshop_materials.htm and the Colorado Special Master's report (Attachment B to the IURC's September 11, 2001, Initial Order in Cause No. 41657). These sources deal with several questions. First, they eliminate the need for the K-table. Second, the ROC appears to use an innovative approach to setting the z-score so as to avoid concerns about materiality. Third, the ROC approach recognizes that certain services are more significant but are purchased in low volumes and provides a special treatment in setting the appropriate z-score for these low-volume, high-value transactions.

4.7 Principle No. 24

Principle No. 24 The remedy plan will provide means to ensure that the reported data and results are publicly disclosed, subject to appropriate procedures (as required under Indiana law) to protect any data or results that the Commission finds to be confidential, proprietary, or a trade secret.

Ameritech Plan	CLECs' Plan
SBC/Ameritech data and aggregated CLEC data available on non-public web site Each CLEC can access their data as well as aggregated CLEC data IURC can access all data Public cannot access data Silent on how affiliate data is reported and who can see it	Will work with IURC to assure compliance Affiliate data should be reported separately as well as included in aggregated CLEC data

IURC Guidance To Parties

In general, SBC/Ameritech affiliates should be treated as CLECs for reporting and disaggregation purposes. Comparisons between SBC/Ameritech's performance toward its affiliates and the aggregate CLEC community should be available to all.

For the purposes of monitoring and measuring SBC/Ameritech's performance in its offering of DSL transport to ISPs, as of September, 2001, a key question appears to be whether ASI North/AADS is providing discriminatory treatment that favors AIMS at the expense of non-affiliated ISPs.¹² The Commission is administratively aware of a pending dispute in Cause No. 41657 between various CLECs and SBC/Ameritech regarding the scope of the 3rd party OSS test being conducted by KPMG consulting and the CLECs' request for performance measurements to "be established and tested as part of the OSS 3rd party test to determine whether Ameritech is providing Indiana CLECs with adequate resold DSL services."¹³ Depending upon the resolution of this disputed request, the Commission may approve performance measures and business rules. If that occurs, the Indiana remedy plan collaborative may need to discuss remedies for those measures and business rules.

4.8 Principle No. 29

Principle No. 29 The remedy plan will clearly identify any proposed absolute exclusions or caps, as well as any associated assumptions or calculation methodologies. All absolute exclusions and caps in the Indiana CLEC performance remedy plan must be approved by the IURC prior to the IURC's approval of the remedy plan. In those instances where absolute caps are proposed, the plan must (1) describe what happens when the cap is reached (do the penalties continue to accrue or not, is there an escrow account, etc.); (2) explain why penalties should no longer be assessed and/or paid if the associated poor performance has not been corrected or the associated performance standard has not been met; (3) trigger a review of the underlying reason(s) for the performance and for reaching the cap, and (4) trigger a review of the level of the absolute cap in question

Ameritech Plan	CLECs' Plan
<p>Explicit caps both annual and monthly</p> <p>Cites other possible remedies <i>e.g.</i> denial or suspension of LD entry</p> <p>An annual cap of \$125.65 million - 36% of net return</p> <p>Monthly cap of 1/12 of annual cap</p> <p>Carry-overs for monthly caps not reached</p> <p>Consistent with Texas plan</p> <p>PMs subject to damages to be reduced by 50% within 2 years</p>	<p>No absolute remedy cap</p> <p>CLECs recommend "review threshold" calculated as 44% of return (\$153 million initially) based on FCC and NY PSC actions in NY</p> <p>Regulatory review also triggered if monthly penalties exceed 1/6 of annual review threshold</p> <p>Mechanism to phase out remedies as competition is established</p>

IURC Guidance To Parties

The IURC is favorably disposed to the proposal in the Colorado plan that Tier I.X payments (see section 1.4 and Table 1) to an individual CLEC not be capped. For Tier I.Y. incentive payments and for Tier II payments, there is a monthly, combined cap of 1/12 of an annual cap of \$100 million in Colorado. An analogous figure will be defined for Indiana for Tier I.Y.2. and Tier II. payments.

The IURC wishes to craft a carefully tailored enforcement response to current and future difficulties experienced by SBC/Ameritech in complying with existing agreements in the Ameritech region.

The IURC favors a procedural cap of at least 36% of total annual “net return,” for Ameritech Indiana that reflects both interstate and intrastate portions of revenue derived from” the Company’s “local exchange service” (based on Automated Reporting Management Information Service (ARMIS) data). We would like to hear parties’ views on the appropriate level of a procedural cap (*e.g.*, 40% of total annual net return, vs. some other percentage that is not less than 36%). To assist us in this inquiry, parties should answer the following minimum set of questions. What lessons can be learned from experience with remedy or performance assurance plans in other jurisdictions (federal or state)? What lessons can be learned from SBC/Ameritech’s retail performance in Indiana or in other states? Should the procedural cap be set higher than 36% from the beginning? Should there be an initial procedural cap of 36% that will rise to some other level above 36% (*e.g.*, 40%) if performance is inadequate? What would trigger the increase in the cap? How long would the increase last? Would there be circumstances in which the cap would rise above 40%? What would trigger a decrease in the cap? Are there circumstances in which the procedural cap would decrease only partially – *i.e.*, not all the way back to 36%? Parties should also discuss the underlying net return figure, to determine if there are any disagreements regarding the full set of U.S.O.A. accounts the Commission should consider, and/or any disagreements regarding either the calculation methodology to be applied to that figure or the results from that calculation(s). Parties should also discuss and recommend a process for updating the total annual net return to be used in the Indiana Remedy Plan. The FCC has indicated that the total annual net return figure should be calculated by “[combining] line 1915 (the interstate “Net Return” line) with a computed net intrastate return number (total intrastate operating revenues and other operating income, less operating expenses, nonoperating items and all taxes) [See ARMIS 43-01 Annual Summary Report, Table 1, Cost and Revenue Table].”¹⁴

We also believe that a root cause review should be triggered any time one month’s penalties (Tier I.Y.2. and Tier II., in the aggregate) exceed 1/6 of the annual cap, whatever the final level of the procedural cap.

4.9 Principle No. 31

Principle No. 31 The remedy plan will provide meaningful and significant financial penalties for non-compliance with the designated performance standards. The financial penalties shall be paid in such a way as to be publicly visible and traceable to the specific underlying poor performance. If penalties are under this plan are to be settled by bill credits, the plan should propose a mechanism that will allow such credits to be issued on an aggregated per-CLEC basis as well as on a per-account basis. The settlement process should be transparent and open to public scrutiny.

Ameritech Plan	CLECs' Plan
Payments calculated using Texas formula Paid by bill credits CLECs get underlying information from account manager Credits assigned on an aggregated basis, <i>i.e.</i> all credits to a CLEC assigned to one master account rather than to sub-accounts	Payments by check Invoice ties submetric missed to dollar amount Supports transparency

IURC Guidance To Parties

All plans are sufficiently complicated that, as stated in the IURC's guidance for principle 4, recent data will be run through a trial run plan to gather empirical evidence of the projected penalty amounts and allocations.

The IURC will accept settlement by either bill credits or check **so long as either method is supported by a detailed invoice that clearly links specific shortfalls to specific dollar/credit totals on both a per-account and an aggregate basis.** Each CLEC should get a single statement that shows both disaggregated per-account totals as well as the aggregated total.

The parties should agree on a standard format for these settlement documents.

Parties should discuss the following: For penalty payment purposes, whether by bill credits or check, what is the appropriate CLEC identification code to support per-account tracking of penalties? What is the appropriate level of disaggregation for effective association of penalties-to-performance shortfalls? ACNA? CIC? OCN? BAN? Other?

The Colorado plan supports bill credits for payments to the CLEC and payments to the state in cash. It has provisions for CLECs that go out of business or who do not use enough Qwest wholesale local service (this excludes retail services, Internet services, etc.) to cancel out the bill credits to receive payment in cash. The IURC is inclined to accept similar settlement provisions for the Indiana Remedy Plan. However, the IURC notes that since Tier I.Y.2. and Tier II. penalties are paid by check, it may be easier for SBC/Ameritech to pay all penalties by check rather than developing a bill-credit system solely for Tier 1 penalties.

4.10 Principle No. 33

Principle No. 33 The remedy plan should be open-ended in escalating penalties for continued poor performance (“duration”) or it should include a rationale as to why the penalties should stop escalating after a specified time period and should identify and explain the specific duration in question.

Ameritech Plan	CLECs Plan
The only rationale for stopping escalation is that Texas stopped after 6 months Escalation applies only to Tier 1 remedies	Open-ended with no cessation of escalation Escalation due to duration applies to both Tier 1 and Tier 2 remedies (NOTE: This is not entirely clear from reading the CLEC plan. CLECs are requested to provide specific clarification on this issue, in addition to the general request for parties to review the Commission’s summaries of their respective plans and positions.)

IURC Guidance To Parties

The IURC looks favorably on many portions of the escalation methodology for Tier I.Y and Tier II penalties proposed in the Colorado Special Master’s report. Escalation proceeds in a step-up / step-down fashion. After the second successive month of poor performance, when a particular performance measure is missed, the base penalty for that PM is doubled and after the third month, the original base penalty is tripled, etc. After the first month in which the performance measure is met, the base penalty for that PM steps down to the next lower level. If acceptable performance on that PM continues, the penalty for that PM is reduced month by month until it reaches its original level. If performance on that PM begins to degrade again, the base penalty on that PM is stepped up again from whatever level it had reached (the multiplier is applied to the original base penalty).

Parties should comment on the relationship between performance variations for disaggregation within a particular performance measure and the escalation and root cause analysis schedules set forth herein.

At the end of a rolling three-month period, if Ameritech's performance on that same PM is still deficient, SBC/Ameritech shall initiate a root cause analysis of the underlying deficient performance and shall implement corrections. The corrections must be made pursuant to the appropriate change management documents, standards, or requirements. A detailed description of the background, reasons for the analysis, the results of this analysis, SBC/Ameritech's efforts to correct the problem(s), and any additional information that the Commission may so require will be posted to a publicly accessible web site, consistent with the appropriate change management documents, standards, requirements, or guidelines. The process of analysis and correction of the root cause shall begin automatically at the end of the third month (month 3) of deficient performance and shall be completed within two months (end of month 5).

The baseline (potential) multiplier factors and tables may need to be changed at some point in the future. Parties will have the opportunity to report to the Commission as part of the review process established by this plan on the need to increase or decrease multiplier factors and tables under the various tiers to better reflect the goals of the plan: to compensate CLECs that are harmed by Ameritech's poor performance; to provide a stable source of funding for ongoing monitoring and auditing efforts; to compensate society as a whole for any lessening of competition due to Ameritech's poor performance; and to provide incentives to Ameritech to provide nondiscriminatory service to the CLECs.¹⁵ Parties should discuss and propose a process for reviewing and, potentially, proposing changes (either increases or decreases) to the Commission regarding baseline multiplier factors and tables.

4.11 Principle No. 34

Principle No. 34 The remedy plan should be open ended in escalating penalties for acutely poor performance (severity) or it should include a rationale as to why the penalties should stop escalating after a specified level of poor performance is reached and should identify and explain the specific “severity” level in question.

Ameritech Plan	CLECs’ Plan
<p>Dependence of “shortfall factor” on the same statistical methods used to determine makes it very hard to determine real size of factor. While SBC/Ameritech says there are no limits on the shortfall factor, practically when mitigation, K-values, etc are considered the factor may be very low</p> <p>Tying shortfall factor to volume of customers affected (for some PMs) means that while competition is low, penalties will be low.</p> <p>Penalties stop escalating after 6 months.</p>	<p>Open-ended with no cessation of escalation</p> <p>Escalation due to severity applies to both Tier 1 and Tier 2 remedies. (NOTE: This is not entirely clear from reading the CLEC plan. CLECs are requested to provide specific clarification on this issue, in addition to the general request for parties to review the Commission’s summaries of their respective plans and positions.)</p>

IURC Guidance To Parties

The IURC is inclined to support that aspect of the Colorado plan that calls for open-ended (uncapped) payment of the Tier I.X penalties for deficient performance toward a specific CLEC. There are also provisions for acutely deficient performance. Each PM has associated with it a per-occurrence (or per measure for ‘small’ CLECs) penalty dollar figure. If SBC/Ameritech misses its PM goal for high and medium weight penalties in a given month by a sufficiently wide margin, the base penalty is multiplied by a number greater than one to yield the “acute severity penalty multiplier.” (See section III.A of the Colorado report for an example of multiplier tables.) At the end of a three-month period when escalated severity penalties are paid on the same PM to **any** CLEC, SBC/Ameritech shall initiate a root cause analysis of the underlying deficient performance and shall implement corrections. The corrections must be made pursuant to the appropriate change management documents, standards, or requirements. A detailed description of the background, reasons for the analysis, the results of this analysis, SBC/Ameritech’s efforts to correct the problem(s),

and any additional information that the Commission may so require will be posted to a publicly accessible web site, consistent with the appropriate change management documents, standards, or requirements. The process of analysis and correction of the root cause shall begin automatically at the end of the third month (month 3) of deficient performance and shall be completed within two months (end of month 5). Beginning with month 6, the penalty multiplier applied to acutely deficient performance on the same PM to **any** CLEC shall be doubled from what it was in the first three-month period.

Parties should propose methods to define severity under various circumstances. Cumulatively, both small misses at high volumes and large misses at small volumes may be both judged severe. How should these be taken into account?

The baseline (potential) multiplier factors and tables may need to be changed at some point in the future. Parties will have the opportunity to report to the Commission as part of the review process established by this plan on the need to increase or decrease multiplier factors and tables under the various tiers to better reflect the goals of the plan: to compensate CLECs that are harmed by Ameritech's poor performance; to provide a stable source of funding for ongoing monitoring and auditing efforts; to compensate the State of Indiana and the citizens thereof for any lessening of competition due to Ameritech's poor performance; and to provide incentives to Ameritech to provide nondiscriminatory service to the CLECs.¹⁶ Parties should discuss and propose a process for reviewing and, potentially, proposing changes (either increases or decreases) to the Commission regarding baseline multiplier factors and tables.

4.12 Principle No. 37

Principle No. 37 A CLEC's adoption of or participation in a remedy plan does not affect the availability of other remedies or rights of action available under agreement or state or federal law. Ameritech may offset payments to a CLEC under a performance plan against the recovery under other rights or remedies unless those payments are deemed to be penalties by agreement or law. For example, payment of a penalty under the Indiana Remedy Plan does not preclude a CLEC from collecting damages in an antitrust action. The penalties set forth in the remedy plan for SBC/Ameritech shall not offset, nor shall they be offset by, penalties in any other IURC-approved plan, agreement, amendment, rule, order, or other mandate; or in any other ILEC-to-CLEC contract or performance/remedy plan into which SBC/Ameritech has entered affecting, or on behalf of, Indiana Bell and that is not approved by a regulatory agency. Penalties paid under the SBC-Ameritech merger agreement shall not offset penalties paid under this remedy plan.

Ameritech Plan	CLECs' Plan
<p>Ameritech anticipates that it will pay CLECs remedies once for the same shortfall in performance. Its remedy plan is intended to supersede duplicative PMs and remedies in current interconnection agreements.</p> <p>Ameritech acknowledges that the application of the assessments and damages provided for in their remedy plan is not intended to foreclose other noncontractual legal and regulatory claims and remedies that may be available to a CLEC.</p>	<p>Support inclusion of this principle in the final IURC order approving the remedy plan.</p>

IURC Guidance To Parties

In devising the remedy plan, the following guidelines shall apply:

Tier I.X (and, where applicable, Tier I.Y.1.) penalties may offset penalties payable to a CLEC under any existing interconnect agreements between the CLEC and SBC/Ameritech, subject to the following conditions. In all cases, the burden shall be on Ameritech to demonstrate double assessment or double recovery of penalties. The identity of the CLEC shall not be considered sufficient grounds to establish double assessment or double recovery, absent some other justification or support. In other words, the fact that a specific, individual CLEC claims that Ameritech's poor performance warrants a penalty payment under both Tier I.X. (and, where applicable, Tier I.Y.1.) of the Indiana Remedy Plan and an IURC-approved interconnection or arbitration agreement, or adoption, shall not, by itself, be considered sufficient to justify either partially or completely offsetting the penalty payments against each other. SBC/Ameritech shall be required to establish some level of "sameness." Factors that should be considered in a sameness review include, but are not limited to, the following: (1) Are the performance standards, requirements, or guidelines the same: (2) Do the affected performance measure(s) or business rule(s) measure the same business process; (3) Is the affected performance measure(s) or business rule(s) calculated the same way; (4) Are the penalties calculated in the same way; and (5) Is the duration of the penalties the same? This list is not intended to be exhaustive.

Tier I.Y.2. and Tier II penalties shall not offset, or be offset by penalties payable to a CLEC under IURC-approved interconnection agreements. Furthermore, while this Commission cannot control the FCC's implementation of the performance assurance plan contained in the FCC's SBC-Ameritech merger order or conditions, it is not this Commission's intent that Tier I.Y.2. and Tier II penalties in the Indiana Remedy Plan should automatically offset or be offset by penalties payable under the FCC performance assurance plan, absent compelling justification from SBC/Ameritech to support any such claim to that effect.

5. PRINCIPLES FOR WHICH THE IURC HAS TAKEN BOTH THE PRINCIPLES AND THE ASSOCIATED GUIDANCE OFF THE TABLE [PRINCIPLES NO. 13, 17, 18, 28, AND 30]

In a few cases, the IURC has taken both the principles and the associated guidance off the table. Parties are directed to incorporate both the principles and the guidance, as is, into the Indiana Remedy Plan, recognizing that there may still be a need to discuss related “implementation issues” – *e.g.*, see Task No. 22. If parties cannot do so within 90 calendar days of the initial organizational remedy plan collaborative meeting, the IURC is prepared to mandate a solution in line with the principles (as modified) and with the associated guidance. [More detailed information may be found in Sections 5 and 6].

5.1 Principle No. 13

Principle No. 13 The remedy plan should contain performance measures and penalties pertaining to the general ability of SBC/Ameritech to handle commercial volumes of CLEC traffic prior to the granting of 271 authority for Indiana. Issues that should be considered include the pre-271 scalability of SBC/Ameritech’s facilities, equipment, systems, software, processes, etc.

Ameritech Plan	CLECs’ Plan
Cites third-party OSS stress test and other procedures as providing evidence of scalability and capability of OSSs. Asserts PMs will allow assessment of commercial volumes on a going forward basis.	Cites third-party OSS test stress test as providing evidence of ability to provision commercial volumes of orders. Cites PMs 5, 13, 13.1, and 94 as providing evidence on a going forward basis.

IURC Guidance To Parties

It is expected that the third-party OSS peak and stress tests will provide some indication of whether SBC/Ameritech systems are capable of handling commercial volumes of orders, as well as commercial volumes of pre-ordering, provisioning, and maintenance &

repair transactions prior to the possible granting of 271 authority in Indiana. Parties should discuss the need for billing capacity and volume tests in the Indiana Remedy Plan, as well. Examples of such capacity tests (for all five types of OSS) include, but are not necessarily limited to, an identification of actual, existing capacity and potential choke points; and peak and stress tests against some pre-defined “normal” volume standard.

5.2 Principle No. 17

Principle No. 17 The remedy plan will establish minimum service quality levels below which penalties will apply. The remedy plan will include a mechanism for defining minimum service quality standards for particular performance measures where those standards are not already defined under Indiana law.

Ameritech Plan	CLECs’ Plan
Parity with a floor is discriminatory in that CLECs will receive better service than SBC/Ameritech’s own customers	Supports parity with a floor for key measures. A floor (and source citation) is proposed for each key PM
Converts parity PMs to benchmarks	Remedies vary by how badly the floor is missed
Not contemplated as part of TA 96	Gap closure plan for PMs where performance is 10% worse than floor, plan presented by CEO to IURC and affected CLECs

IURC Guidance To Parties

Upon further review, for purposes of the initial performance plan, the IURC is not inclined to adopt the CLEC’s recommendation of “parity with a floor” for parity measures. Parties, however, are encouraged to report to the Commission as part of the review process established by the plan on the need for new or revised benchmarks either in lieu of, or in addition to, parity measures to assure that CLECs are receiving performance from Ameritech at a level sufficient to allow appropriate entry into the market.

5.3 Principle No. 18

Principle No. 18 The remedy plan will provide for a method of determining whether performance measures are being satisfied. If statistical methods are used to determine if performance in a particular area is “in parity,” a system designed to balance both type 1 and type 2 errors must be included as a part of the plan. Techniques including, or similar to, “stare and compare” will be used for performance measures with a benchmark standard. A detailed rationale must be used if statistical analysis is used for performance measures with a benchmark standard.

Ameritech Plan	CLECs’ Plan
Uses modified z test for PMs with more than 30 transactions (disaggregated) Uses permutation tests for PMs with fewer than 30 transactions Z-test uses a 95% confidence level. This is supplemented by a K table to mitigate the remaining 5% error rate Agreed to statistical methodology would be applied to benchmarks as well as parity measures	Proposes error balancing for parity measures No statistical analysis of benchmarks

IURC Guidance To Parties

Upon further reflection, and given the lengthy and contentious discussions regarding the statistical methodology to be used during the independent 3rd party OSS test for Indiana, the IURC believes that a compromise that uses an approach similar to the one taken in the Colorado Special Master’s report (Attachment B to the Commission’s September 11, 2001, Initial Order in Cause No. 41657) would be appropriate. The K-table was eliminated and, for medium and low weight PMs, substituted with higher critical z values for larger sample sizes. The higher z values grew in a stepwise function as the sample size increased. Most PMs share the same step function, but some PMs related to high-value, low occurrence transactions such as DS-1s and DS-3s have their own step function. Parties are asked to provide their views on which, if any, PMs should have a separate step function.

Tier I.A (high priority) PMs are treated differently as these PMs are the most critical and are of particular importance to small competitors. For these PMs, the Colorado plan suggests taking the prior six months retail performance and using a “slack factor” to modify the benchmark. The slack factor approaches 0, as the sample size gets larger. See Attachment C to the Commission’s September 11, 2001, Initial Order in Cause No. 41657 (which is Appendix A of the Colorado report) for details. The parties are invited to consider several issues: 1) does the moving six-month window adequately take into account seasonal variations? 2) How should the slack factor be set so as to mitigate the effect of small sample sizes?

No statistical tests will be applied to benchmarks.

5.4 Principle No. 28

Principle No. 28 The Commission is leaning toward allowing accrual of Tier I.X. and Tier I.Y.1. penalties for a particular CLEC to begin twenty business days after that CLEC indicates in writing to the IURC and to SBC/Ameritech that it intends to enter into the plan, but not earlier than the PMR tests in the independent 3rd party OSS test for Indiana have been completed for the performance measure(s) in question. However, the Commission needs more information on the process and timing of SBC/Ameritech's collection and analysis of metrics data to determine if this is feasible.

The Commission is leaning toward allowing accrual of Tier I.Y.2. and Tier II. penalties to begin twenty business days after the first CLEC indicates in writing to the IURC and to SBC/Ameritech that it intends to enter into the plan, but not earlier than the PMR tests in the independent 3rd party OSS test for Indiana have been completed for the performance measure(s) in question. However, the Commission needs more information on the process and timing of SBC/Ameritech's collection and analysis of metrics data to determine if this is feasible.

[NOTE: This Principle was modified.]

Ameritech Plan	CLECs' Plan
Tier 2 penalties effective on approval of plan by IURC CLECs become eligible for Tier 1 upon approval or amendments to their interconnection agreements Not explicitly stated: do Tier 1 penalties begin accruing from plan approval or amendment implementation? See principle 27	Accrual and payment take effect when the plan is approved by IURC

The performance plan operates in a broader context than just the section 271 public policy requirements. It is part of the larger scheme to assure that market opening requirements of sections 251 and 252, as well as sections 271 and 272, are effective. Thus, the remedy plan is not contingent on FCC action.

As the Georgia Public Service Commission stated in its order directing the adoption of a wholesale performance plan:

BellSouth maintains that remedies should only be adopted to prevent backsliding once BellSouth has entered the long distance market. Yet avoiding backsliding is only one of the purposes served by a remedy plan. By delaying adoption of a penalty plan until BellSouth enters the long distance market, the Commission would forego the opportunity to enable more rapid development of competition. An appropriate penalty plan will further encourage BellSouth to provide nondiscriminatory service during the critical early stages of competition, while providing some compensation to CLECs for the additional costs they incur when BellSouth's performance falls short...

The Commission is leaning toward allowing accrual of Tier I.X and the CLEC portion of Tier I.Y (Tier I.Y.1.) penalties for a particular CLEC to begin twenty business days after that CLEC indicates in writing to the IURC and to SBC/Ameritech that it intends to enter into the plan, but not earlier than the PMR tests in the independent 3rd party OSS test for Indiana have been completed for that performance measure. However, the Commission needs more information on the timing of SBC/Ameritech's collection and analysis of metrics data to determine if this is feasible. To be specific, Tier I.X. and Tier I.Y.1. penalties can be assessed and collected beginning in {{MONTH/YEAR = TBD}}, for performance data that were collected beginning in {{MONTH/YEAR = TBD}}.

The Commission is leaning toward allowing accrual of the State of Indiana or dedicated fund portion of Tier I.Y. penalties (Tier I.Y.2. penalties) and Tier II penalties to begin twenty business days after the first CLEC indicates in writing to the IURC and to SBC/Ameritech that it intends to enter into the plan, but not earlier than the PMR tests in the independent 3rd party OSS test for Indiana have been completed for that performance measure. However, the Commission needs more information on the timing of SBC/Ameritech's collection and analysis of metrics data to determine if this is feasible. To be specific, Tier I.Y.2. and Tier II penalties can be assessed and collected beginning in {{MONTH/YEAR = TBD}}, for performance data that were collected beginning in {{MONTH/YEAR = TBD}}.

The accrual of penalties shall not be conditioned on any further CLEC actions or behavior, including (but not limited to) signing of an amendment to an interconnection agreement. Penalties accruing, but not paid, for more than 30 days while additional agreements are being entered into or modified shall be subject to interest payments.

5.5 Principle No. 30

Principle No. 30 The remedy plan should have a simple mechanism that CLECs will use to enter into the plan. It should not take a long time or require extensive negotiations for a CLEC to enter into the remedy plan.

Ameritech Plan	CLECs' Plan
<p>Describes entry process as through a generic three-page amendment to each CLEC's interconnection agreement</p> <p>No information about the length of the amendment process.</p> <p>The implication is that Tier 1 penalties do not begin to accrue until amendment is complete.</p> <p>States IURC's review and approval of each individual amendment should be a painless and swift formality.</p> <p>Says nothing about precursor steps needed to get amendment to the IURC.</p>	<p>Entry through written notice of accession from the CLEC to SBC/Ameritech and the IURC.</p>

IURC Guidance To Parties

A CLEC's assent to the approved and effective Indiana Remedy Plan shall become effective 20 business days after a letter of notification is sent from the CLEC to the IURC and SBC/Ameritech. Penalties shall begin to accrue from this effective date. Any required modification to the interconnection agreement is done separately and does not affect when the clock starts to run for penalty purposes.

SBC/Ameritech cannot condition participation in the remedy plan on any requirement not specified in the Indiana performance remedy plan or approved by the IURC.

6. NEXT STEPS FOR THE COLLABORATIVE

Within two weeks of the issuance of the Order to which this document is attached, Mr. John Kern is directed to conduct an organizational meeting of the Indiana Collaborative. The purpose of this meeting will be to discuss the process, scope, and schedule to be used in the completion of the Indiana Remedy Plan. Based on the information available to the IURC, we believe the deadlines and schedules in this and other sections of this document are reasonable. Absent compelling arguments to the contrary, these time frames will serve as the basis for planning during this initial, organizational remedy plan meeting. While parties can raise scheduling or procedural issues during the meeting, it will be helpful to submit them in writing to the Collaborative prior to the meeting.

The IURC finds that neither the SBC/Ameritech nor the CLEC remedy plans, as filed, completely satisfies the requirements or expectations of the IURC. The IURC expects the parties to work together to devise an acceptable plan. The structure of the plan to be developed shall generally follow the structure of the Ameritech plan and related documents, filed on February 9, 2001, in Cause No. 41657, and as discussed below. The IURC chose to use Ameritech Indiana's February 9, 2001, remedy plan as the starting point for discussions because the structure and format of the Ameritech plan appear to be easier to edit than the structure and format of the CLEC plan; the Commission's decision is not intended as an assessment or evaluation of the specific content of either plan. More to the point, while the IURC generally supports the structure and format of the SBC/Ameritech remedy plan as a starting point for discussion, the Commission does not necessarily support the content of that plan. This does not preclude the use of section or subsection headings from the CLEC plan, if consistent with this Attachment, and the Commission's Orders and guidance.

The parties should begin their discussion from the structure and format of the SBC/Ameritech plan as embodied in the following attachments to Ameritech Indiana's Submission of Performance Remedy Plan [February 9, 2001], subject to the explanatory comments shown below:

- ?? **AIT Indiana Remedy Plan Description - Ex. A** (The Commission generally believes that the subject headings, and the headings of some of the subsections, may provide a convenient way to organize the structure of the remedy plan that it is asking the parties to develop. The Commission expects parties to add new sections and subsections for which no section or subsection headings currently exist, in order to accommodate the IURC's 44 Principles and guidance. Parties may also need to delete or modify existing headings.)
- ?? **Appendix 1 - Indiana 271 Performance Measure Business Rules** [as modified to reflect their current status, and subject to further modification. See Principles No. 4 and 5 for further guidance.]
- ?? **Appendix 1/Appendix Three** [Remedy Document for Collocation]: Parties should discuss whether, and to what extent, this should be applicable to SBC/Ameritech for the Indiana Remedy Plan.

?? Appendix 1/Appendix Four [Flow-Through]: Parties should discuss whether, and to what extent, this should be applicable to SBC/Ameritech for the Indiana Remedy Plan, in light of their recent agreement to delete this appendix from the 5-state business rules. In the event parties agree to also delete this appendix from the Indiana Remedy Plan, they should discuss and recommend a replacement mechanism for making the CLECs (and other parties) and the Commission aware of the historical and current flow-through requirements and agreements for SBC/Ameritech in, or for, the state of Indiana.

?? AIT Remedy Plan Appendix 2 (Tier I, Tier II, and PM weighting categorization)

Parties should discuss whether, and to what extent, this should be applicable to SBC/Ameritech for the Indiana Remedy Plan, including possible modifications.

?? AIT Remedy Plan Appendix 3 (per measure and per occurrence categorization)

Parties should discuss whether, and to what extent, this should be applicable to SBC/Ameritech for the Indiana Remedy Plan, including possible modifications.

The intent of the IURC is that the parties take the skeletal structure of the SBC/Ameritech plan and modify it in light of the revised principles and, where applicable, in light of the Commission's guidance in this Attachment and other related IURC remedy plan requirements or guidance (if any). Where all parties believe that a section or subsection of the SBC/Ameritech remedy plan complies with the Commission's requirements and, as applicable, with the Commission's guidance, they may incorporate that section(s) or subsection(s) into the parties' recommended Indiana Remedy Plan. Where parties cannot reach agreement to use an existing section or subsection "as is," they should modify it in light of the Principles and, as applicable, the guidance provided in this document until all parties agree. Where issues arise that cannot be readily incorporated into the existing structure and format of the proposed SBC/Ameritech remedy plan, new section or subsection headings shall be added and the agreed-upon language incorporated into those sections of the Indiana Remedy Plan. In the event that parties are unable to reach agreement on certain specific language for the proposed Indiana Remedy Plan, they shall so notify the Commission, subject to the procedural schedule to be set later by the Commission.

6.1 Minimum Set of Expected Deliverables/Work Product from the Indiana Remedy Plan Collaborative

Following is the minimum documentation set that the Commission expects the Collaborative to provide:

Within five days of the initial, organizational Collaborative session, Parties should formally notify the Commission of:

- ?? Their agreement or disagreement with the Commission's assessment of the apparent level of agreement or disagreement between the SBC/Ameritech and CLEC plans, as currently filed.
- ?? Any impediments to reaching expeditious agreement on the "Principles . . . Substantial Agreement" and the "Principles . . . Minor Disagreement."

Prior to the trial run, the Collaborative should submit the following minimum set of documents to the Commission and all parties to this proceeding, via the Commission's 271 e-mail distribution list [Ameritech271@urc.state.in.us]:

- ?? Detailed, agreed-upon language for implementing those principles to be completed during or after the trial run, and, where applicable, the related IURC guidance. As currently shown on Table 3 (Section 6.3.6), this includes, but is not necessarily limited to, Principles No. 1, 2, 3, 6, 8, 10, 17, 19, 20, 21, 23, 24, 25, 30, 44, and 45; as well as portions of Principles No. 4, 38, and 40; plus the first (pre-trial run) iterations of Principles No. 11 and 12. This could also include Principles No. 5, 7, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 42, or 43 (either in whole or in part).
- ?? Agreed-upon responses to all IURC questions, concerns, and tasks that are to be completed prior to the trial run.
- ?? An agreed-upon trial run plan.
- ?? Clear, detailed identification and explanation of disputed and unresolved issues.
- ?? Clear, detailed requests for IURC action (if any).

Following the trial run, the Collaborative should submit to the Commission and all parties to this proceeding, via the Commission's 271 e-mail distribution list [Ameritech271@urc.state.in.us], and formally file with the Commission:

- ?? Detailed, agreed-upon language for implementing those principles to be completed during or after the trial run, and, where applicable, the related IURC guidance. As currently shown on Table 3 (Section 6.3.6), this includes, but is not necessarily limited to, Principles No. 9, 13, 14, 15, 16, 18, 22, 37, 39, 41, 46, as well as portions of Principles No. 4, 38, and 40, plus subsequent (post-trial run) iterations of Principles No. 11 and 12. This could also include Principles No. 5, 7, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 42, or 43 (either in whole or in part).

- ?? Detailed, agreed-upon responses to all IURC questions, concerns, and tasks that are to be completed during and after the trial run.
- ?? A final, agreed-upon and jointly-recommended baseline Indiana Remedy Plan, incorporating any revisions based upon the results of the trial run.
- ?? Clear, detailed identification and explanation of disputed and unresolved issues.
- ?? Clear, detailed requests for IURC action (if any).

Following is a more detailed list of tasks, plus a proposed “high-level” time table.¹⁷ Subsequent to the initial organizational remedy plan collaborative meeting, parties will be expected to complete these tasks and to advise the Commission of their responses (including, but not necessarily limited to, specific agreed-upon language for the Indiana Remedy Plan). If parties are able to reach a consensus, they should file a joint motion or joint petition to that effect with the Commission, containing the unified response(s). If parties cannot reach agreement, they should file separately. After reviewing these separate filings, the Commission will notify the parties whether it will accept responsive filings.

6.2 Tasks To Be Completed within Five Business Days of the Initial Organizational Remedy Plan Collaborative Meeting

The following are tasks that must be completed within five days of the Collaborative meeting described above:

1. Review the summaries of the parties’ positions in this document and advise the IURC if any are incomplete or inaccurate.
2. Review principles in the “substantial agreement” category and raise any issues that will prevent expeditious agreement.
3. Review principles in the “minor disagreement” category and raise any issues that will prevent agreement with a reasonable amount of discussion.

6.3 Tasks To Be Completed within 90 Calendar Days of the Initial Organizational Remedy Plan Collaborative Meeting

The following are tasks that must be completed within 90 calendar days of the initial Collaborative meeting, described above:

6.3.1 General

4. Once language has been agreed to, parties should attempt to determine how the remedy plan details will be fleshed out and documented. How will the remedy plan be written and presented to the IURC? In previous collaboratives, SBC/Ameritech has taken

the lead in drafting documents. Other parties have submitted comments; Ameritech has issued subsequent drafts incorporating much of the feedback, etc., in an iterative process. Another possible approach would be to form a Joint Drafting Team consisting of representatives from a subset the parties. At a minimum, parties should discuss these approaches. Parties are free to discuss other approaches, as well. The Commission believes that the use of joint progress reports and joint motions has worked well in the past for informing the Commission of the progress of various collaborative discussions and for making final recommendations, respectively. The parties should discuss these two approaches and provide recommendations to the Commission, either supporting or opposing the use of joint progress reports and joint motions. If parties oppose the use of these types of documents, they must recommend a specific alternative(s) and provide detailed support for their alternative recommendation(s). Note that the IURC expects this discussion will be done by the Collaborative concurrently with both preparation for, and execution of, the trial run.

6.3.2 Tasks Related to Areas of Apparent Minor Disagreement Between the SBC/Ameritech and CLEC Plans, as Currently Filed

5. What should be the standard format for penalty settlement documentation? (Principles 25, 31)

[NOTE: Additional information regarding the Task in Section 6.2.2 appears in Section 3.]

6.3.3 Tasks Related to Areas of Apparent Significant Disagreement Between the SBC/Ameritech and CLEC Plans, as Currently Filed

6. Review principles in the “significant disagreement” category and collaborate to resolve issues and report back with agreements and unresolved issues.
7. The Commission believes that CLECs should have the right to request mini-audits. The parties should discuss Ameritech’s proposed limitations and conditions and attempt to reach a compromise. (Principle 4)
8. There are certain products and services - *e.g.* collocation, DS-1s and DS-3, which, though the demand is small (if calculated by simply counting the number of collocation spaces or circuits requested by an individual CLEC), represent critical areas for the CLECs. What are the associated PMs and how should penalties for shortfalls in performance be structured? (Principles 6, 7)
9. Propose mechanisms for the detection of mode of entry discrimination. (Principles 7, 12)
10. Attempt to categorize performance measures into high, medium and low categories. (Principles 6, and 7)
11. Devise language for events that may warrant mitigation. (Principle 19a)
12. Review approaches developed in the ROC and in Colorado and propose mechanisms for statistical mitigation. ROC documentation is located at http://www.nrri.ohio-state.edu/oss/Post271/Post271/final_report.pdf . Appendix A to the Colorado Special Master’s Report is labeled Attachment C to the IURC’s September 11, 2001, Initial Order in Cause No. 41657). (Principle 19b)
13. In light of interconnection agreements that may exist between SBC/Ameritech and CLECs, should Principle 37 be strengthened? If so, how?

14. Discuss and recommend an appropriate level for a procedural cap (The procedural cap must be at least 36%), plus triggers and procedures for increasing the procedural cap and for decreasing the procedural cap (to no lower than 36%). In light of decisions and experiences in other jurisdictions, is it appropriate to set the procedural cap above 36%? (A more detailed set of questions appears in Principle 29).
 15. If caps or other triggers are hit, what will be the expedited process to be used for the follow-up steps?
 16. For penalty payment purposes, whether by bill credits or check, what is the appropriate CLEC identification code to support per-account tracking of penalties? What is the appropriate level of disaggregation for effective association of penalties-to-performance shortfalls? ACNA? CIC? OCN? BAN? Other? (Principle 31)
 17. CLECs are requested to provide specific clarification on whether escalation applies to both Tier I and Tier II remedies in their plan. In addition to the general request for parties to review the Commission's summaries of their respective plans and positions. (Principle 33, CLEC summary)
 18. Parties should comment on the relationship between performance variations for disaggregation within a particular performance measure and the escalation and root cause analysis schedules set forth herein. (Principle 33)
 19. CLECs are requested to provide specific clarification on whether escalation applies to both Tier I and Tier II remedies in their plan. In addition to the general request for parties to review the Commission's summaries of their respective plans and positions. (Principle 34, CLEC summary)
- [NOTE: Additional information regarding the Tasks in Section 6.2.3 appears in Section 4.]

6.3.4 Tasks Related to Principles for Which Both the Principles and the Guidance Have Been Taken off the Table

20. Review principles and guidance that are "off the table" and attempt to craft mutually acceptable language in line with the IURC's firm guidance or be prepared to accept language of the IURC's devising.
 21. Under the ROC and Colorado plans, most PMs share the same modified z test step function, but PMs related to Local Interconnection Service (LIS) trunks, Unbundled Digital Interconnection Trunks (UDITs), DS-1s, and DS-3s have their own step function. Parties are asked to provide their views on which, if any, Indiana PMs should have a separate step function. (Principle 18)
 22. Parties should discuss the need for billing capacity and volume tests, as well. Examples of such capacity tests (for all five types of OSS) include, but are not necessarily limited to, an identification of actual, existing capacity and potential choke points; or peak and stress tests against some pre-defined "normal" volume standard. (Principle 13)
- [NOTE: Additional information regarding the Tasks in Section 6.2.4 appears in Section 5]

6.3.5 Additional Tasks**6.3.5.1 Trial Run-Related Tasks**

23. Devise procedures for acquiring the necessary performance data and perform a trial run of a plan meeting the criteria outlined in this document within 90 calendar days of the initial organizational collaborative meeting.
24. Agree on an implementation of a plan meeting the criteria of this document in enough detail to allow the trial runs to be performed. Discuss and resolve any other issues that need to be resolved prior to the development of the implementation plan for the trial run.

6.3.5.2 Remedy Plan Implementation-Related Tasks

25. Define how to categorize a “small” CLEC for penalty purposes in Indiana. (Section 4, principle 6)
26. Define the minimum penalty for each PM to apply to small CLECs. (Section 4, principle 6)
27. Discuss how bridge funding will be provided initially to the special fund. (Section 1.4)
28. Discuss and resolve whether the Colorado approach would effectively account for seasonal variation in Indiana. Are the “slack” factors used reasonable? (Section 1.4, principle 19b. See, also, Attachment C to the September 11, 2001, Initial Order in Cause No. 41657.)
29. Discuss data storage requirements (Principle 14) in light of language in the Colorado report. (Section II.A. (2))
30. Discuss how small misses at high volumes and large misses at low volumes should be dealt with. (Principle 34)
31. Comment on the governance structure for the performance measures subject to remedies and the associated **remedy plan** change management process. Note that there are at least two classes of events that trigger the CMP: 1) adding changing, deleting remedies, business rules, disaggregations, etc., to be used in conjunction with the remedy plan, and 2) changes to the remedy plan, itself. Comment on how these types of changes are to be managed. (Principles 38-44)
32. Discuss the need for changes to the 13-State CMP in the context of the Indiana Remedy Plan. See, for example, the second bullet of Section 1.7.
33. Parties should discuss whether the three-month and six-month processes provide adequate notification to parties other than SBC/Ameritech of possible changes to performance measures and business rules and adequate opportunity for all interested parties other than SBC/Ameritech to participate in developing and implementing those changes, or whether one or both processes need to be supplemented or modified for use with the Indiana Remedy Plan.
34. The parties are to discuss what additional CMP documents, guidelines, or requirements (other than the FCC Thirteen State CMP) should also be given “baseline” status – *e.g.*, accessible letters, CLEC User Forum documents or requirements, etc. The parties should

advise the Commission of the results of those discussions and of any recommendations, and disputed issues. The parties should also discuss, and advise the Commission, whether and how to incorporate changes to these other CMP documents, guidelines, or requirements in the baseline CMP for the Indiana Remedy Plan. (Section 1.7)

35. The parties should discuss and advise the Commission of the impact of the nature (voluntary vs. non-voluntary) of the Indiana Remedy Plan on the change management mechanism of that plan. For example, would Ameritech's change management obligations be different under a voluntary plan than under a non-voluntary plan. (Section 1.7, Principle 29)
36. Parties should discuss the relationship, if any, that exists between Ameritech's OSS change management requirements and procedures and its obligation [under Section 251(c)(5) of TA-96 and related FCC requirements] to provide CLECs with "notice of changes." Parties should advise the Commission on the results of those discussions.
37. Parties should discuss and propose a process for modifying the set of performance measures to be included in the Indiana Remedy Plan. At a minimum, parties should address the following questions and should provide a response to the Commission: Should the regional six-month review process (including both the three-month status discussions and the more comprehensive six-month review meetings) be used to develop and implement possible modifications to this list of performance measures for the Indiana Remedy Plan? If the regional six-month review process is maintained, is there a need for separate, Indiana-specific collaborative meetings or discussions? For how long is each party willing to commit to actively participating in this process? What procedures are appropriate for developing and implementing possible modifications to this list of performance measures to be used for the Indiana Remedy Plan, in the event that the regional six-month review process is discontinued or modified? What items from the Section 271 checklist and from Section 251 (and applicable FCC orders and rules, and judicial opinions) are relevant to the Indiana Remedy Plan? How will the PMs be mapped to the 271 checklist items and to Section 251 requirements? (Principle No. 5)
38. The parties should discuss and develop reporting requirements and formats for reports to include, but not be limited to:
 - ?? Trial run reports
 - ?? Reports from CLECs alleging harm
 - ?? Reports from SBC/Ameritech regarding penalties that have been: (1) assessed or calculated, (2) paid, (3) withheld, and/or (4) disputed
 - ?? Escalator and multiplier reports
 - ?? Root cause analysis reports
39. The Commission is leaning toward requiring SBC/Ameritech to develop performance measurements and business rules for special access to include in the Indiana Remedy Plan. However, the Commission does not have enough information to reach a final decision. Parties are required to discuss, at a minimum: (1) issues pertaining to Ameritech's performance in providing special access to CLECs,

(2) appropriate performance measures and business rules, and (3) appropriate remedies and penalties for missing those standards. In addition, CLECs should be prepared to discuss specific concerns regarding Ameritech's allegedly poor performance. SBC/Ameritech, in turn, should be prepared to discuss ways of resolving those concerns. The Commission will consider the results of these discussions in deciding whether to formally require the development and implementation of performance standards for SBC/Ameritech's provision of special access and/or remedies for poor performance. This list of issues is for illustrative purposes and is not exhaustive. (Principle No. 7)

40. The baseline (potential) remedy and penalty amounts under the various tiers may need to be changed at some point in the future. Parties should discuss and propose a process for reviewing and, potentially, proposing changes (either increases or decreases) to the Commission regarding baseline remedy and penalty amounts. (Principle No. 4)
41. The baseline (potential) multiplier factors and tables for the various tiers may need to be changed at some point in the future. Parties should discuss and propose a process for reviewing and, potentially, proposing changes (either increases or decreases) to the Commission regarding baseline remedy and penalty amounts. (Principles No. 33 and 34)
42. Parties should discuss whether, and to what extent, Ameritech Indiana's February 9, 2001, "Appendix 1/Appendix Three" collocation remedy document should be included in the Indiana Remedy Plan [Sections 1.5 and 6].
43. Parties should discuss whether, and to what extent, Ameritech Indiana's February 9, 2001, "Appendix 1/Appendix Four" flow-through document should be included in the Indiana Remedy Plan, in light of their recent agreement to delete this appendix from the 5-state business rules. In the event parties agree to also delete this appendix from the Indiana Remedy Plan, they should discuss the need for a replacement mechanism for making the CLECs (and other parties) and the Commission aware of the historical and current flow-through requirements and agreements for SBC/Ameritech in, or for, the state of Indiana and make any appropriate recommendations to the Commission [Sections 1.5 and 6].
44. Parties should discuss whether, and to what extent, Ameritech Indiana's February 9, 2001, "Appendix 2" document (Tier I, Tier II, and PM weighting categorization) should be included in the Indiana Remedy Plan [Sections 1.5 and 6].
45. Parties should discuss whether, and to what extent, Ameritech Indiana's February 9, 2001, "Appendix 3" document (per measure and per occurrence categorization) should be included in the Indiana Remedy Plan [Sections 1.5 and 6].
46. Parties should discuss enumerated issues and questions regarding the level and calculation of the procedural cap [See guidance for Principle No. 29 for more details.]

6.3.6 Table Summarizing Tasks and Their Timing Relative to the Trial Run

Table 3, below, summarizes the IURC's best estimate of the timing and sequencing of the numbered tasks from sections 6.2 and 6.3, given the information currently available to the Commission.

Table 3

Task	Timing
1.	Before trial run
2.	Before trial run
3.	Before trial run
4.	Before and during trial run
5.	Before, during, or after trial run
6.	Before trial run
7.	Before, during, or after trial run
8.	Before trial run
9.	During and after trial run
10.	Before trial run
11.	Before trial run, modify in light of trial run
12.	Before trial run, modify in light of trial run
13.	During or after trial run
14.	During and after trial run
15.	After trial run
16.	After trial run
17.	Before trial run
18.	During or after trial run
19.	Before trial run
20.	Before trial run
21.	Before trial run
22.	During or after trial run
23.	Before trial run
24.	Before trial run
25.	Before trial run
26.	Before or during trial run
27.	Before or during trial run

28.	Before or during trial run
29.	Before, during or after trial run
30.	Before trial run
31.	Before, during, or after trial run
32.	Before, during, or after trial run
33.	Before, during, or after trial run
34.	Before, during, or after trial run
35.	Before, during, or after trial run
36.	Before, during, or after trial run
37.	During or after trial run
38.	First bullet before trial run, others during or after trial run
39.	During or after Trial Run
40.	Before and during trial run
41.	During or after trial run
42.	Before or during trial run
43.	Before or during trial run
44.	Before trial run
45.	Before trial run
46.	During or after trial run

7. COMPLETE LIST OF ALL PRINCIPLES (INCLUDING MODIFICATIONS)

The list below contains all the principles to be incorporated into the Indiana Remedy Plan. NOTE: In some cases the text of a principle may have changed; in other cases, guidance from the IURC has altered the scope or implementation direction of the principle. A summary of changes can be found in Section 1.8.5, Table 2.

Remedy Plan Structure

Principle No. 1 Oversight of the remedy plan and the performance measures supporting the plan will ultimately rest with the IURC.
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Principle No. 2 The remedy plan should adjust in a timely and efficient way to changing market conditions.

Principle No. 3 The remedy plan should contain measures and penalties for all relevant points of the 14-point checklist.

Principle No. 4 The remedy plan will clearly and unambiguously support the five factors identified by the FCC in its Bell Atlantic New York and SBC Texas orders. These five factors are: (1) Potential liability that provides a meaningful and significant remedy to comply with the designated performance standards; (2) Clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) A reasonable structure that is designed to detect and sanction poor performance when it occurs; (4) A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and (5) Provide reasonable assurances that the reported data are accurate. The remedy plan should not include a fixed termination date. The remedy plan should not assume an unchanging list of PMs over the life of the plan. The plan will include criteria and procedures to add, delete, or modify the PMs used in the plan.

Principle No. 5 The remedy plan should not include a fixed termination date. The remedy plan should not assume an unchanging list of performance measures (“PMs”) over the life of the plan. The plan will include criteria and procedures to add, delete, or modify the PMs used in the plan.

Principle No. 6 The remedy plan should be neutral as to the various entry strategies (resale, UNEs, interconnection, collocation, and other non-UNE facilities) that competitive carriers are likely to use in entering the local exchange market.

Principle No. 7 The remedy plan will treat the selection of PMs and the weight of the PMs, in such a way as to maintain neutrality with respect to mode of entry (resale, UNEs, interconnection, collocation, and other non-UNE facilities). If a mode of entry is not represented in the set of PMs then anti-competitive behavior with respect to that mode of entry might not be detected. Similarly, the way the PMs are weighted and the way their populations are sampled should be structured to not discriminate against a mode of entry.

Principle No. 8 The Indiana Remedy Plan should give the IURC explicit authority to reallocate the monthly distribution of penalty payments between the change management/change control portion of the plan and other portions of the plan.

Performance Measures

Principle No. 9 The remedy plan will include, but not be limited to, the measures, metrics and business rules that are developed, tested, and audited as part of the third party testing of operational support systems for Ameritech Indiana. The Indiana Remedy Plan may also include certain measures, metrics, and business rules that the IURC may approve or require either subsequent to the completion of, or outside the scope of, the independent 3rd party OSS test for Ameritech Indiana. All the performance measures to be included in the Indiana Remedy Plan will be clearly articulated and encompass a comprehensive range of carrier-to-carrier performance. Where Indiana-specific goals and criteria are not compromised, performance measures or metrics may be common across SBC/Ameritech states. The Indiana Remedy Plan should specify how, if two or more PMs measure the same underlying performance or function, the PMs should be counted for penalty calculations.

Principle No. 10 The remedy plan should include performance measures and penalties regarding the availability, functionality, and quality of SBC/Ameritech's front-end/front-office and back-end/back-office systems.

Principle No. 11 The remedy plan will establish standards and measurements for "network performance." There should be at least two broad categories of measurements and associated penalties: (1) insufficient trunk capacity, high trunk blockage levels, or excessive trunk provisioning intervals and (2) excessive collocation provisioning intervals.

Principle No. 12 The remedy plan will contain penalties for discrimination against any CLEC or class of CLECs based upon mode of entry (resale, UNEs, collocation, interconnection, or other non-UNE facilities). These penalties should be in addition to any other penalties contained in the remedy plan.

Principle No. 13 The remedy plan should contain performance measures and penalties pertaining to the general ability of SBC/Ameritech to handle commercial volumes of CLEC traffic prior to the granting of 271 authority for Indiana. Issues that should be considered include the pre-271 scalability of SBC/Ameritech's facilities, equipment, systems, software, processes, etc.

Principle No. 14 Raw data underlying a performance measure should be stored in a secure, stable, redundant, and auditable manner – *e.g.*, as regards format and storage medium. All raw data files (both original and back-up(s)) should be maintained for at least three years.

Principle No. 15 The remedy plan will contain a quality control/quality assurance mechanism(s) to ensure that the reported performance and penalty data and results are accurate. At a minimum, this quality control/quality assurance mechanism(s) will include a well-defined method to permit auditing of both data and results. All such audit data and results will be disclosed publicly, subject to appropriate procedures (as required under Indiana law) to protect any data or results that the Commission finds to be confidential, proprietary, or a trade secret.

Principle No. 16 The remedy plan may contain diagnostic measures, where appropriate, to further identify problem areas and to allow for fine tuning of the performance measure standards in future proceedings.

Service Quality Criteria

Principle No. 17 The remedy plan will establish minimum service quality levels below which penalties will apply. The remedy plan will include a mechanism for defining minimum service quality standards for particular performance measures where those standards are not already defined under Indiana law.

Analytic Criteria

Principle No. 18 The remedy plan will provide for a method of determining whether performance measures are being satisfied. If statistical methods are used to determine if performance in a particular area is “in parity,” a system designed to balance both type 1 and type 2 errors must be included as a part of the plan. Techniques including, or similar to, “stare and compare” will be used for performance measures with a benchmark standard. A detailed rationale must be used if statistical analysis is used for performance measures with a benchmark standard.

Principle No. 19a Where mitigation or “forgiveness” for Acts of God is desired, the remedy plan should identify and fully explain, at a minimum: (1) specific measurements, metrics, or other circumstances to which or under which mitigation or forgiveness would be applied); (2) clearly stated rationale and assumptions for why mitigation is appropriate), (3) the amount or level of mitigation/forgiveness to be applied; and (4) what criteria will be used to determine what that level of mitigation or “forgiveness” should be.

Principle No. 19b Where mitigation or “forgiveness” for statistical artifacts is desired, the remedy plan should identify and fully explain, at a minimum: (1) specific measurements, metrics, or other circumstances to which or under which mitigation or forgiveness would be applied; (2) clearly stated rationale and assumptions for why mitigation is appropriate; (3) the amount or level of mitigation/forgiveness to be applied; and (4) what criteria will be used to determine what that level of mitigation or “forgiveness” should be.

Principle No. 20 Initially, the resale performance measurements to be used in the Indiana Remedy Plan will include the same geographic disaggregations that are used in the independent 3rd party OSS test for Indiana.

Principle No. 21 Initially, the UNE, interconnection, and collocation performance measurements to be used in the Indiana Remedy Plan will include the same geographic disaggregations that are used in the independent 3rd party OSS test for Indiana.

Principle No. 22 The remedy plan must contain measures and penalties for xDSL and other advanced services.

Principle No. 23 The remedy plan will contain a mechanism to permit changes to the plan to accommodate nascent or emerging services, elements, and functionalities provided to CLECs.

Principle No. 24 The remedy plan will provide means to ensure that the reported performance and penalty data and results are publicly disclosed, subject to appropriate procedures (as required under Indiana law) to protect any data or results that the Commission finds to be confidential, proprietary, or a trade secret.

Principle No. 25 The remedy plan should propose a mechanism for resolving disagreements regarding the format of the raw data to be shared between SBC/Ameritech and the CLECs in a timely and efficient way.

Enforcement Mechanism

Principle No. 26 The remedy plan will have a manageable enforcement structure for the IURC.

Principle No. 27 The remedy plan and its associated penalties must be legally enforceable and under the control of the IURC.

Principle No. 28 The Commission is leaning toward allowing accrual of Tier I.X. and Tier I.Y.1. penalties for a particular CLEC to begin twenty business days after that CLEC indicates in writing to the IURC and to SBC/Ameritech that it intends to enter into the plan, but not earlier than the PMR tests in the independent 3rd party OSS test for Indiana have been completed for the performance measure(s) in question. However, the Commission needs more information on the process and timing of SBC/Ameritech's collection and analysis of metrics data to determine if this is feasible.

The Commission is leaning toward allowing accrual of Tier I.Y.2. and Tier II. penalties to begin twenty business days after the first CLEC indicates in writing to the IURC and to SBC/Ameritech that it intends to enter into the plan, but not earlier than the PMR tests in the independent 3rd party OSS test for Indiana have been completed for the performance measure(s) in question. However, the Commission needs more information on the process and timing of SBC/Ameritech's collection and analysis of metrics data to determine if this is feasible.

Principle No. 29 The remedy plan will clearly identify any proposed absolute exclusions or caps, as well as any associated assumptions or calculation methodologies. All absolute exclusions and caps in the Indiana CLEC performance remedy plan must be approved by the IURC prior to the IURC's approval of the remedy plan. In those instances where absolute caps are proposed, the plan must (1) describe what happens when the cap is reached (do the penalties continue to accrue or not, is there an escrow account, etc.); (2) explain why penalties should no longer be assessed and/or paid if the associated poor performance has not been corrected or the associated performance standard has not been met; (3) trigger a review of the underlying reason(s) for the performance and for reaching the cap, and (4) trigger a review of the level of the absolute cap in question.

Principle No. 30 The remedy plan should have a simple mechanism that CLECs will use to enter into the plan. It should not take a long time or require extensive negotiations for a CLEC to enter into the remedy plan.

Principle No. 31 The remedy plan will provide meaningful and significant financial penalties for non-compliance with the designated performance standards. The financial penalties shall be paid in such a way as to be publicly visible and traceable to the specific underlying poor performance. If penalties are under this plan are to be settled by bill credits, the plan should propose a mechanism that will allow such credits to be issued on an aggregated per-CLEC basis as well as on a per-account basis. The settlement process should be transparent and open to public scrutiny.

Principle No. 32 The remedy plan will include a procedure to determine the cause(s) of, or reasons(s) for poor performance. The cause(s) or reason(s) will be publicly disclosed. The plan will include a trigger to initiate this procedure.

Principle No. 33 The remedy plan should be open-ended in escalating penalties for continued poor performance ("duration") or it should include a rationale as to why the penalties should stop escalating after a specified time period and should identify and explain the specific duration in question.

Principle No. 34 The remedy plan should be open ended in escalating penalties for acutely poor performance (severity) or it should include a rationale as to why the penalties should stop escalating after a specified level of poor performance is reached and should identify and explain the specific “severity” level in question.

Principle No. 35 The remedy plan should be a separate agreement from other agreements entered into between SBC/Ameritech and the CLECs.

Principle No. 36 The remedy plan will contain methods to ensure that penalties are not passed on to, or recovered from, SBC/Ameritech’s customers or ratepayers.

Principle No. 37 A CLEC’s adoption of or participation in a remedy plan does not affect the availability of other remedies or rights of action available under agreement or state or federal law. Ameritech may offset payments to a CLEC under a performance plan against the recovery under other rights or remedies unless those payments are deemed to be penalties by agreement or law. For example, payment of a penalty under the Indiana Remedy Plan does not preclude a CLEC from collecting damages in an antitrust action. The penalties set forth in the remedy plan for SBC/Ameritech shall not offset, nor shall they be offset by, penalties in any other IURC-approved plan, agreement, amendment, rule, order, or other mandate; or in any other ILEC-to-CLEC contract or performance/remedy plan into which SBC/Ameritech has entered affecting, or on behalf of, Indiana Bell and that is not approved by a regulatory agency. Penalties paid under the SBC-Ameritech merger agreement shall not offset penalties paid under this remedy plan.

Change Management/Change Control Mechanism

Principle No. 38 The remedy plan will have a method to measure performance and assess penalties in the area of change management/ change control.

Principle No. 39 The remedy plan will contain a mechanism to permit adjustments to the plan to accommodate changes in the OSS systems, processes, or procedures.

Principle No. 40 The remedy plan should contain performance measures and penalties pertaining to the post-271 scalability of SBC/Ameritech’s facilities, equipment, systems, software, processes, etc., in the context of the ability of SBC/Ameritech to handle commercial volumes of orders, as well commercial volumes of pre-ordering, provisioning, maintenance & repair, and billing inquiries following the granting of 271 authority for Indiana. For major releases or software upgrades for any of the five types of OSS, change management and change control tests should include tests to determine existing capacity and potential choke points, as well as volume tests at “peak,” and “stress” levels, against some predetermined “normal” volume.

Principle No. 41 Change control authority over the remedy plan and the performance measures supporting the plan will ultimately rest with the IURC. There should be an explicit process or mechanism for the Commission, on its own motion, to identify problems and make changes to the remedy plan or the performance measures that support the plan.

Principle No. 42 The remedy plan will include an explicit, predictable, flexible, and public mechanism for SBC/Ameritech and other parties to identify problems to the IURC and permit changes to the remedy plan and the performance measures used to support the plan.

Principle No. 43 The change management/change control remedy plan for SBC/Ameritech may contain diagnostic measures, where appropriate, to further identify problem areas and to allow for fine tuning of the performance measure standards in future proceedings.

Principle No. 44 A CLEC's receipt of payments under the change management/change control portion of this remedy plan does not affect the availability of other remedies or rights of action available under agreement or state or federal law. Ameritech may offset payments to a CLEC under the change management/change control portion of this remedy plan against the recovery under other rights or remedies unless those payments are deemed to be penalties by agreement or law. For example, payment of a CMP-related penalty by SBC/Ameritech under the Indiana Remedy Plan does not preclude a CLEC from collecting damages in an antitrust action. The penalties set forth in the change management/change control portion of this remedy plan shall not offset, nor shall they be offset by, penalties that are: (1) contained in, and/or required or permitted by any other portion of this remedy plan; (2) contained in and/or required or permitted by any other IURC-approved plan, agreement, amendment, rule, order, or other mandate; or (3) contained in and/or required or permitted by any other ILEC-to-CLEC contract or performance/remedy plan affecting SBC/Ameritech or into which SBC/Ameritech has entered and that is not approved by a regulatory agency. Tier I.Y.2. and Tier II change management-related penalties shall not offset or be offset by penalties payable to CLECs or the U.S. Treasury under the FCC's SBC-Ameritech merger order or conditions.

8. COMPLETE LIST OF ORIGINAL PRINCIPLES

Remedy Plan Structure

Principle No. 1 Oversight of the remedy plan and the performance measures supporting the plan will ultimately rest with the IURC.

Principle No. 2 The remedy plan should adjust in a timely and efficient way to changing market conditions.

Principle No. 3 The remedy plan should contain measures and penalties for all relevant points of the 14-point checklist.

Principle No. 4 The remedy plan will clearly and unambiguously support the five factors identified by the FCC in its Bell Atlantic New York and SBC Texas orders. These five factors are: (1) Potential liability that provides a meaningful and significant remedy to comply with the designated performance standards; (2) Clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) A reasonable structure that is designed to detect and sanction poor performance when it occurs; (4) A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and (5) Provide reasonable assurances that the reported data are accurate. The remedy plan should not include a fixed termination date. The remedy plan should not assume an unchanging list of PMs over the life of the plan. The plan will include criteria and procedures to add, delete, or modify the PMs used in the plan.

Principle No. 5 The remedy plan should not include a fixed termination date. The remedy plan should not assume an unchanging list of performance measures (“PMs”) over the life of the plan. The plan will include criteria and procedures to add, delete, or modify the PMs used in the plan.

Principle No. 6 The remedy plan should be neutral as to the various entry strategies (resale, UNEs, interconnection, collocation, and other non-UNE facilities) that competitive carriers are likely to use in entering the local exchange market.

Principle No. 7 The remedy plan will treat the selection of PMs, weight of the PMs, and the sample size in such a way as to maintain neutrality with respect to mode of entry (resale, UNEs, interconnection, collocation, and other non-UNE facilities). If a mode of entry is not represented in the set of PMs then anti-competitive behavior with respect to that mode of entry might not be detected. Similarly, the way the PMs are weighted and the way their populations are sampled should be structured to not discriminate against a mode of entry.

Principle No. 8 The Indiana remedy plan should give the IURC explicit authority to reallocate the monthly distribution of penalty payments between the change management/change control portion of the plan and other portions of the plan.

Performance Measures

Principle No. 9 The remedy plan will be built on the Indiana-specific performance measures and metrics that support this performance remedy plan, as well as other measures and metrics that are developed, tested, and audited as part of the third party testing of operational support systems for SBC/Ameritech. These measures will be clearly articulated and encompass a comprehensive range of carrier-to-carrier performance. Where Indiana-specific goals and criteria are not compromised, performance measures or metrics may be common across SBC/Ameritech states. The remedy plan should specify how, if two or more PMs measure the same underlying performance or function, the PMs should be counted for penalty calculations.

Principle No. 10 The remedy plan should include performance measures and penalties regarding the availability, functionality, and quality of SBC/Ameritech's front-end/front-office and back-end/back-office systems.

Principle No. 11 The remedy plan will establish standards and measurements for "network performance." There should be at least two broad categories of measurements and associated penalties: (1) insufficient trunk capacity, high trunk blockage levels, or excessive trunk provisioning intervals and (2) excessive collocation provisioning intervals.

Principle No. 12 The remedy plan will contain penalties for discrimination against any CLEC or class of CLECs based upon mode of entry (resale, UNEs, collocation, interconnection, or other non-UNE facilities). These penalties should be in addition to any other penalties contained in the remedy plan.

Principle No. 13 The remedy plan should contain performance measures and penalties pertaining to the general ability of SBC/Ameritech to handle commercial volumes of CLEC traffic prior to the granting of 271 authority for Indiana. Issues that should be considered include the pre-271 scalability of SBC/Ameritech's facilities, equipment, systems, software, processes, etc.

Principle No. 14 Raw data underlying a performance measure should be stored in a secure, stable, redundant, and auditable manner – e.g., as regards format and storage medium. All raw data files (both original and back-up(s)) should be maintained for at least three years.

Principle No. 15 The remedy plan will contain a quality control/quality assurance mechanism(s) to ensure that the reported data and results are accurate. At a minimum, this quality control/quality assurance mechanism(s) will include a well-defined method to permit auditing of both data and results. All such audit data and results will be disclosed publicly, subject to appropriate procedures (as required under Indiana law) to protect any data or results that the Commission finds to be confidential, proprietary, or a trade secret.

Principle No. 16 The remedy plan may contain diagnostic measures, where appropriate, to further identify problem areas and to allow for fine tuning of the performance measure standards in future proceedings.

Service Quality Criteria

Principle No. 17 The remedy plan will establish minimum service quality levels below which penalties will apply. The remedy plan will include a mechanism for defining minimum service quality standards for particular performance measures where those standards are not already defined under Indiana law.

Analytic Criteria

Principle No. 18 The remedy plan will provide for a method of determining whether performance measures are being satisfied. If statistical methods are used to determine if performance in a particular area is “in parity,” a system designed to balance both type 1 and type 2 errors must be included as a part of the plan. Techniques including, or similar to, “stare and compare” will be used for performance measures with a benchmark standard. A detailed rationale must be used if statistical analysis is used for performance measures with a benchmark standard.

Principle No. 19 Where mitigation or “forgiveness” is desired, the remedy plan should identify and fully explain, at a minimum: (1) specific measurements, metrics, or other circumstances to which or under which mitigation or forgiveness would be applied; (2) clearly stated rationale and assumptions for why mitigation is appropriate; (3) the amount or level of mitigation/forgiveness to be applied; and (4) what criteria will be used to determine what that level of mitigation or “forgiveness” should be.

Principle No. 20 The remedy plan will disaggregate the resale performance measurements based upon the number and scope of SBC/Ameritech’s retail rate groups.

Principle No. 21 The remedy plan will disaggregate the UNE, interconnection, and collocation performance measurements based upon the number and scope of zones that SBC/Ameritech uses to set prices for geographically deaveraged UNEs.

Principle No. 22 The remedy plan must contain measures and penalties for xDSL and other advanced services.

Principle No. 23 The remedy plan will contain a mechanism to permit changes to the plan to accommodate nascent or emerging services, elements, and functionalities provided to CLECs.

Principle No. 24 The remedy plan will provide means to ensure that the reported data and results are publicly disclosed, subject to appropriate procedures (as required under Indiana law) to protect any data or results that the Commission finds to be confidential, proprietary, or a trade secret.

Principle No. 25 The remedy plan should propose a mechanism for resolving disagreements regarding the format of the raw data to be shared between SBC/Ameritech and the CLECs in a timely and efficient way.

Enforcement Mechanism

Principle No. 26 The remedy plan will have a manageable enforcement structure for the IURC.

Principle No. 27 The remedy plan and its associated penalties must be legally enforceable and under the control of the IURC.

Principle No. 28 The remedy plan, including the accrual and payment of penalties, should take effect when the plan is approved by the IURC.

Principle No. 29 The remedy plan will clearly identify any proposed absolute exclusions or caps, as well as any associated assumptions or calculation methodologies. All absolute exclusions and caps in the Indiana CLEC performance remedy plan must be approved by the IURC prior to the IURC's approval of the remedy plan. In those instances where absolute caps are proposed, the plan must (1) describe what happens when the cap is reached (do the penalties continue to accrue or not, is there an escrow account, etc.); (2) explain why penalties should no longer be assessed and/or paid if the associated poor performance has not been corrected or the associated performance standard has not been met; (3) trigger a review of the underlying reason(s) for the performance and for reaching the cap, and (4) trigger a review of the level of the absolute cap in question.

Principle No. 30 The remedy plan should have a simple mechanism that CLECs will use to enter into the plan. It should not take a long time or require extensive negotiations for a CLEC to enter into the remedy plan.

Principle No. 31 The remedy plan will provide meaningful and significant financial penalties for non-compliance with the designated performance standards. The financial penalties shall be paid in such a way as to be publicly visible and traceable to the specific underlying poor performance. If penalties are under this plan are to be settled by bill credits, the plan should propose a mechanism that will allow such credits to be issued on an aggregated per-CLEC basis as well as on a per-account basis. The settlement process should be transparent and open to public scrutiny.

Principle No. 32 The remedy plan will include a procedure to determine the cause(s) of, or reasons(s) for poor performance. The cause(s) or reason(s) will be publicly disclosed. The plan will include a trigger to initiate this procedure.

Principle No. 33 The remedy plan should be open-ended in escalating penalties for continued poor performance (“duration”) or it should include a rationale as to why the penalties should stop escalating after a specified time period and should identify and explain the specific duration in question.

Principle No. 34 The remedy plan should be open ended in escalating penalties for acutely poor performance (severity) or it should include a rationale as to why the penalties should stop escalating after a specified level of poor performance is reached and should identify and explain the specific “severity” level in question.

Principle No. 35 The remedy plan should be a separate agreement from other agreements entered into between SBC/Ameritech and the CLECs.

Principle No. 36 The remedy plan will contain methods to ensure that penalties are not passed on to, or recovered from, SBC/Ameritech’s customers or ratepayers.

Principle No. 37 The penalties set forth in the remedy plan for SBC/Ameritech shall not offset, nor shall they be offset by, penalties in any other IURC-approved plan, agreement, amendment, rule, order, or other mandate; or in any other ILEC-to-CLEC contract or performance/remedy plan into which SBC/Ameritech has entered affecting, or on behalf of, Indiana Bell and that is not approved by a regulatory agency. Penalties paid under the SBC-Ameritech merger agreement shall not offset penalties paid under this remedy plan.

Change Management/Change Control Mechanism

Principle No. 38 The remedy plan will have a method to measure performance and assess penalties in the area of change management/ change control.

Principle No. 39 The remedy plan will contain a mechanism to permit adjustments to the plan to accommodate changes in the OSS systems, processes, or procedures.

Principle No. 40 The remedy plan should contain performance measures and penalties pertaining to the post-271 scalability of SBC/Ameritech’s facilities, equipment, systems, software, processes, etc., in the context of the ability of SBC/Ameritech to handle commercial volumes of CLEC traffic following the granting of 271 authority for Indiana. For major releases or upgrades, change management and change control tests should include volume tests at “normal,” “peak,” and “stress” levels.

Principle No. 41 Change control authority over the remedy plan and the performance measures supporting the plan will ultimately rest with the IURC. There should be an explicit process or mechanism for the Commission, on its own motion, to identify problems and make changes to the remedy plan or the performance measures that support the plan.

Principle No. 42 The remedy plan will include an explicit, predictable, flexible, and public mechanism for SBC/Ameritech and other parties to identify problems to the IURC and permit changes to the remedy plan and the performance measures used to support the plan.

Principle No. 43 The change management/change control remedy plan for SBC/Ameritech may contain diagnostic measures, where appropriate, to further identify problem areas and to allow for fine tuning of the performance measure standards in future proceedings.

Principle No. 44 The penalties set forth in the change management/change control portion of this remedy plan shall not offset, nor shall they be offset by, penalties that are: (1) contained in, and/or required or permitted by any other portion of this remedy plan; (2) contained in and/or required or permitted by any other IURC-approved plan, agreement, amendment, rule, order, or other mandate; or (3) contained in and/or required or permitted by any other ILEC-to-CLEC contract or performance/remedy plan affecting SBC/Ameritech or into which SBC/Ameritech has entered and that is not approved by a regulatory agency.