

This Service Level Agreement (“SLA”) is subject to the terms and conditions of the applicable Agreement between First Communications and Customer regarding Essential T1 Service (for purposes of this SLA only, “Service”). Defined and/or capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Company’s Terms and Conditions of Business Services posted on the [www.firstcomm.com](http://www.firstcomm.com) website.

**1. Network and Port Components.** This SLA applies solely to the Service and the underlying network components of the First Communications IP Network (“IP Network”) used solely for the purpose of providing the Service, and does not modify or affect any other SLAs provided by Company (if any) for telecommunications or information services purchased by Customer. The IP Network includes routers, switches, fiber and any other facilities that are owned by Company or other providers specifically selected by Company. As defined in this SLA, a Point of Presence (“POP”) means a First Communications POP location that represents the provider edge of the IP Network.

**2. Network and Port-Related Goals.** The following service level goals (“Goals”) apply to Ethernet DIA IP Ports purchased from Company. The Goals associated with Latency and Packet Loss are measured using monthly averages from the First Communications IP Network and apply after the Service has been accepted for use.

**Network Availability**

Total amount of Service “downtime” (in minutes) from all trouble tickets relative to Network Outage time (per individual Service) rounded up to the nearest hour.

*Example: Total Network Outage time of 20 minutes = 1 hour*

**Network Latency**

Latency measured by averaging sample measurements (in 5 minute intervals) taken during a calendar month between First Communications IP Network routers.

**Packet Loss**

Packet Loss measured by averaging sample measurements taken during a calendar month between First Communications IP Network routers.

**Time to Firm Order Commitment**

Total count of business days, beginning at Day One from Provisioning Order Acceptance and assignment notification to the day First Communications provides the initial Firm Order Commitment (FOC) notification for installation of new circuit local access connectivity. Credit is issued on a one time basis per Service Order for new circuit installations only.

**Mean Time to Repair (MTTR)**

$$\frac{\text{Sum of all trouble tickets Service restoration intervals relative to the Network Outage in the calendar month}}{\text{Total number of trouble tickets relative to Network Outage in the calendar month}}$$

Applicable Components	Goal	Service Credits*****
*Network Availability	<u>Essential T1 Service</u> : 99.9% availability	1 day credit = 1/30 of the monthly fees for the applicable location(s) per each hour of downtime (e.g., downtime between 1 to 60 minutes = 1 day credit eligible) in a given billing period
**Latency	Less than or equal to 65ms maximum monthly average	1 day credit = 1/30 of the monthly fees for the applicable location(s) if average monthly Latency exceeds 65ms
**Packet Loss	Less than 1% average per month	1 day credit = 1/30 of the monthly fees for the applicable location(s) per each percentage above the monthly average Packet Loss of 1%
***Time to FOC	10 business days	1 day credit = 1/30 of the monthly fee(s) for the applicable Service(s) for each day that exceeds the initial 10 days
****Mean Time to Repair (MTTR)	4 hours (monthly average)	1 day credit = 1/30 of the monthly fee(s) for the applicable Affected Service(s) for each hour that exceeds the initial 4 hour MTTR in a given calendar month

In all instances, see Section 4 for remedies, requirements and exceptions.

\*NOTE: Company Components Included in Network Availability: (a) First Communications dedicated facilities used to provide connectivity between the customer’s location, or First Communications provided access to the First Communications POP, and (b) First Communications provided CPE (Channel Bank, Router, CSU/DSU) if any.

**\*\*NOTE:** First Communications Network Latency and Packet Loss are relative to the First Communications IP Network only and do not include local access or Customer specific performance. Latency and Packet Loss is measured on an ongoing basis, therefore if Customer believes Company has failed to meet the network performance goals set forth above (Latency and Packet Loss), then Customer must contact Company as described below. Upon Company verification that the actual average IP Network Latency for the preceding 30 days has exceeded 65ms, Customer will be eligible for SLA credit.

**\*\*\*NOTE:** Day One equals the Provisioning Order Acceptance Date + 1 business day for assignment (Ex: Provisioning Order Acceptance Notice is sent on Monday at 3:00pm. Day One is Tuesday). Time to FOC objective excludes orders that require special access, involve facility and/or special construction or changes to existing circuits that do not include installation of a new circuit. The FOC represents the date the ILEC estimates local access will be installed which does not equate to Service activation. This SLA does not guarantee the initial FOC date will be met by the ILEC.

**\*\*\*\*NOTE:** MTTR is calculated less access time. Access time is (a) the time it takes for Customer to respond to Company's repair questions related directly to the current open trouble ticket(s), or (b) the time a Company on-site repair technician waits to gain access to the Customer or other required premises.

### 3. Maintenance.

**3.1 Network Normal Maintenance.** "Network Normal Maintenance" means scheduled maintenance, including but not limited to upgrades of hardware or software or upgrades to increase capacity. Normal Maintenance may temporarily degrade the quality of the Service, including possible Network Downtime. Such effects related to Network Normal Maintenance will not entitle Customer to service credits. "Local Time" means the local time in the time zone in which an Affected Service is located. Company may change the maintenance window times upon posting to the website or other notice to Customer.

**3.2 Network Urgent Maintenance.** "Urgent Maintenance" means efforts to correct network conditions that are likely to cause a material Service outage and that require immediate action. Urgent Maintenance may degrade the quality of the Service, including possible Network Downtime. Such effects related to Urgent Maintenance will entitle Customer to service credits only as set forth in this SLA. Company may undertake Urgent Maintenance at any time deemed necessary and will provide notice of Urgent Maintenance to Customer as soon as is commercially practicable under the circumstances.

### 4. General.

**4.1 Remedies; Requirements.** To be eligible for service credits under this SLA, Customer must be in good standing with Company and current in its obligations. To receive service credits, Customer must contact Customer Care and submit the relevant trouble ticket information within five business days following the end of the month in which the relevant Goal was not met. Company will determine the credits provided to Customer in accordance with the requirements of this SLA. A credit will be applied only to the month in which the event giving rise to the credit occurred. The credits will apply to the MRCs of the Affected Service after application of all discounts and do not apply to MRCs of other services. The maximum service credits issued in any one calendar month will not exceed: (a) seven days charges pro-rated from the MRC of the Affected Service with respect to solely Network Availability, or (b) 50% of the MRCs of the Affected Service with respect to Latency or Packet Loss. "Affected Service" means the applicable Service hereunder that fails to meet the applicable Goal. In no event will the total credit, in the aggregate for all credits issued in one month, exceed the equivalent of 50% of the relevant MRCs for the Affected Service. Cumulative credits in any one month must exceed \$25.00 to be processed. If Customer fails to notify Company in the manner set forth above with respect to the applicable SLA credits, Customer will have waived its right to such SLA credits for that month. CUSTOMER'S RIGHT TO RECEIVE SUCH CREDITS SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND COMPANY'S SOLE AND EXCLUSIVE OBLIGATION IN THE EVENT OF A PERFORMANCE FAILURE, EVEN IF SUCH REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.

**4.2 Service Credit Exceptions.** Network Outage Time is measured from the time a Trouble Ticket is opened with Customer Care, at the toll free number 1-877-274-6277, as a result of Customer's inability to transmit and receive data, and ends when the connection is able to be sent and receive data. Service credits will not be issued where the SLA is not met as a result of:

- (a) The acts or omissions of Customer, its affiliates or their respective employees, contractors, agents or end users;
- (b) The failure or malfunction of equipment, applications, facilities or systems not owned or controlled by Company;
- (c) A Force Majeure Event;
- (d) Network Normal Maintenance, alternation or implementation;
- (e) The unavailability of required Customer personnel, including as a result of failure to provide Company with accurate, current contact information; or
- (f) Company's lack of access to Customer or other premises where reasonably required to restore the Service.

**4.3** Company reserves the right to review and deny any credits under this SLA or otherwise claimed by Customer, if, in Company's reasonable judgment, the claim does not meet the criteria established above for such claim.