

4901:1-7-08

Negotiation and mediation of 47 U.S.C. 252 interconnection agreements.

Interconnection agreements pursuant to 47 U.S.C. 252, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, shall be negotiated, mediated, and arbitrated under the following mediation and arbitration guidelines:

(A) Duty to negotiate

All telephone companies have the duty to negotiate in good faith the terms and conditions of their agreements. The commission will presume that a party who refuses to provide information about its costs or other relevant information upon request of the other party has not negotiated in good faith provided that, where appropriate, the other party agrees to execute a reasonable confidentiality agreement. This presumption of failure to negotiate in good faith is rebuttable. The commission will resolve disputes concerning the furnishing of information when raised by a party to the negotiation and may impose sanctions where appropriate.

(B) Mediation

(1) Mediation is a voluntary alternative dispute resolution process in which a neutral third party assists the parties in reaching their own settlement. At any point during the negotiation, any party or both parties to the negotiation may ask the commission to mediate any differences arising during the course of the negotiation

(2) To request mediation, a party to the negotiation shall notify in writing the chief of the telecommunications section of the commission's legal department and the chief of the telecommunications division of the utilities department of the commission. A copy of the mediation request should be simultaneously served on the other party in the dispute. The request shall include the following information:

(a) The name, address, telephone number, e-mail, and fax number of the party to the negotiation making the request.

(b) The name, address, telephone number, e-mail, and fax number of the other party to the negotiation.

(c) The name, address, telephone number, e-mail, and fax number of the parties' representatives participating in the negotiations and to whom inquiries should be made.

(d) The negotiation history, including meeting times and locations.

(e) A statement concerning the differences existing between the parties, including relevant documentation and arguments concerning matters to be mediated.

- (f) The other party to the negotiation shall provide a written response within seven calendar days of the request for mediation to the chief of the telecommunications section of the commission's legal department and to the chief of the telecommunications section of the utilities department. The response to a request for mediation shall be simultaneously served upon the telephone company requesting the mediation.
- (3) The commission will appoint a mediator to conduct the mediation. The mediator will promptly contact the parties to the negotiation and establish a time to commence mediation. The mediator will work with the parties to establish an appropriate schedule and procedure for the mediation.
- (4) The mediator's function is to be impartial and to encourage voluntary settlement by the parties. The mediator may not compel a settlement. The mediator may schedule meetings of the parties, direct the parties to prepare for those meetings, hold private caucuses with each party, request that the parties share information, attempt to achieve a mediated resolution, and, if successful, assist the parties in preparing a written agreement.
- (5) Participants in the mediation must have the authority to enter into a settlement of the matters at issue.
- (6) Confidentiality
- (a) Discussions during the mediation process shall be private and confidential between the parties. By electing mediation under this rule, the parties agree that no communication made in the course of and relating to the subject matter of the mediation shall be disclosed, except as permitted in this chapter.
- (b) No party shall use any information obtained through the mediation process for any purpose other than the mediation process itself. This restriction includes, but is not limited to, using any information obtained through the mediation process to gain a competitive advantage.
- (c) As provided in the Ohio Rules of Evidence 408, offers to compromise disputed claims and responses to them are inadmissible to prove the validity of that claim in a subsequent proceeding. Evidence of conduct or statements made in compromise negotiations are also not admissible in a future proceeding. This rule does not require the exclusion of evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.
- (7) Parties to the mediation shall reduce to writing the mediated resolution of all or

any portion of the mediated issues and submit the resolution to the mediator.

(8) A member of the commission staff or an attorney examiner who serves as a mediator shall, by virtue of having served in such capacity, be precluded from serving in a decision-making role or as a witness on matters subject to mediation in a formal commission case involving the same parties and the same issues.

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CERTIFIED ELECTRONICALLY

Certification

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Date

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