

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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IN THE MATTER OF POTENTIAL RULES )  
REGARDING PETITIONS TO ARBITRATE )  
ISSUES IN INTERCONNECTION ) DOCKET NO. 96R-181T  
NEGOTIATIONS BY TELECOMMUNICATIONS )  
PROVIDERS WITHIN COLORADO. )  
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**REQUEST FOR COMMENTS**

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Mailed Date: April 25, 1996  
Adopted Date: April 24, 1996  
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**I. BY THE COMMISSION:**

**A. Statement**

1. The Colorado Public Utilities Commission hereby requests comments regarding potential rules relating to Colorado's implementation of the recently enacted Telecommunications Act of 1996, specifically section 47 U.S.C. 252(b): "Interconnection Agreements Arrived at through Compulsory Arbitration".

2. Interested persons may submit written comments on this matter to the Commission by May 10, 1996. The Commission will consider all submissions.

3. The Telecommunications Act of 1996 ("the Act"), Public Law No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. 151 *et seq.*, was signed into law by President Clinton on February 8, 1996.

4. In part, 251(c) of the Act [47 U.S.C. 251(c)] requires telecommunications carriers to negotiate in good faith the particular terms

and conditions of interconnection agreements for the transmission and routing of telephone exchange service and exchange access. Section 252 of the Act sets forth the procedures for negotiation, arbitration, and approval of interconnection agreements between telecommunications providers. Significantly, 252(b) mandates that, during the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under 47 U.S.C. 252(b), any party to the negotiation may petition the Commission to arbitrate any open issues. Section 252(c) states the standards to be used by the Commission for this arbitration. Once completed, the arbitrated interconnection agreements between providers must be submitted to the state commission (*e.g.*, the Colorado Public Utilities Commission) for review and approval. Pursuant to 47 U.S.C. 252(e)(4), the state commission must act within thirty (30) days after Submittal of an arbitrated agreement rather than 90 days or the Agreement shall be deemed approved.

5. Since the Act compels us to arbitrate interconnection agreements between telecommunications carriers when petitioned within the specified timeframe noted in Attachment A, we must establish procedures relating to our role in that arbitration. Given the mandates in the Act for Commission arbitration and later review, we find that eventual adoption of rules regarding arbitration procedures is necessary to comply with federal law, and that comments in response to this request will help ensure the drafting of rules in the public interest. The statutory authority for adoption of potential rules is set forth in 40-2-108, and 40-3-102, C.R.S.

6. The purpose of the request made by this order is to solicit

public comment on the rules which should eventually be adopted to implement the Commission's obligations under 47 U.S.C. 252(b).

7. Specifically, we seek comments on the arbitration procedures outlined in the draft rules presented in Attachment B of this order including comments on the degree of formality to be used by the Commission in arbitrating such interconnection agreements. The draft rules in Attachment B suggest a range of options from formal to informal relating to each of these purposes. Respondents are invited to discuss these, suggest combinations of these, or describe new options.

a. Formal option: In order to implement statutory directives, it may be preferable to approach the arbitration proceedings in a more formal manner consistent with the Commission's hearing process outlined in 40-6-109 C.R.S. including written positions, court reporters, and public hearings.

b. Informal option: In the alternative, it may be appropriate to select a more informal, traditional approach to arbitration in which the proceedings are private, off-the record and seek to resolve the disputes in as expedited manner as possible. Parties advocating an informal process should discuss the Commission's authority to implement such a process in light of the interplay between the provisions of 40-6-109 C.R.S. and other requirements set forth in State statutes and the Telecommunications Act of 1996.

8. We further seek comments on the apparent conflict between the statement in 47 U.S.C. 252(b)(4)(A): "the Commission shall limit its consideration of any petition to the issues set forth in the petition and in

the response" and the statement in 47 U.S.C. 252(b)(4)(C): the Commission "shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request". This apparent conflict raises the question of whether the scope of the work to be accomplished in the 9 month period discussed in 47 U.S.C. 252(b)(4)(C) includes only the issues addressed in the petition or the completion of the entire arbitrated interconnection agreement.

9. Additionally, we seek all other pertinent comments regarding the appropriate arbitration process to be adopted by the Commission.

10. Following the receipt of comments, the Commission will take necessary action to promulgate rules relating to these issues.

## II. **ORDER**

### A. **The Commission Orders That**

1. Interested parties submit comments to the Colorado Public Utilities Commission on matters contained in this Request for Comments no later than 12:00 noon on May 10, 1996.

2. This Order is effective upon its Mailed Date.

B. ADOPTED IN OPEN MEETING April 24, 1996.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER CHRISTINE E. M. ALVAREZ  
RESIGNED EFFECTIVE APRIL 5, 1996.

THE  
PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF COLORADO

DRAFT RULES ESTABLISHING PROCEDURES RELATING TO  
PETITIONS FOR THE COMMISSION TO ARBITRATE ISSUES  
IN INTERCONNECTION NEGOTIATIONS  
BY TELECOMMUNICATIONS PROVIDERS  
WITHIN COLORADO

4 CCR 723-XX

**BASIS, PURPOSE, AND STATUTORY AUTHORITY**

These rules are issued under the general authority of 40-2-108 and 40-3-102 C.R.S., and are consistent with 47 U.S.C. 252(b) and 40-15-503 C.R.S. They establish the process to be used and the information required by the Commission when a party negotiating an interconnection agreement files a petition requesting the Commission to arbitrate any open issues arising in the course of the negotiation under 47 U.S.C. 252. Upon completion of the arbitration, the parties shall submit the arbitrated agreement (Arbitrated Agreement) to the Commission for approval in accordance with the procedures established in 4 CCR 723-XX and consistent with 47 U.S.C. 252(e)(1). The Commission is to act either to approve or to reject the Arbitrated Agreement, with written findings, within 30 days after receipt of the agreement.

**RULE 1. APPLICABILITY.** Pursuant to 47 U.S.C. 252(b), these rules apply to any petition filed by any Party to the negotiation of an interconnection agreement (under 47 U.S.C. 251 and 47 U.S.C. 252) requesting the Commission to arbitrate any open issues in the negotiations. These rules apply only to petitions filed during the period from the 135th to the 160th day

(inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under 47 U.S.C. 251 and 47 U.S.C. 252.

**RULE 2. DEFINITIONS.** The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by the Colorado statute or this rule. In addition to the definitions in this section, the statutory definitions apply. In the event the general usage of terms in the telecommunications industry or the definitions in this rule conflict with the statutory definitions, the statutory definitions control. As used in these rules, unless the context indicates otherwise, the following definitions apply:

2.1 Arbitrated Interconnection Agreement or Arbitrated Agreement. The interconnection agreement between or among telecommunications carriers reached as a result of compulsory arbitration by the Commission. It may be an agreement voluntarily reached by the Parties through arbitration, or it may contain terms and conditions to interconnection that were imposed by the Commission in order to reach the "agreement" but does not necessarily reflect the voluntary positions of the Parties.

2.2 Commission. The Public Utilities Commission of the State of Colorado.

2.3 Commission-appointed Arbitrator. May include the Commissioners, individually or as a panel, a specially-appointed arbitrator, or an Administrative Law Judge (ALJ). All may be assisted by the Commission Staff.

2.4 Party(ies) to the Negotiation/Arbitration; or Party(ies). Any telecommunications carrier providing telecommunications services in the State of Colorado that is a party to negotiations for interconnection agreement following a request made by a carrier to an incumbent.

2.5 Petition for Arbitration. The petition requesting the Commission to arbitrate any open issues in the negotiations for an interconnection agreement.

2.6 Petitioner. The Party to the Negotiations that files the

Petition for Arbitration with the Commission.

2.7 Respondent(s). The non-petitioning party(ies) to the negotiation.

2.8 Submittal. A filing made by a telecommunications provider with the Commission seeking approval of an Arbitrated Agreement pursuant to 4 CCR 723-44.

**RULE 3. REQUIREMENT TO NOTIFY COMMISSION OF A "REQUEST TO NEGOTIATE."**

Pursuant to 4 CCR 723-44, Rule 3, any incumbent local exchange carrier upon receiving a request for negotiation under 47 U.S.C. 251 and 47 U.S.C. 252(a)(1), must notify the Commission of the Request within five (5) days after the incumbent local exchange carrier receives the request.

**RULE 4. PROCESS TO PETITION COMMISSION TO ARBITRATE OPEN ISSUES IN THE NEGOTIATION.**

4.1 Pursuant to 47 U.S.C. 252(b), any party negotiating an interconnection agreement may, during the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under 47 U.S.C. 252, petition the Commission to arbitrate any open issues in the negotiation.

4.2 (Formal Option:) To petition the Commission, a Party shall file a request with the Commission. The Petition shall contain, in the following order and specifically identified, the following information, either in the Request or in appropriately identified, attached exhibits:

4.2.1 Identifying Information.

4.2.1.1 The name, address, and telephone number of the Party to the negotiation making the request;

4.2.1.2 The name, address, and telephone number of the other Parties to the negotiation;

4.2.1.3 The name and address of the Party's(ies)' representative, who is participating in the negotiations and to whom all inquiries should be made;

4.2.1.4 The negotiation history, established meeting times and location, etc;

4.2.2 Issues Information. All relevant documentation and arguments concerning:

4.2.2.1 the unresolved issues;

4.2.2.2 the position of each of the Parties with respect to those issues; and

4.2.2.3 any other issue discussed and resolved by the Parties.

4.2 (More Informal Option:) To file such a petition, a Party shall send a letter to the 4.2.1 Identifying Information.

4.2.1.1 The name, address, and telephone number of the Party to the negotiation making the request;

4.2.1.2 The name, address, and telephone number of the other Parties to the negotiation;

4.2.1.3 The name and address of the Party's(ies') representative, who is participating in the negotiations and to whom all inquiries should be made;

4.2.1.4 The negotiation history, established meeting times and location, etc;

4.2.2 Issues Information. All relevant documentation and arguments concerning:

4.2.2.1 the unresolved issues;

4.2.2.2 the position of each of the Parties with respect to those issues; and

4.2.2.3 any other issue discussed and resolved by the Parties.

**RULE 5. REQUIREMENT TO PROVIDE NOTICE.**

5.1 To Other Party(ies) of the Petition. Pursuant to 47 U.S.C. 252(b)(2)(B), a party petitioning the Commission to arbitrate shall provide a copy of the Petition and any documentation to the other Party or Parties

not later than the day on which the Commission receives the Petition.

5.2 (Option 1): Petitioner Provide Notice to Public. On the day of its Petition, the Petitioner shall publish notice of the Petition in a newspaper having general circulation. A copy of the legal notice shall be included in the Petition to the Commission. Proof of publication of the notice shall be provided to the Commission by the Petitioner within three days after filing. The Petitioner shall also furnish written notice to: a) any telecommunications carrier then known to be providing interconnected telecommunications service in the State of Colorado, as contained on a list maintained by the Commission; and b) the Office of Consumer Counsel.

5.2 (Option 2): Commission Provides Notice to Public. When a Petition is filed and a docket number is assigned to it, the Commission (Director), within five (5) working days of the filing, shall issue and mail a notice that a Petition was received to any person who in the opinion of the Commission would be interested in or affected by the Petition. The Notice shall include: a) identification of the Parties to the Arbitration, b) the issues to be addressed, c) information on the intervention process and/or notice of opportunity to comment, and d) scheduled hearing date(s) on the matter. The Commission may require the Petitioner to give notice of these items to interested persons as prescribed by the Commission.

5.3 (Option 3): No Notice Provided to Public. The arbitration sessions are to be private and, therefore, no court reporter will be used and the public will be given no notice and no opportunity to comment or to intervene.

**RULE 6. OPPORTUNITY TO RESPOND TO PETITION.**

6.1 Other Parties. Pursuant to 47 U.S.C. 252(b)(3), a non-petitioning Party to an interconnection negotiation may respond to the other Party's petition and provide such additional information as it wishes within 25 days after the Commission receives the petition.

6.2 Public Response. Interested persons may file responses to the petition or notices of intervention pursuant to Rule 64, 4 CCR 723-1, and

provide such additional information as it wishes within twenty-five (25) days after the Commission receives the petition.

**RULE 7. (FORMAL Option) ROLE OF COMMISSION DURING ARBITRATION.**

7.1 Upon receiving a Petition to Arbitrate, the Commission will within ten (10) days after receipt: a) set the matter for hearing, and b) establish the schedule for submission of testimony and exhibits by interested persons.

7.2 The Commission or its appointed Arbitrator shall: a) review all submitted documentation and written arguments, and b) hold a hearing, with recorded testimony/transcript, during which the Parties can present additional comments not already presented in writing.

7.3 The Commission shall limit its consideration of any petition for arbitration and any response thereto to the issues set forth in the petition and in the response, if any, filed pursuant to Rule 6 [Opportunity to Respond].

7.4 The Commission may require the petitioning party and the responding party to provide such information as may be necessary for the Commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the Commission, then the Commission may proceed on the basis of the best information available to it from whatever source derived.

7.5 The Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement Rule 8 [Standards for Arbitration] upon the parties to the agreement.

7.6 The Commission shall conclude the resolution of any unresolved issues not later than nine (9) months after the date on which the local exchange carrier received the request under this section in accordance with the Commission's own procedures and specified statutes or rules.

7.7 All Parties shall purchase a transcript of the arbitration

proceedings. Such transcript shall be available to the Commission in its deliberations on the issues raised in the arbitration (Petition) proceedings.

7.9 The Commission shall issue a final order pursuant to 40-6-109(b) on the issues raised in the Petition for Arbitration (or any unresolved issues) within 9 months after the initial request to negotiate was received by the Incumbent.

**RULE 7. (Informal Option) ROLE OF COMMISSION DURING ARBITRATION.**

7.1 The Commission will respond to the petition within ten (10) days after receipt. The response shall include the assignment of the Commission contact person and such other Commission personnel as are in its opinion necessary. [On the filing of an arbitration petition, the Commission will assign the matter to one or more arbitrators, in the manner and with the effort set forth in this rule. The Commission shall promptly notify the parties of the assigned arbitrator(s).

7.2 Schedule for Arbitration. The Commission or its appointed Arbitrator shall work with all Parties to establish an appropriate schedule for arbitration.

7.3 The Commission/ Arbitrator shall arbitrate the issues in an informal, off-the-record manner intended to resolve the dispute in an expedited manner.

7.4 The Commission shall limit its consideration of any petition for arbitration, and any response thereto, to the issues set forth in the petition and in the response, if any, filed pursuant to Rule 6 [Opportunity to Respond].

7.5 The Commission may require the petitioning party and the responding party to provide such information as may be necessary for the Commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the Commission, then the Commission may proceed on the basis of the best information available to it from whatever source

derived.

7.6 The Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement Rule 8 [Standards for Arbitration] upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than nine (9) months after the date on which the local exchange carrier received the request under this section.

7.7 The Arbitrator shall issue an Arbitration Settlement (on the issues in the Petition or on any unresolved issues?)

7.8 The Commission shall review the Arbitration Settlement and issue a final order.

**RULE 8. STANDARDS FOR ARBITRATION.** Pursuant to 47 U.S.C. 252(c), in resolving any open issues by arbitration under 47 U.S.C. 252(b) [Compulsory Arbitration] and imposing conditions upon the parties to the agreement, the Commission shall:

8.1 ensure that such resolution and conditions meet the requirements of 47 U.S.C. 251, including the regulations prescribed by the Commission pursuant to 47 U.S.C. 251;

8.2 establish any rates for interconnection, services, or network elements according to 47 U.S.C. 252(d); and

8.3 provide a schedule for implementation of the terms and conditions by the parties to the agreement.

**RULE 9. DUTY OF PARTIES TO NEGOTIATE IN GOOD FAITH DURING ARBITRATION.**

Pursuant to 47 U.S.C. 251(c)(1), each incumbent local exchange carrier has, among other duties, the duty to negotiate in good faith in accordance with 47 U.S.C. 252 the particular terms and conditions of agreements to fulfill the duties described in 47 U.S.C. 251(b)(1) through (5) and 47 U.S.C. 252. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

**RULE 10. REFUSAL TO NEGOTIATE.** Pursuant to 47 U.S.C. 252(b)(5), the refusal of any party to the negotiation to participate further in the negotiations, to cooperate with the Commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the Commission shall be considered a failure to negotiate in good faith. Pursuant to 47 U.S.C. 252(b)(4)(B), if any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the Commission, then the Commission may proceed on the basis of the best information available to it from whatever source derived.

**RULE 11. CONFIDENTIALITY OF INFORMATION DURING ARBITRATION PROCESS.** Until the terms of the agreement are final, all information discussed during the arbitration process will be considered and treated as confidential by the Commission consistent with applicable law.

**RULE 12. REQUIREMENT TO SUBMIT AGREEMENT FOR APPROVAL.** Pursuant to 47 U.S.C. 252(a)(1) and 47 U.S.C. 252(e)(1), any interconnection agreement adopted by negotiation or arbitration [between or among telecommunications carriers] shall be submitted for approval to the Commission following the process established in 4 CCR 723-XX. Pursuant to 47 U.S.C. 252(e)(4), the Commission must approve or reject Arbitrated Agreements within 30 days.

**RULE 13. WAIVER OF RULES.** The Commission may permit variance from these rules, if not contrary to law, for good cause shown or it if finds compliance to be impossible, impracticable, or unreasonable.