

Description and Objectives

EarthLink Complete™ MPLS Service will be measured on the basis of Network availability, mean time to repair (MTTR), Latency, delivery ratio, jitter and install interval. EarthLink provides coverage of its Service 24/7/365. The MPLS Service Level Agreement Objectives (“SLA Objectives”) and related service credits for EarthLink MPLS Service are as follows:

	SLA	Credit
Network Availability	100.00%	Up to 15% MRC
Latency	45 ms	Up to 15% MRC
Delivery Ratio (Real Time traffic)	99.90%	Up to 15% MRC
Jitter (Real Time Traffic)	1ms	Up to 15% MRC

	Ethernet Access	DS3 Access	DS1 Access	ADSL Access	Credit
MTTR	4 hours	4 hours	4 Hours	18 hours	Up to 15% MRC
Install Interval (business days)	90 days	60 days	45 days	30 days	Up to 15% MRC

	CPE	Credit
MTTR	Next Business Day	Up to 5% MRC

Methodology

All SLA Objectives apply only to the MPLS Service segment between the point where traffic enters EarthLink’s core MPLS switching equipment, and the point where it leaves EarthLink’s core MPLS switching equipment.

Network Availability

Network Availability will be an average of actual minutes of availability of all Customer IP logical connections as a percentage of the total IP logical connection available minutes as measured over a calendar month and shall be calculated as follows:

$$\text{Network Availability} = ((\text{Calendar Month Minutes} - \text{Excluded Outage Time Minutes} - \text{Outage Time Minutes}) / (\text{Calendar Month Minutes} - \text{Excluded Outage Time Minutes})) \times 100$$

Network Availability will be measured using the EarthLink Network Management System upon receipt of Customer’s trouble ticket reporting the Service Outage.

Mean Time to Repair (“MTTR”)

MTTR shall be calculated as follows:

$$\text{MTTR} = (\text{Service Outage Time Hours} - \text{Excluded Outage Time Hours}) / \text{Outage Count}, \text{ provided that Service Outage Time, Excluded Outage Time and Outage Count are measured over a single calendar month.}$$

EarthLink Deployed Equipment Mean Time to Repair

Replacement equipment provided by EarthLink will be shipped for next business day delivery for Customer self-installation so long as (i) the trouble is isolated to the EarthLink provided and managed equipment, and (ii) the root cause of the failure is determined by EarthLink by 1PM Pacific Time on a business day.

“**Business Day**” means Monday through Friday, 8AM to 5PM, excluding Federal holidays.

Latency

Latency is a monthly measure of the EarthLink network-wide delay within the region or between regions, which is the average interval of time it takes during the applicable calendar month for test packets of data to travel between all selected pairs of EarthLink Network Backbone Nodes in the region(s). Specifically, the time it takes test packets to travel from one EarthLink Network Backbone Node in a pair to another and back is measured for all selected pairs of EarthLink Network Backbone Nodes in the region(s) over the month. Latency for the month is the average of all of these measurements.

“**EarthLink Network Backbone Nodes**” are the core MPLS routing nodes in the EarthLink Network consisting of Cisco GSR Switches.

Delivery Ratio

The “**Delivery Ratio Percentage**” for a region or between regions is the average Data Delivery percentage for that month for all selected pairs of EarthLink IP Backbone Nodes in the region(s) calculated by dividing Data Received by Data Delivered and multiplying by 100.

“**Data Delivered**” is the number of test packets of data delivered in a month by EarthLink to an ingress router at an EarthLink Network Backbone Node for delivery to an egress router at the other specific EarthLink Network Backbone Node in the selected pair.

“**Data Received**” is the number of such test packets of data that are actually received by the egress router at the other EarthLink Network Backbone Node.

The packets offered variable in Delivery Ratio calculations will exclude Packets lost due to: erroneous transmissions, unknown causes, lost or dropped as a result of service outages, lost due to CPE induced causes, lost as a result of oversubscription on the egress user to network interface, offered in excess of SCR/CIR, and dropped due to preemptive congestion alleviation techniques employed at ingress to the network.

Install Interval

Install Interval is defined as the number of business days beginning when EarthLink accepts, and has confirmed for provisioning with Customer, a complete order package for Service and ending when the circuit is activated and available to transport data. Install Interval applies to each service location individually. Install intervals excludes any service location where facilities are determined to be unavailable or impaired by the underlying local access provider.

MPLS Jitter

“**MPLS Jitter**” is a monthly measure of the EarthLink Network-wide IP packet delay variation within or between the applicable region(s), which is the average difference in the interval of time it takes during the applicable calendar month for selected pairs of test packets of data in data streams to travel between selected pairs of EarthLink Network Backbone Nodes in the region(s). Specifically, the difference in time it takes a selected pair of test packets in a data stream to travel from one EarthLink Network Backbone Node in a pair to another is measured for all selected pairs of EarthLink Network Backbone Nodes in the region(s) over the month. One of the test packets in the selected pair will always be a packet in the data stream that takes the least time to travel from one EarthLink Network Backbone Node in the pair to another. MPLS Jitter within or between regions for the month is the average of all of these measurements in the region(s).

Service Credits

If EarthLink does not meet its SLA Objectives, Customer may receive a service credit (“Service Credit”) for the Service impairment proportional to the SLA Objectives non-conformance, up to the percentage identified in the table above, multiplied by the base monthly recurring charge, excluding taxes, surcharges and other similar charges, (“MRC”) for the particular Service element(s) responsible for the non-conformance.

To be eligible for a Service Credit, Customer must: (i) request EarthLink to open a trouble ticket documenting the SLA Objective non-conformance and (ii) timely request the applicable Service Credit by emailing customercare@earthlinkbusiness.com, with “Service Credit Request” in the subject header, within thirty (30) days after the trouble ticket is closed by EarthLink. Each Service Credit request must reference the applicable trouble ticket number(s) and circuit identifier(s) for the circuit elements associated with the non-conforming event.

Service Credit requests will be evaluated in relation to the relevant accumulated statistics in the month during which the SLA Objectives non-conforming event is alleged to have occurred. Service Credit requests encompassing multiple months will be prorated in accordance with the statistical accumulations for the month in which the non-conformance occurred. EarthLink shall have thirty (30) business days to respond from the end of the month in which the Service Credit request is submitted. Service Credit requests approved by EarthLink will be credited to the Customer’s account on the next billing cycle that begins no less than ten (10) business days after the Service Credit approval.

Service Credit requests will not be accepted for open trouble tickets. Customer may not receive more than one Service Credit per month for any SLA Objective non-conformance involving a specific Service element. Multiple instances of non-conformance affecting one circuit element during a particular month will not be eligible for multiple SLA credits, however, if approved they will be applied toward the accumulated monthly statistics. For Ethernet Access, Customer will receive one credit per circuit for failure to meet the install interval defined above. Service Credits will not be available for any Service terminated by Customer for cause pursuant to the terms of the Agreement.

Chronic Outage

In the event of a Chronic Service Outage (as defined below), Customer may request an escalation of repair in writing to customercare@earthlinkbusiness.com. “**Chronic Service Outage**” shall be defined as a specific circuit element at a particular Service location (i) that experiences three or more occurrences of repairs in any given month not resulting from a Customer caused impairment, or (ii) that is in violation of the SLA Objectives more than three times within any given month (“**Affected Service**”). EarthLink will have ten (10) business days following its receipt of a Customer’s notification to evaluate and prescribe resolution, including a timeline to complete the prescribed repairs (“**Cure Period**”). If EarthLink is unable to resolve the Chronic Service Outage within the Cure Period, Customer shall have the right to terminate the Affected Service without incurring any Early Termination Fee (“**ETF**”), however, Customer shall remain obligated to pay EarthLink for all Services rendered through the effective date of termination.

Specific Exclusions

SLA Objectives and Service Credits do not include periods of Service Outages or other service level deficits in whole or in part due to the following causes and exclusions:

- Customer fails to report the issue or request a trouble ticket;
- Service interruptions or delays arising out of or in connection with but not limited to (i) any act or omission on the part of Customer or a third party, including without limitation local access providers, (ii) interruption occurring in whole or in part because Customer elects not to release the Service for testing and repair by EarthLink, but continues to use it on an impaired basis, (iii) failing to provide access to Customer premises as reasonably requested by EarthLink or its agents to enable EarthLink to comply with its obligation, (iv) Customer's Software, equipment or facilities, or that of any third party, including without limitation local access providers;
- EarthLink or Customer's scheduled network maintenance or emergency maintenance;
- Any force majeure event beyond the reasonable control of EarthLink including, but not limited to cable cuts;
- Any failure, issue or delay associated in whole or in part with Customer's provided connection to the EarthLink Network, including but not limited to local access, and cross-connect, Customer premise equipment, applications, facilities or internal network;
- Any event or occurrence that results in "no trouble found" by EarthLink customer support;
- New Service that has not been accepted by Customer or that occurs within the first 30 days of Service for the affected Service element;
- MPLS Service (i) modified on an Individual Case Basis (ICB), (ii) based on classes of service other than Committed Information Rate (CIR) or Variable Bit Rate (VBR), (iii) where the CPE is not configured to Traffic Shape the packets offered to less than or equal to the Sustained Cell Rate (SCR) or Committed Information Rate (CIR), and/or (iv) delivered to the Customer using EVDO/Wireless Data;
- Service that does not directly interface a port on the EarthLink network via physical or logical connection; or
- During emergency network conditions where dynamic rerouting is required, EarthLink will not commit to its Latency, Jitter or Delivery Ratio measurements. Latency, Jitter or Delivery Ratio measurements for the network models exclude circuits that have SCR/CIR subscription rates beyond 100% of the Customer port speed.

EarthLink, in its sole discretion, may change, amend or revise this SLA at any time. Such changes or revisions shall be deemed effective upon posting of an updated SLA to the EarthLink website