

4901:1-7-09

**Arbitration of 47 U.S.C. 252 interconnection agreements.**

- (A) Arbitration is an alternative dispute resolution process whereby parties present evidence and legal arguments to a neutral third party, called an arbitrator or an arbitration panel, who renders a recommended decision to the commission. Any party to the negotiation of an interconnection agreement may, during the period from the one hundred thirty-fifth to the one hundred sixtieth day (inclusive) after the date on which a local exchange carrier receives a request for negotiation, petition the commission to arbitrate any open issues.
- (B) The commission will only arbitrate issues that have been unresolved between the parties and filed with the commission in the petition for arbitration or the response to the petition.
- (C) To petition the commission for arbitration, a party to the negotiation shall file two copies of the request with the commission's docketing division. Docketing will assign a docket number using the industry code TP and the purpose code ARB.
- (D) The petition must include the following information:
- (1) The name, address, telephone number, e-mail, and fax number of the party to the negotiation making the request.
  - (2) The name, address, telephone number, e-mail, and fax number of the other party to the negotiation.
  - (3) The name, address, telephone number, e-mail, and fax number of the parties' representatives participating in the negotiation and to whom inquiries should be made.
  - (4) The negotiation history, including meeting times and locations.
  - (5) A list of the petitioning party's unresolved issues and a clear explanation of that party's position on the listed issues.
  - (6) All relevant nonproprietary documentation on any other issue discussed and resolved by the parties.
  - (7) A statement identifying information needed to decide unresolved issues or information that has been requested during negotiations but not yet provided.
- (E) Notice of petition for arbitration

A petitioner requesting the commission to arbitrate unresolved issues shall provide a copy of the petition and accompanying documentation to the other party not later than the day on which the petition is filed with the commission.

(F) Opportunity to respond to petition

A nonpetitioning party to a petition for arbitration shall file a response to the petition within twenty-five calendar days after the petition to arbitrate is filed. The response should identify the nonpetitioning party's position on the petitioning party's unresolved issues. In addition, the ~~responding~~ nonpetitioning party may identify additional unresolved issues with a clear explanation of its position on the additional issues it identifies.

(G) Commission responsibility

- (1) Upon receipt of a timely and complete petition for arbitration, the commission shall appoint an arbitration panel. It is the function of the arbitration panel to recommend a resolution of the issues in dispute if the parties cannot reach a voluntary agreement.
- (2) Within ten calendar days of the filing of a request for arbitration, the arbitration panel will schedule a conference to be held within thirty calendar days after the filing of the arbitration petition. The purpose of the conference is to plan an arbitration hearing date, identify witnesses to be presented at the hearing, discuss possible admissions or stipulations of uncontested matters, clarify the issues to be resolved, identify additional information needed to reach a decision on the unresolved issues, schedule the production of relevant documents and other information, identify issues which have been resolved, discuss or rule on any other appropriate procedural matters, and consider any other procedures that will expedite the arbitration process. The arbitration panel is authorized to order any party to provide information that it deems necessary to reach a decision on the unresolved issues and to establish the time period for providing the information.
- (3) Unless otherwise determined by the arbitration panel, seven calendar days prior to the arbitration hearing, each party shall file an arbitration package that will assist the arbitrators in the conduct of the hearing. Unless previously submitted in writing to the panel, the arbitration package shall contain: the list of issues to be arbitrated as identified by the petition for arbitration or the response to the petition, the party's position as to each issue, identification of issues which have been resolved by the parties and a description of the resolution, the party's prefiled testimony, the exhibits which the party intends to introduce at the hearing, and a list of factual stipulations upon which the

parties have agreed. Given the expedited nature of the arbitration process, factual stipulations are encouraged.

- (4) Unless otherwise determined by the arbitration panel and the parties, the panel will conduct a hearing with prefiled testimony, transcription of the hearing, and cross-examination of witnesses. Unless determined otherwise by the arbitration panel after consultation with the parties, the length of the hearing, including oral argument, will be limited to four calendar days. Generally, the arbitration panel will conduct the hearing process according to the following procedures:
- (a) The panel will provide the parties at least fifteen calendar days' written notice of the hearing.
  - (b) Unless consolidation of issues is permitted, only parties to the negotiation will be permitted to participate as parties to the arbitration hearing.
  - (c) The arbitration panel will permit discovery. Basic cost information to support prices for interconnection, services, or network elements should be exchanged expeditiously. The panel will establish a schedule for additional discovery by entry or at the prehearing conference.
  - (d) Whenever possible, the parties should enter into factual stipulations given the expedited hearing schedule.
  - (e) The chair of the arbitration panel will preside over the hearing.
  - (f) A written transcript of the hearing will be prepared.
  - (g) Witnesses shall be subject to cross-examination on their testimony. However, the arbitration panel shall have the authority to limit or prohibit cross-examination on policy or legal issues.
  - (h) Instead of requiring post-hearing briefs, the panel may hear oral arguments of the parties at the conclusion of the hearing.
  - (i) The arbitration panel will limit its consideration of any petition for arbitration and any response to the unresolved issues raised in the petition and response.
  - (j) The parties to the arbitration may be required to provide additional

information as may be necessary for the arbitration panel to reach a decision on the unresolved issues. Information provided to the arbitration panel shall also be provided at the same time to the other parties to the arbitration. If any party refuses or fails to respond on a timely basis to any reasonable request from the arbitration panel, the arbitration panel may proceed on the basis of the best information available on the record.

- (k) The commission shall resolve each issue set forth in the petition and the response by imposing conditions that ensure that the resolution and conditions meet the requirements of 47 U.S.C. 251, ~~as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code~~, establish rates for interconnection, services, or network elements in accordance with 47 U.S.C. 252(d), ~~as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code~~, and provide a schedule for implementation of the terms and conditions by the parties to the agreement.
- (l) A commission arbitration award shall be issued not later than nine months after the date on which the local exchange carrier received the request for interconnection pursuant to 47 U.S.C. 252(b)(4)(C), ~~as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code~~.
- (5) Within thirty calendar days after the issuance of the arbitration award, the parties shall file their entire interconnection agreement, consistent with the commission's arbitration award, for commission review. A complete interconnection agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement, including all separate agreements covering such services or network elements.
- (6) If the parties are unable to agree on an entire interconnection agreement, within thirty calendar days after the arbitration award is issued, each party shall file for commission review its version of the language that should be used in a commission-approved interconnection agreement. Unless otherwise authorized by the commission, no comments addressing disputed language filed under this provision will be entertained. The commission will select the competing language that most closely reflects the commission's award.
- (7) Parties to the arbitration may seek extension of any of the deadlines outlined in this rule by the mutual agreement of the parties and the arbitration panel.

(H) Commission review

Unless otherwise determined by the commission, the agreement shall be deemed approved on the thirty-first calendar day.

(I) Nothing in these rules precludes the filing of a voluntarily negotiated interconnection agreement at any time.

(J) If the commission rejects a voluntary agreement resulting from negotiation or mediation, or an agreement arrived at by the arbitration process, the parties may file within thirty calendar days an application for rehearing for the commission's consideration. Alternatively, the parties may resubmit the agreement for commission approval within thirty calendar days following rejection if the parties have remedied the deficiencies found by the commission in its order.

(K) Confidentiality

The commission will treat information determined by the commission to be proprietary and confidential which is received during the mediation, negotiation, and/or arbitration process as confidential. The parties to the mediation, negotiation, and/or arbitration process are expected to negotiate appropriate protective orders for the exchange of information deemed to be proprietary. The commission's procedures concerning proprietary information contained in rule 4901-1-24 of the Administrative Code, shall govern the treatment of confidential and proprietary information.

(L) Waiver

(1) Notwithstanding any provision in these rules, the mediator, arbitration panel, or the commission may permit variance from these rules.

(2) The commission retains continuing jurisdiction and will maintain regulatory oversight over all approved interconnection agreements.

(M) Notice of approved interconnection agreements

All approved interconnection agreements may be obtained from the commission's docketing division or electronically by subscribing to a personal daily distribution list at the commission website.

Effective:

R.C. 119.032 review dates: 11/19/2012

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Certification

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Date

Promulgated Under: 111.15  
Statutory Authority: 4901.13, 4927.03  
Rule Amplifies: 4901.13, 4927.04  
Prior Effective Dates: 11/30/2007