



Service Level Agreement Net-Biz and Net-Biz-Xtend Services

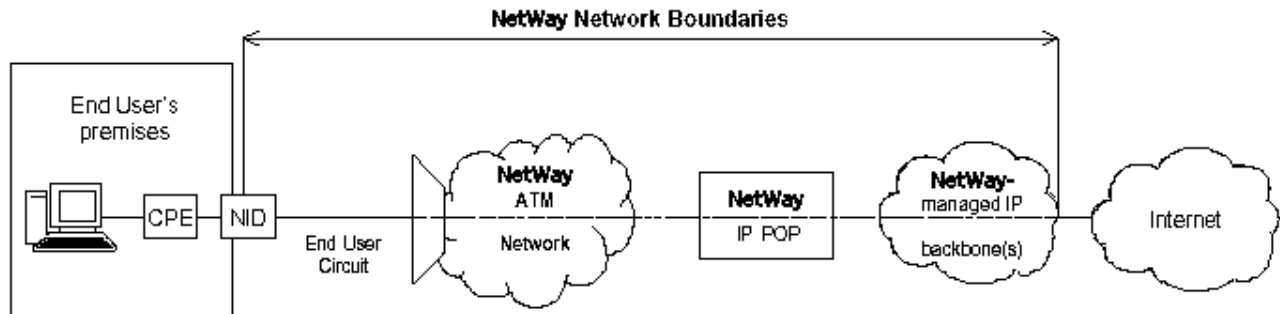
This Service Level Agreement on Net-Biz DSL and Net-Biz-Xtend Services ("SLA") covers only Net-Biz DSL and Net-Biz-Xtend Services, and applies only to the NetWay Network, Net-Biz DSL End User Circuits, and Net-Biz-Xtend End User Circuits. This SLA does not apply to any other Services, including but not limited to, Net-Surfer and Net-Biz Soho Services, the non-IP (Layer 2) versions of Net-Biz and Net-Biz-Xtend Services, and Customer Circuits. This SLA is applicable to Customer alone, and Customer's End Users are not eligible to participate directly in the SLA.

All terms used herein and not otherwise defined shall have the meaning attributed to such terms in the DSL Services Agreement (the "Agreement") between Customer and NetWay,

Definitions

NetWay Network: "NetWay Network" means the infrastructure, facilities, and equipment owned, operated, or controlled by NetWay and its affiliates used to provide Net-Biz DSL and Net-Biz-Xtend Services. The NetWay Network excludes End User Premises Equipment ("CPE"), inside wiring at an End User's premises, and any network infrastructure, facilities, or other components not owned, leased, operated, or controlled by NetWay and affiliates. See Figure 1.

Figure 1: NetWay Network boundaries.



NetWay IP POP: A "NetWay IP PoP" is defined as that part of the NetWay Network that connects to the public Internet.

IP Region: An "IP Region" is the set of NetWay Service Areas that are served by a particular IP PoP. A listing of NetWay IP Regions is available from NetWay upon request. NetWay may, at its sole discretion, change the number and configuration of IP Regions and the assignment of Service Areas to particular IP Regions. NetWay may serve individual End User Circuits from an IP PoP in a different IP Region.

Service Available: "Service Available" is defined as the ability for an End User to exchange Internet Protocol ("IP") packets between the End User's NID and any IP address (of NetWay's choice) on the public Internet via the NetWay Network.

Service Outage: There is a "Service Outage" on a specific End User Circuit when IP packets cannot be exchanged between the End User's NID and any IP address (of NetWay's choice) on the public Internet via NetWay Network.



A Service Outage excludes any failures to which any of the following have contributed in whole or in part:

- a) Scheduled maintenance or other planned outages on the NetWay Network;
- b) Problems with, or maintenance on, Customer's applications, equipment, or network;
- c) Problems with, or maintenance on, End User's applications or equipment (including, but not limited to, inside wiring, or changes to or reconfiguration of End User's CPE not performed by NetWay); or
- d) A Force Majeure Event, as defined in the Agreement.

Time to Restore Service: "Time to Restore Service" is defined as the duration of a Service Outage. Time to Restore Service is calculated commencing with the date and time (as set forth on the trouble ticket) on which Customer or NetWay initially reports the Service Outage on a trouble ticket containing all information necessary for NetWay to respond to the trouble ticket and ending upon confirmation by NetWay to Customer that the service is restored. This calculation excludes any period that NetWay waits for a response, availability, or action from Customer or End User, and further excludes any period NetWay spends monitoring the affected End User Circuit after NetWay has restored service to the affected End User Circuit.

Monthly Service Availability: "Monthly Service Availability" is defined as the percentage of minutes in a calendar month an End User Circuit did not experience a Service Outage in that month. Specifically, Monthly Service Availability is a percentage calculated as:

1- [(aggregate Time to Restore Service for all Service Outages experienced by End User Circuit in a calendar month)/(total minutes in same month)]*100

Severe Problem: An End User Circuit is experiencing a "Severe Problem" if the aggregate Time to Restore Service for all Service Outages for such End User Circuit is in excess of twenty-four (24) hours in any calendar month.

Chronic Problem: A particular End User Circuit is experiencing a "Chronic Problem" if a subsequent Severe Problem occurs (a) within one (1) calendar month following the calendar month in which an End User experienced a Severe Problem, *and* (b) NetWay did not recommend that Customer disconnect the End User Circuit at the time of the prior Severe Problem.

Network Delay: "Network Delay" is defined as the time in milliseconds ("ms") required for a round-trip ping test between the End User's NID and a NetWay IP PoP in a different IP Region, *provided* that the only traffic on the End User Circuit during the ping test is the test traffic.

Average Network Delay: The "Average Network Delay" on an End User Circuit is the hourly average of the Network Delay measurements conducted on that End User Circuit. Average Network Delay is not measured when the End User Circuit is experiencing a Service Outage.

Delivery: "Delivery" is defined as the percentage of IP packets successfully transmitted between the End User's NID and a NetWay IP PoP in a different IP Region in a period, *provided* that the only traffic on the End User Circuit during the test is the test traffic.

Average Delivery: The "Average Delivery" on an End User Circuit is an hourly average of the Delivery measurements conducted on that End User Circuit. Average Delivery is not measured when the End User Circuit is experiencing a Service Outage.

Time to Repair Service: "Time to Repair Service" is defined as the duration that the Average Network Delay or Average Delivery on an End User Circuit exceeds the targets for Average Network Delay or Average Delivery set forth below. Measurement of Time to Repair commences with the date and time (as set forth on the trouble ticket) on which the Customer or NetWay reports the Network Delay or Delivery issue on a trouble ticket containing all information



necessary for NetWay to respond to the trouble ticket and ends upon confirmation by NetWay to Customer that performance within the Average Network Delay or Average Delivery targets is restored. This calculation excludes any period that NetWay waits for a response, availability, or action from Customer or End User, and further excludes any period NetWay spends monitoring the affected End User Circuit after NetWay has restored performance to within the targets for Average Network Delay or Average Delivery for the affected End User Circuit.

Installation Interval: For completed, End User Circuits on which billing has commenced, "Installation Interval" is calculated as the number of whole calendar days between the date NetWay received the End User Circuit order from Customer and the Billing Start Date for that End User Circuit order. This calculation excludes: (a) any period that NetWay waits for a response, availability, or action from Customer or End User, (b) any period that NetWay waits to install the End User Circuit resulting from Customer or End User failure to respond, unavailability, lack of access to End User's facilities, change of requested installation date, or other action or inaction, or (c) any period resulting from Force Majeure Events.

Service Levels and Remedies

Monthly Service Availability: NetWay's target for Monthly Service Availability for each Net-Biz DSL End User Circuit and Net-Biz-Xtend End User Circuit is:

Service	Monthly Service Availability Target
Net-Biz DSL End User Circuit	99.9%
Net-Biz-Xtend End User Circuit	99.99%

If NetWay does not meet the Monthly Service Availability Target for an End User Circuit per the above definition and Customer requests a credit, NetWay will provide Customer a credit of three percent (3%) of the monthly recurring charge for such End User Circuit for each hour (or fraction thereof, rounded to the nearest fifteen (15) minutes) of Service Outage experienced by the End User Circuit in excess of the Service Availability Target ("Service Availability Credit"); *provided* that in no case will the aggregate of all Service Availability Credits and TTR Credits (defined below) exceed the total monthly recurring charge billed for such End User Circuit during such month.

For the purposes of illustrating the Service Availability Credit only, if a Net-Biz DSL 384 End User Circuit for a Customer with Tier 4 pricing (i.e., monthly recurring charge of \$154.90) experiences a single Service Outage with Time to Restore Service of 14 hours, 22 minutes in January 2004, NetWay will calculate the Service Availability Credit in the following manner:

- 1) Subtract Monthly Service Availability Target (in minutes) from the Time to Restore Service for the Service Outage for the month to determine the Time to Restore Service in excess of the target. In this case, the calculation is 14 hours, 22 minutes Time to Restore - 45 minutes allowable Service Outage time (1-99.9% of 44,640 minutes in January) = 13 hours, 37 minutes outage in excess of target;
- 2) Round to the nearest 15 minutes = 13 hours, 30 minutes
- 3) Multiply by 3% per hour = 40.5 % of monthly recurring charge
- 4) Multiply by monthly recurring charge (\$154.90) = **\$62.73 Service Availability Credit.**

Time to Restore Service: NetWay's target for Time to Restore Service for each Service Outage experienced by a Net-Biz DSL End User Circuit or Net-Biz-Xtend End User Circuit is:

Service	Time to Restore Service Target
Net-Biz DSL End User Circuit	24 hours
Net-Biz-Xtend End User Circuit	4 hours



If NetWay does not meet the Time to Restore Service Target for a Service Outage on an End User Circuit per the above definition and Customer requests a credit, NetWay will provide Customer a credit of ten percent (10%) of the monthly recurring charge for that End User Circuit ("TTR Credit"), in addition to any other applicable credits for Service Availability, *provided* that in no case will the aggregate of all Service Availability Credits and TTR Credits for that End User Circuit in a month exceed the total monthly recurring charge billed by NetWay for such End User Circuit for service during such month.

Severe and Chronic Problems: For any End User Circuit that NetWay verifies has experienced a Severe Problem, NetWay may recommend that Customer disconnect the affected End User Circuit. If NetWay recommends that Customer disconnect the affected End User Circuit, Customer may disconnect such End User Circuit, and NetWay will provide a credit to Customer for the amount of such disconnection fee (if any) assessed by NetWay.

For any End User Circuit that NetWay verifies has experienced a Chronic Problem, Customer may disconnect such End User Circuit, and NetWay will provide a credit to Customer for the amount of any disconnection fee (if any) assessed by NetWay.

Average Network Delay: NetWay's Average Network Delay target for all Net-Biz DSL & Net-Biz-Xtend End User Circuits is:

Service	Average Network Delay Target
Net-Biz DSL End User Circuit	110 ms
Net-Biz-Xtend End User Circuit	110 ms

If NetWay does not meet the Average Network Delay Target for an End User Circuit in a month per the above definition and Customer requests a credit, NetWay will credit the Customer ("Network Delay Credit") according to the following table:

If Average Network Delay Time to Repair Service exceeds:	Network Delay Credit is:
One (1) hour in a calendar month	Five percent (5%) of the monthly recurring charge for that End User Circuit
Two (2) hours in a calendar month	Ten percent (10%) of the monthly recurring charge for that End User Circuit

Average Delivery: NetWay's targets for Average Delivery for all Net-Biz DSL and Net-Biz-Xtend End User Circuits are:

Network	Average Delivery Target
Net-Biz DSL End User Circuit	99.9%
Net-Biz-Xtend End User Circuit	99.9%

If NetWay does not meet the Average Delivery Target for an End User Circuit per the above definition and Customer requests a credit, NetWay will credit the Customer ("Delivery Credit") according to the following table:

If Average Delivery Time to Repair Service exceeds:	Delivery Credit is:
One (1) hour in a calendar month	Five (5%) of the monthly recurring charge for that End User Circuit
Two (2) or more hours in a calendar month	Ten (10%) of the monthly recurring charge for that End User Circuit



Installation Interval: NetWay's target for Installation Interval for each End User Circuit is:

Service	Installation Interval Target
Net-Biz DSL End User Circuit	30 calendar days
Net-Biz-Xtend End User Circuit	30 calendar days

If NetWay does not meet the Installation Interval Target for an End User Circuit per the above definition and Customer requests a credit, NetWay will provide Customer with a credit ("Installation Interval Credit") of fifty percent (50%) of the first whole month's monthly recurring charge for that End User Circuit.

Claims and Credit Availability

It is the Customer's responsibility to identify, request and document all valid SLA claims and corresponding credits. To be eligible for service credits, Customer must first report service availability, delay, or delivery events to NetWay through standard trouble reporting/ticket mechanisms, as set forth in NetWay's Customer Policies. NetWay will notify Customer of its resolution of the reported event. Customer must claim any applicable service credits by the 15th day of the month following the month in which (a) the reported incident was resolved (in the case of credits for Service Availability, Time to Restore, Network Delay, or Delivery credits) or (b) the Billing Start Date of the affected End User Circuit (in the case of Installation Interval credits). NetWay will verify the Customer's claim within thirty (30) days of a complete and properly submitted credit request, and will apply any applicable credits, as determined at NetWay's sole discretion, to the Customer's invoice issued on the first day of the month following NetWay's thirty (30) day review. **NOTE: Total credits in a given month on an End User Circuit may not exceed the monthly recurring fees charged by NetWay for such End User Circuit during such month. Any excess credits will not carry over into later invoices.**

For the purposes of illustrating the timelines for Credit Availability only, if NetWay resolves an incident in January 2004 - regardless of when Customer or NetWay opened the trouble ticket for the incident - and Customer wishes to receive a credit for the incident, Customer must claim the applicable credits by February 15, 2004. If the claim is complete and is properly submitted, NetWay will verify the claim by March 15, 2004, and will apply any credit to Customer's April 1, 2004 invoice. Customer may not, under any circumstances, submit credit requests after the due date; NetWay will not accept late credit requests.

Requests for SLA credits must be submitted to Customer's Account Team on the form designated by NetWay. A separate credit request must be submitted for each End User Circuit for which a claim is made. In addition, a separate credit request must be submitted for each type of credit (e.g., Service Availability Credit, Installation Interval Credit, etc.) requested if multiple types of claims are made on a single End User Circuit; *provided, however*, that requests for Service Availability Credits and Time to Restore Credits for a single End User Circuit may be made via the same credit request.

NetWay will reject any credit requests that do not provide sufficient supporting information to allow NetWay to verify the claim. Such information must include:

- The NetWay circuit number for the End User Circuit on which the incident occurred;
- The specific type of credit being requested;
- The NetWay trouble ticket number(s) (for credits for Service Availability, Time to Restore, Network Delay, or Delivery) or installation order number (for credits for Installation Interval) on which the credit claim is based;



- The date(s) of the resolution of the trouble ticket(s) (for credits for Service Availability, Time to Restore, Network Delay, or Delivery) or the Billing Start date (for credits for Installation Interval) for the incident; and
- Any other information that NetWay may reasonably request to assist NetWay in verifying Customer's credit request.

NetWay does not guarantee that provision of the above information will be sufficient to allow NetWay to verify the request. NetWay will inform Customer of credit requests rejected for insufficient information, and Customer will be allowed to resubmit such requests with additional supporting information within fifteen (15) days of NetWay's notification of its rejection of the credit request. After Customer resubmits the credit request with the additional supporting information, the standard verification and crediting timelines (outlined above) will apply.

NetWay reserves the right to modify the format for submission of and information required for SLA credit requests with thirty (30) days notice to Customer.

NetWay may, at its reasonable discretion and without notice, limit or eliminate Customer's eligibility and ability to submit SLA credit requests if (a) Customer fails to pay the undisputed portion of its invoice within forty (40) calendar days after notification of billing, or (b) in NetWay's sole determination, NetWay determines that Customer has:

- Failed on one or more occasions to comply with the credit request policies and requirements described herein;
- Submitted an excessive number of rejected SLA credit requests; or
- Used, or attempted to use, the SLA credit process in a frivolous, abusive, or fraudulent manner.

NetWay will restore Customer's ability to submit SLA credit requests once Customer (i) has paid all amounts owed NetWay (in case of failure to pay outstanding invoices), or (ii) in all other cases, provides to NetWay assurances sufficient for NetWay to determine Customer has cured the conduct that initiated Customer's ineligibility to participate in the SLA.

Customer must be current in all of its invoices to be eligible for any credits.