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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of the Commission's)	GEN Docket No. 90-314
Rules To Establish New Personal)	RM-7140, RM-7175,
Communications Services)	RM-7618

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SUPPLEMENTAL COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA") hereby submits supplemental comments addressing various issues that have been raised concerning its proposal to require parties involved in the deployment of new 2 GHz Personal Communications Services ("PCS") to "participate in reasonable arrangements for sharing the costs of relocating incumbent microwave links."¹ In recent discussions with microwave licensees, members of the PCS industry, and other interested parties, PCIA has been made aware of several concerns regarding the implementation of its cost sharing proposal and the potential for imposition of unwarranted burdens on the Commission should substantial numbers of disputes arise over entities' cost sharing obligations. PCIA submits the following in response to those concerns.²

¹ See Petition for Partial Reconsideration filed by PCIA, July 25, 1994.

² A Motion To Accept Supplemental Comments has been filed concurrently with these comments.

I. THE COMMISSION SHOULD NOT BE UNDULY BURDENED WITH COST SHARING COMPLAINTS

As PCIA explained in its Comments on the Petition for Partial Reconsideration, the determination of whether or not a PCS interest has a cost sharing obligation with respect to the relocation of a particular microwave link will be a relatively simple and straightforward process.³ Cost sharing will be required only in those cases of co-channel interference where relocation of a microwave link benefits another PCS interest, and only in those limited adjacent channel cases where a PCS interest in an adjacent block relocates a link to the benefit of a co-channel PCS interest.⁴ The existence of a "benefit" will be determined by the avoidance of interference between a PCS deployment and the relocated microwave link as calculated in accordance with Section 24.237 of the Rules.⁵

A PCS interest obligated to engage in cost sharing would be liable for only its pro rata share of the cost of comparable facilities and would be entitled to all documentation necessary to calculate those amounts. PCIA further expects that many PCS interests will identify sharing opportunities and negotiate necessary arrangements prior to the relocation

³ See PCIA Comments at 3-5.

⁴ Id. at 3.

⁵ See 47 C.F.R. § 24.237(a).

of microwave links. It therefore appears unlikely that the Commission would become embroiled in the resolution of numerous cost sharing-related complaints.

Nonetheless, to ensure that such is not the case and that Commission resources are not unduly burdened, PCIA suggests that participation in cost sharing arrangements be made a condition of PCS licensing. Considering a licensee's failure to comply with cost sharing requirements at the time of license renewal creates enormous incentives for licensees to resolve relocation cost issues between themselves and without recourse to the Commission. In an analogous situation, the Commission has declared a licensee's record of compliance with FCC rules and policies to be a key criterion for awarding a renewal expectancy to cellular providers.⁶ There is no reason to believe that a similar pronouncement would not be equally useful here. No PCS licensee will place their substantial investment in auction payments and infrastructure deployment at risk over a dispute regarding their obligation to bear a part of the expense of relocating a microwave link.

Moreover, as discussed in additional detail below, PCIA has recommended that affected parties initially employ alternative dispute resolution techniques to address any

⁶ See Cellular License Renewals, 7 FCC Rcd 719, 720 (1991), recon., FCC 93-139 (released Apr. 9, 1993).

disagreements prior to resorting to agency action. Under these conditions, PCIA does not believe that the establishment of cost sharing obligations among PCS interests would excessively burden agency resources.

II. PCS DESIGNATED ENTITIES SHOULD BE PERMITTED TO ELECT A TIME PAYMENT OPTION TO FULFILL THEIR COST SHARING OBLIGATIONS

PCIA recognizes that not all entities seeking PCS licenses will have access to the same level of financial resources, at least initially. Indeed, the Commission has already accounted for this to some extent in the bidding preferences it has provided for designated entities.⁷ PCIA appreciates that such concerns could be equally applicable to the funding available for microwave relocations. This could pose a particular problem for certain PCS interests in situations where they lack immediate access to the funds necessary to satisfy a cost sharing obligation that arises as a result of the relocation of a microwave link by another PCS interest.

PCIA submits that this concern can easily be addressed through express recognition of the right of affected entities to comply with the cost sharing requirements through the use of installment payments. Just as the Commission has

⁷ See Fifth Report and Order, FCC 94-178, PP Dkt. No. 93-253 (released July 15, 1994), ¶¶ 130-134.

permitted designated entities to elect an installment payment plan for remittance of their winning bids,⁸ all designated entity licensees should be permitted to utilize an installment plan to satisfy their cost sharing obligations.

As in the case of bidding payments, interest charges could be fixed at the time the cost sharing obligation arises at the rate for 10-year U.S. Treasury obligations plus 2.5%; interest-only payments could be permitted for a reasonable period of years; and principal and interest payments could then be amortized over the remaining years of the entity's license. A reasonable down payment of 10% of the total cost sharing obligation could also be required. In this manner, a PCS interest's financial ability to make its bid payments and pursue construction of its system would not be unreasonably impaired by the relocation activities of other entities.

**III. PCS INTERESTS SHOULD MAKE USE OF
ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES
PRIOR TO RESORTING TO THE AGENCY FOR
RESOLUTION OF COST SHARING DISPUTES**

As PCIA previously suggested, PCS interests should be required to engage in good faith negotiations in an attempt to reach agreement concerning their respective cost sharing obligations.⁹ Should those negotiations fail, the parties

⁸ Id., ¶¶ 135-140.

⁹ PCIA Comments at 5-6.

should be strongly encouraged to make use of alternative dispute resolution ("ADR") techniques such as mediation or arbitration prior to seeking a resolution from the FCC.¹⁰ The Commission's ADR procedures and the arbitration process established by the American Arbitration Association explain the available techniques.

For example, the FCC's ADR Policy Statement expressly contemplates the engagement of "neutrals" to aid the parties in resolving a controversy.¹¹ Such an individual can be employed, with the agreement of the parties, to assist in "settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, . . . arbitration" or any other mechanisms or combinations thereof that would facilitate an agreed solution.¹²

The American Arbitration Association has adopted detailed rules for the conduct of commercial arbitration and mediation proceedings. Those rules, which are appended hereto, provide for the appointment of arbitrators or mediators, explain their respective roles, permit the presentation of evidence, and generally establish formal

¹⁰ See Use of the Alternative Dispute Resolution Procedures In Commission Proceedings and Proceedings In Which the Commission Is A Party, 6 FCC Rcd 5669 (1991) ("ADR Policy Statement").

¹¹ Id. at 5671.

¹² See id. at 5673 n.19.

procedures to expedite the decisionmaking process. Willingness to participate in ADR programs such as these would be considered as evidence of good faith should a cost sharing dispute carry over to the license renewal process as discussed above.

IV. CONCLUSION

For the foregoing reasons and those set out in its Petition, Comments, and Reply, PCIA urges the Commission to expeditiously promulgate rules implementing its proposed cost sharing requirements.

Respectfully submitted

THE PERSONAL COMMUNICATIONS
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APPENDIX VII

COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION

(Revised Rules and Fees for Cases Filed on or after May 1,
1992.)

1. Agreement of Parties

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter AAA) or under its Commercial Arbitration Rules. These rules and any amendment of them shall apply in the form obtaining at the time the demand for arbitration or submission agreement is received by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules.

2. Name of Tribunal

Any tribunal constituted by the parties for the settlement of their dispute under these rules shall be called the Commercial Arbitration Tribunal.

3. Administrator and Delegation of Duties

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these rules, and may be carried out through such of the AAA's representatives as it may direct.

4. National Panel of Arbitrators

The AAA shall establish and maintain a National Panel of Commercial Arbitrators and shall appoint arbitrators as provided in these rules.

5. Regional Offices

The AAA may, in its discretion, assign the administration of an arbitration to any of its regional offices.

6. Initiation under an Arbitration Provision in a Contract

Arbitration under an arbitration provision in a contract shall be initiated in the following manner:

(a) The initiating party (hereinafter claimant) shall, within the time period, if any, specified in the contract(s), give written notice to the other party (hereinafter respondent) of its intention to arbitrate (demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, and

(b) Shall file at any regional office of the AAA three copies of the notice and three copies of the arbitration provisions of the contract, together with the appropriate filing fee as provided in the schedule on page 21. [Editor's Note: See schedule following Rule 57.]

The AAA shall give notice of such filing to the respondent or respondents. A respondent may file an answering statement in duplicate with the AAA within ten days after notice from the AAA, in which event the respondent shall at the same time send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a counterclaim is made, the appropriate fee provided in the schedule on page 21 shall be forwarded to the AAA with the answering statement. If no answering statement is filed within the stated time, it will be treated as a denial of the claim. Failure to file an answering statement shall not operate to delay the arbitration.

7. Initiation under a Submission

Parties to any existing dispute may commence an arbitration under these rules by filing at any regional office of the AAA three copies of a written submission to arbitrate under these rules, signed by the parties. It shall contain a statement of the matter in dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, together with the appropriate filing fee as provided in the schedule on page 21. [Editor's Note: See schedule following Rule 57.]

8. Changes of Claim

After filing of a claim, if either party desires to make any new or different claim or counterclaim, it shall be made in writing and filed with the AAA, and a copy shall be mailed to the other party, who shall have a period of ten days from the date of such mailing within which to file an answer with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

9. Applicable Procedures

Unless the AAA in its discretion determines otherwise, the Expedited Procedures shall be applied in any case where no disclosed claim or counterclaim exceeds \$50,000, exclusive of interest and arbitration costs. Parties may also agree to using the Expedited Procedures in cases involving claims in excess of \$50,000. The Expedited Procedures shall be applied as described in Sections 53 through 57 of these rules, in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

All other cases shall be administered in accordance with Sections 1 through 52 of these rules.

10. Administrative Conference, Preliminary Hearing, and Mediation Conference

At the request of any party or at the discretion of the AAA, an administrative conference with the AAA and the parties and/or their representatives will be scheduled in appropriate

cases to expedite the arbitration proceedings. There is no administrative fee for this service.

In large or complex cases, at the request of any party or at the discretion of the arbitrator or the AAA, a preliminary hearing with the parties and/or their representatives and the arbitrator may be scheduled by the arbitrator to specify the issues to be resolved, to stipulate to uncontested facts, and to consider any other matters that will expedite the arbitration proceedings. Consistent with the expedited nature of arbitration, the arbitrator may, at the preliminary hearing, establish (i) the extent of and schedule for the production of relevant documents and other information, (ii) the identification of any witnesses to be called, and (iii) a schedule for further hearings to resolve the dispute. There is no administrative fee for the first preliminary hearing.

With the consent of the parties, the AAA at any stage of the proceeding may arrange a mediation conference under the Commercial Mediation Rules, in order to facilitate settlement. The mediator shall not be an arbitrator appointed to the case. Where the parties to a pending arbitration agree to mediate under the AAA's rules, no additional administrative fee is required to initiate the mediation.

11. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within ten days after notice of the request has been sent to it by the AAA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale and its decision shall be final and binding.

12. Qualifications of an Arbitrator

Any neutral arbitrator appointed pursuant to Section 13, 14, 15, or 54, or selected by mutual choice of the parties or their appointees, shall be subject to disqualification for the reasons specified in Section 19. If the parties specifically so

agree in writing, the arbitrator shall not be subject to disqualification for those reasons.

Unless the parties agree otherwise, an arbitrator selected unilaterally by one party is a party-appointed arbitrator and is not subject to disqualification pursuant to Section 19.

The term "arbitrator" in these rules refers to the arbitration panel, whether composed of one or more arbitrators and whether the arbitrators are neutral or party appointed.

13. Appointment from Panel

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: immediately after the filing of the demand or submission, the AAA shall send simultaneously to each party to the dispute an identical list of names of persons chosen from the panel.

Each party to the dispute shall have ten days from the transmittal date in which to strike any names objected to, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists.

14. Direct Appointment by a Party

If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of

the panel from which the party may, if it so desires, make the appointment.

If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the AAA shall make the appointment.

If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within ten days thereafter an arbitrator has not been appointed by a party, the AAA shall make the appointment.

15. Appointment of Neutral Arbitrator by Party-Appointed Arbitrators or Parties

If the parties have selected party-appointed arbitrators, or if such arbitrators have been appointed as provided in Section 14, and the parties have authorized them to appoint a neutral arbitrator within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint a neutral arbitrator, who shall act as chairperson.

If no period of time is specified for appointment of the neutral arbitrator and the party-appointed arbitrators or the parties do not make the appointment within ten days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the neutral arbitrator, who shall act as chairperson.

If the parties have agreed that their party-appointed arbitrators shall appoint the neutral arbitrator from the panel, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section 13, a list selected from the panel, and the appointment of the neutral arbitrator shall be made as provided in that section.

16. Nationality of Arbitrator in International Arbitration

Where the parties are nationals or residents of different countries, any neutral arbitrator shall, upon the request of either party, be appointed from among the nationals of a country other than that of any of the parties. The request must be

made prior to the time set for the appointment of the arbitrator as agreed by the parties or set by these rules.

17. Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that a greater number of arbitrators be appointed.

18. Notice to Arbitrator of Appointment

Notice of the appointment of the neutral arbitrator, whether appointed mutually by the parties or by the AAA, shall be sent to the arbitrator by the AAA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

19. Disclosure and Challenge Procedure

Any person appointed as neutral arbitrator shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others. Upon objection of a party to the continued service of a neutral arbitrator, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

20. Vacancies

If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.

In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

21. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The AAA shall send a notice of hearing to the parties at least ten days in advance of the hearing date, unless otherwise agreed by the parties.

22. Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

23. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a date, time, and place determined by the arbitrator.

24. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

25. Attendance at Hearings

The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be

discretionary with the arbitrator to determine the propriety of the attendance of any other person.

26. Postponements

The arbitrator for good cause shown may postpone any hearing upon the request of a party or upon the arbitrator's own initiative, and shall also grant such postponement when all of the parties agree.

27. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

28. Majority Decision

All decisions of the arbitrators must be by a majority. The award must also be made by a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

29. Order of Proceedings and Communication with Arbitrator

A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the date, time, and place of the hearing, and the presence of the arbitrator, the parties, and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. In some cases, part or all of the above will have been accomplished at the preliminary hearing conducted by the arbitrator pursuant to Section 10.

The complaining party shall then present evidence to support its claim. The defending party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the dis-

cretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

There shall be no direct communication between the parties and a neutral arbitrator other than at oral hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the neutral arbitrator shall be directed to the AAA for transmittal to the arbitrator.

30. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

31. Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent in default or has waived the right to be present.

32. Evidence by Affidavit and Posthearing Filing of Documents or Other Evidence

The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents or other evidence.

33. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

34. Interim Measures

The arbitrator may issue such orders for interim relief as may be deemed necessary to safeguard the property that is the subject matter of the arbitration, without prejudice to the rights of the parties or to the final determination of the dispute.

35. Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.

If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of

briefs. If documents are to be filed as provided in Section 32 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing.

36. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearing and shall have thirty days from the closing of the reopened hearing within which to make an award.

37. Waiver of Oral Hearing

The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

38. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

39. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

40. Serving of Notice

Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.

The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these rules.

41. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than thirty days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

42. Form of Award

The award shall be in writing and shall be signed by a majority of the arbitrators. It shall be executed in the manner required by law.

43. Scope of Award

The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract. The arbitrator shall, in the award, assess arbitration fees, expenses, and compensation as provided in Sections 48, 49, and 50 in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA.

44. Award upon Settlement

If the parties settle their dispute during the course of the arbitration, the arbitrator may set forth the terms of the agreed settlement in an award. Such an award is referred to as a consent award.

45. Delivery of Award to Parties

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

46. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

47. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.

(c) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

48. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe filing and other administrative fees to compensate it for the cost of providing administrative services. The fees in effect

when the demand for arbitration or submission agreement is received shall be applicable.

The filing fee shall be advanced by the initiating party or parties, subject to final apportionment by the arbitrator in the award.

The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

49. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

50. Neutral Arbitrator's Compensation

Unless the parties agree otherwise, members of the National Panel of Commercial Arbitrators appointed as neutrals will serve without compensation for the first day of service.

Thereafter, compensation shall be based on the amount of service involved and the number of hearings. An appropriate daily rate and other arrangements will be discussed by the administrator with the parties and the arbitrator. If the parties fail to agree to the terms of compensation, an appropriate rate shall be established by the AAA and communicated in writing to the parties.

Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

51. Deposits

The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's

fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

52. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

Expedited Procedures

53. Notice by Telephone

The parties shall accept all notices from the AAA by telephone. Such notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any notice hereunder, the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.

54. Appointment and Qualifications of Arbitrator

The AAA shall submit simultaneously to each party an identical list of five proposed arbitrators drawn from the National Panel of Commercial Arbitrators, from which one arbitrator shall be appointed.

Each party may strike two names from the list on a peremptory basis. The list is returnable to the AAA within seven days from the date of the AAA's mailing to the parties.

If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from among other members of the panel without the submission of additional lists.

The parties will be given notice by telephone by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Section 19. Within seven days, the parties shall notify the AAA, by telephone, of

any objection to the arbitrator appointed. Any objection by a party to the arbitrator shall be confirmed in writing to the AAA with a copy to the other party or parties.

55. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place of the hearing. The AAA will notify the parties by telephone, at least seven days in advance of the hearing date. A formal notice of hearing will also be sent by the AAA to the parties.

56. The Hearing

Generally, the hearing shall be completed within one day, unless the dispute is resolved by submission of documents under Section 37. The arbitrator, for good cause shown, may schedule an additional hearing to be held within seven days.

57. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than fourteen days from the date of the closing of the hearing.

[Editor's Note: The following material appears at p 21 in the Commercial Arbitration Rules pamphlet.]

Administrative Fees

The AAA's administrative charges are based on filing and service fees. Arbitrator compensation, if any, is not included. Unless the parties agree otherwise, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the award.

Filing Fees

A nonrefundable filing fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed, as provided below.

Amount of Claim	Filing Fee
Up to \$25,000	\$300
Above \$25,000 to \$50,000	\$500
Above \$50,000 to \$250,000	\$1,000

Above \$250,000 to \$500,000	\$2,000
Above \$500,000 to \$5,000,000	\$3,000
Above \$5,000,000	\$4,000

When no amount can be stated at the time of filing, the filing fee is \$1,000, subject to adjustment when the claim or counterclaim is disclosed.

When a claim or counterclaim is not for a monetary amount, an appropriate filing fee will be determined by the AAA.

Hearing Fees

For each day of hearing held before a single arbitrator, an administrative fee of \$100 is payable by each party.

For each day of hearing held before a multiarbitrator panel, an administrative fee of \$150 is payable by each party.

Postponement Fees

A fee of \$100 is payable by a party causing a postponement of any hearing scheduled before a single arbitrator.

A fee of \$150 is payable by a party causing a postponement of any hearing scheduled before a multiarbitrator panel.

Processing Fees

No processing fee is payable until 180 days after a case is initiated.

On single-arbitrator cases, a processing fee of \$150 per party is payable 180 days after the case is initiated, and every 90 days thereafter, until the case is withdrawn or settled or the hearings are closed by the arbitrator.

On multiarbitrator cases, a processing fee of \$200 per party is payable 180 days after the case is initiated, and every 90 days thereafter, until the case is withdrawn or settled or the hearings are closed by the arbitrators.

Suspension for Nonpayment

If arbitrator compensation or administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may make the required payment. If