



# Public Service Commission of Wisconsin

Cheryl L. Parrino, Chairman  
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Lynda L. Dorr, Secretary to the Commission  
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May 15, 1996

Mr. William F. Caton, Acting Secretary  
Office of the Secretary  
Federal Communications Commission  
Washington, DC 20554

Re: In the Matter of Implementation of the Local Competition  
Provisions in the Telecommunications Act of 1996

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MAY 16 1996

FCC L ROOM

CC Docket No. 96-98

Dear Mr. Caton:

Pursuant to the Notice of Proposed Rulemaking, dated April 19, 1996, the Public Service Commission of Wisconsin is providing the enclosed comments. Enclosed are the original plus 12 copies as requested.

Sincerely,

Cheryl L. Parrino  
Chairman

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Enclosure

cc: International Transcription Service, Inc.  
Janice Myles, Common Carrier Bureau

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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MAY 16 1996  
FCC L ROLL

In the Matter of )  
)  
Implementation of the Local Competition ) CC Docket No. 96-98  
Provisions in the Telecommunications Act )  
of 1996 )

COMMENTS OF THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

I. Introduction

In its Notice of Proposed Rulemaking (Notice) adopted on April 19, 1996,<sup>1</sup> the Federal Communications Commission (FCC or Commission) initiated a rulemaking to consider and implement the local competition provisions in the Telecommunications Act of 1996 (1996 Act).<sup>2</sup> The Public Service Commission of Wisconsin (Wisconsin PSC), having been given general regulatory authority over public utilities within our jurisdiction, hereby submits these Comments on issues most directly related to state regulatory policy. The Wisconsin PSC submits these comments in the interest of sharing our experience so that the FCC may give "due regard to work already done by the states that is compatible with the

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<sup>1</sup> In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, FCC 96-98 (April 19, 1996).

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151 et seq.).

terms and the pro-competitive intent of the 1996 Act" (Notice, paragraph 26). Further, we caution the FCC to avoid setting national standards that stifle innovative and compatible state initiatives.

## II. The Wisconsin Experience

Prior to enactment of the 1996 Act, the Wisconsin PSC was undertaking its own actions to foster local exchange competition in docket 05-TI-138, Investigation of the Appropriate Standards to Promote Effective Competition in the Local Exchange Telecommunications Market in Wisconsin. Upon enactment of the 1996 Act, the Wisconsin PSC re-examined this docket and afforded parties an opportunity to brief the impact of the 1996 Act. In addition, on March 21, 1996, the Wisconsin PSC opened docket 05-TI-140, Investigation of the Implementation of the Telecommunications Act of 1996 in Wisconsin. This docket afforded parties, including Wisconsin PSC staff, an opportunity to file written comments on: (1) the procedures the Wisconsin PSC should establish regarding its role in negotiation, mediation, and arbitration of interconnection arrangements; (2) requirements for filing existing interconnection agreements, contracts, and tariffs for removing resale restrictions; and (3) other issues that should be addressed in this docket, including whether hearings should be held on any issue.

On May 14, 1996, the Wisconsin PSC discussed the record in docket 05-TI-138. Its tentative decisions to date attempt to harmonize the provisions of the 1996 Act with our pro-competitive state statutes established by 1993 Wisconsin Act 496. For example, the Wisconsin PSC tentatively decided that cost-based reciprocal compensation, interconnection, and network element charges need to be established through the negotiation and arbitration process set forth in 47 U.S.C. § 252. Moreover, given that our state statutes define costs as Total Service Long-Run Incremental Cost (TSLRIC), the Wisconsin PSC adopted TSLRIC as its cost standard.

Our staffs' memorandum regarding the issues in docket 05-TI-140 is attached. It includes proposed interim procedures for negotiations, mediation, arbitration and approval of agreements. The Wisconsin PSC will be deciding at its open meeting of May 16, 1996, whether to accept, reject, or modify these proposed interim procedures, among other issues noted above.

The comment due date in this Notice did not permit us to file our final decisions in these two dockets. We will be in a better position to do so when reply comments are due on May 30, 1996.

### **III. National Standards versus State Initiatives**

In its pursuit of national standards, the FCC should avoid stifling the innovative work already done by the states, like Wisconsin, that is compatible with the terms and the pro-competitive intent of the 1996 Act. Further, any such national standards should not prevent states from interpreting and applying the 1996 Act in a way that harmonizes its provisions with applicable state statutes, particularly as it relates to establishing costs, setting and approving rates, along with other terms and conditions. Moreover, states should be free to develop their own procedures for negotiations, mediation, arbitration and the approval of agreements, so long as those procedures are compatible with the terms and the pro-competitive intent of the 1996 Act.

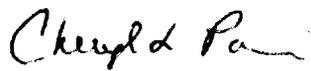
### **IV. Summary**

The Wisconsin PSC submits these comments in the interest of sharing our experience so that the FCC may give "due regard to work already done by the states that is compatible with the terms and the pro-competitive intent of the 1996 Act" (Notice, paragraph 26). The comment due date in this Notice did not permit us to file our final decisions in two pending

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dockets. We will be in a better position to do so when reply comments are due on May 30, 1996. Finally, national standards should not stifle state commission innovation, prevent harmonization of applicable state statutes, or preclude development of dispute resolution procedures that are compatible with the terms and the pro-competitive intent of the 1996 Act.

Respectfully Submitted,



Cheryl L. Parrino  
Chairman

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Attachments

# PUBLIC SERVICE COMMISSION OF WISCONSIN

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## Memorandum

May 13, 1996

### FOR COMMISSION AGENDA

TO: The Commission

FROM: Scot Cullen, Administrator *SCC*  
Telecommunications Division

RE: Investigation of the Implementation of the  
Telecommunications Act of 1996 in Wisconsin

05-TI-140

Suggested Minute: The Commission discussed the issues of the proceeding and approved/rejected/approved with modifications the procedure proposed by the staff for negotiations and arbitration in compliance with the Telecommunications Act of 1996 and the authorization of resale of telecommunications services, with requirements. The Commission approved the attached letter orders reflecting the Commission's discussion and determinations.

### Background

On February 8, 1996, the Telecommunications Act of 1996 ("Act") was signed into law by the President. A major objective of the Act is to establish a national pro-competitive, deregulatory framework for the provision of telecommunications services. It also embodies as a national policy the two goals that have guided Wisconsin's regulatory policy during the past two years: the development of local telecommunications competition and the advancement of universal service. Prior to the enactment of the Act, the Public Service Commission (Commission) was undertaking its own actions to foster local exchange competition in docket 05-TI-138, Investigation of the Appropriate Standards to Promote Effective Competition in the Local Exchange Telecommunications Market in Wisconsin. The Act, however, decided many of the policy and procedural issues in docket 05-TI-138.

On March 21, 1996, the Commission opened this docket to determine the actions necessary to implement the provisions of the Act, including several of the procedural issues in docket 05-TI-138. The Commission requested parties to file comments addressing seven specific issues (phrased in the form of questions) regarding the implementation of the provisions of the Act. Thirteen parties filed comments. These comments addressed (1) the procedures the Commission should establish regarding its role in negotiation, mediation, and arbitration of interconnection arrangements; (2) requirements for filing existing interconnection agreements, contracts, and tariffs for removing resale restrictions; and (3) other issues that should be addressed in this docket, including whether hearings should be held on any issue.

On May 1, 1996, staff sent an informational memo to the Commission transmitting all the initial and reply comments filed in this docket. Staff has conducted an analysis of these comments regarding each of the seven specific issues. This memo provides an analysis of these comments and makes recommendations for the Commission to consider when it decides the seven issues.

#### Staff Analysis and Recommendations

**1. What procedures or mechanisms should the Commission establish for implementing Section 252 of the Act pertaining to negotiation, mediation, arbitration, and approval of agreements regarding interconnection, network elements, transport and termination of traffic, and wholesale prices?**

Several parties (BellSouth, AT&T, TCG, GTE North Incorporated, Time Warner) more or less support staff's proposed guidelines for the negotiation of agreements and the mediation and arbitration of disputes. While generally supportive, these parties suggest

certain modifications for improvement. WSTA also suggests modification of staff's proposed guidelines.

MCI, on the other hand, proposes a "business-as-usual" approach by urging the Commission to utilize its existing procedures, albeit on an expedited basis, to implement the requirements of the Act. Similarly, Sprint strongly advocates the right to intervene in any arbitration proceeding, presumably giving arbitration the "look and feel" of a typical Commission proceeding.

Wisconsin Bell, Inc. (Ameritech), represents the opposite end of the spectrum. It argues for an arbitration "paper-only process" with the Commissioners acting as the arbitrator. Anything else, Ameritech argues, is unlawful and contrary to the Act's purpose. Staff submits, however, that §§252(e)(3) and (f)(2), and 601(c)(1) of the Act provide for the application of state enforcement and review procedures, including ordinary delegations of authority, insofar as they are consistent with the Act.

Staff has further refined its proposed guidelines (attached), now called interim procedures, and modified the procedures based on several parties' suggestions contained in their reply comments. With these modifications, many of which are intended to emphasize the informal nature customarily sought in arbitrations, staff believes its process still strikes a reasonable balance and effects the purpose of the Act, all things considered. As the substance of the interim procedures amounts to general internal directives to examiners and staff regarding the procedure for the handling of a petition for arbitration, a minute action by the Commission is all that is required. Staff recommends that the Commission adopt these proposed interim procedures for use until such time as rules are promulgated. Staff also believes that rulemaking will likely have to address integration of the Act and ch. 196, Stats., in many areas besides dispute resolution.

**2. Are incumbent local exchange carriers (LECs) required to submit all interconnection and service agreements (including those existing prior to the Act) for approval by the Commission? If not all agreements, what types of agreements should be filed? What would be the impact (both financially and administratively) on those responsible for filing these agreements with the Commission?**

The language of the Act is clear. It requires all incumbent local exchange carriers (ILECs) to file all agreements the ILEC may have with other telecommunications providers, regardless of whether the agreement was entered into before or after the Act went into effect. The agreements which must be filed include those for interconnection (such as Extended Area Service (EAS), Extended Community Calling (ECC), and routing of intraLATA calls), for network elements (such as SS7 interconnection and FGA or ISDN provided from a remote central office or tandem), and network services (such as operator services, directory assistance and directory listings exchange).

The impact of filing these agreements could be significant, especially on the Commission staff, who would be required to review them. Staff recommends that the Commission make two rulings that would greatly limit these impacts, both for the companies and staff. First, the language of the Act requires the filing of *all* agreements. Read literally, this provision would include agreements which expired decades ago. The Commission should determine that the agreements made in the past, which expired and were discarded or renegotiated prior to February 8, 1996, are presumed reasonable and need not be filed.

All contracts which were in effect as of that date, even if they have subsequently expired or have been noticed for termination, must be filed. Second, staff recommends that the agreements be filed in stages to allow additional time for the companies to retrieve the agreements and to allow staff the opportunity to review similar agreements together. A draft schedule for filing is attached. The schedule has Ameritech filing its agreements first,

because the majority of new entrants are serving in Ameritech areas. The proposed schedule would allow the smaller LECs additional time to consider applying for exemptions under §251(f). A proposed letter order to this effect is attached.

The agreements would be reviewed and approved under the procedures outlined in the staff comments. If companies have renegotiated agreements since the Act went into effect, and if a party to an agreement believes that the agreements are no longer valid and should not be available for new entrants for that reason, it may make those arguments during the review process. Likewise, if parties to an agreement believe that the agreements are not in the public interest, given changed circumstances, they may make such arguments in their filings.

**3. Are incumbent LECs required to file existing contracts under which LECs are providing services to end-user customers? If so, what procedure should the Commission undertake to require such existing contracts to be filed and in what time frame?**

ILECs are required under § 252(i), to file only agreements *with other carriers*. They are not required to file agreements with end-users. Some parties have argued that the ILECs need to be compelled to submit such contracts to allow enforcement of the various resale provisions of §251. While such filings would definitely assist in such enforcement, they are not required. The other parties argue that if such agreements are not filed, they will have no way of knowing whether the ILECs are offering better deals to end users than to resellers. This is incorrect. In all agreements with end users, the complete information on that agreement is known to the ILEC *and to the end user*. The end users are not prevented from revealing that information. The competing providers can--and will--hear about the terms of existing agreements when they market services to the end users involved in such agreements.

If the end user reports receiving rates much better than those offered to resellers, the competing carriers may initiate a complaint against the ILEC for violations of § 251.

**4. Are incumbent LECs required to file tariffs with the Commission to remove all resale restrictions on services offered to end users? If so, what procedure should the Commission undertake to require such tariffs to be filed and in what time frame?**

Section 251(b)(1), specifically forbids all complete prohibitions against resale of services. All such prohibitions are now moot, and ILECs should remove them from their tariffs. The LECs should file corrected tariffs within 60 days.

Resellers may resell "MTS, WATS, or other services approved for reselling by the Commission," s. 196.01(9), Stats. The Commission has formally approved the resale of private line services and software defined network services under this section. The passage of the Act may or may not negate the need for such approvals. To remove all doubt, the Commission should formally approve for resale under s. 196.01(9), Stats., all services, except for those services with a specific resale restriction in the tariff.

**5. With respect to tariffs and contracts pertinent to (3) and (4) above, what terms and conditions that restrict or condition resale are reasonable to continue in force?**

**Interconnection Agreements**

Staff's recommended procedures for reviewing interconnection agreements are included in staff's comments. It is not reasonable at present, in advance of any evidence or sufficient information, to determine what restrictions or conditions may be reasonable. The appropriate time for LECs to propose restrictions and/or conditions is during the review process. For example, if a LEC has terminated or renegotiated some agreements, and the

LEC argues that the termination should mean that the old agreements should no longer be generally available, then the LEC should make that argument during the review process.

### Resale

The state and federal statutes allow for two types of reasonable restriction on resale. First, the Commission may restrict resale of services between categories of service. Staff recommends that the Commission find that resellers may not resell service purchased at a rate intended for residential customers to business customers if the rate for business customers for that service is higher than the rate for residential services. That language should be written into the administrative rules for resellers currently being revised in docket 1-AC-158. LECs may also incorporate that language in their tariffs.

Under s. 196.219(3)(j), Stats., small LECs may limit resale of services to prevent their use as a substitute for access. The Commission may--and should--find this restriction on usage to be reasonable. This provision was added to the law in response to a LEC reseller which was using B1 lines and EAS service as a substitute for Feature Group B access service, and is an unfair and unreasonable substitution. However, while the small LECs may reasonably restrict such use, the LECs may not prohibit resale of B1 services for this reason. Instead, they should include tariff language that prevents the unreasonable use, while allowing resale. Staff also suggests that it be directed to incorporate the foregoing class of service restriction, as appropriate and permissible, in the reseller rulemaking docket, 1-AC-158.

Section 196.219(3)(j), Stats., permits a LEC to restrict the resale of basic local exchange service, unless the Commission removes the restriction. Unless otherwise determined in docket 05-TI-138, staff proposes in this proceeding that the restriction be lifted

except for LECs having 150,000 or fewer access lines in use in this state. For the smaller telecommunications utilities, the Commission should consider lifting the restriction against resale on a company-by-company basis, but only after a filing of a bona fide request for such resale.

Some LECs may see a need to include or retain other restrictions in their tariffs, or to make clarification on what services are available for resale. All LECs should be required to file tariffs with any new restrictions, together with any tariff modifications making it easy for resellers to identify existing restrictions (for example, by segregating them onto a separate page or in a single section of the "rules and regulations" portion of the tariff). Such tariff revisions should be filed within 60 days. Review of such filings would be through the normal tariff review process, while competitors and new entrants could object through the complaint process. If a significant number of complaints appeared, especially if several companies included similar restrictions, the Commission could initiate a comment cycle or hearing.

A proposed letter order reflecting staff's recommendations respecting this issue and the preceding issue is attached.

**6. Are there other provisions of the Act that should be addressed in the near term? What other provisions of the Act should the Commission address in subsequent phases of this docket? Identify whether these provisions should be implemented prior to FCC rules? If so, why and by when?**

Several parties provided comments on the issues that should be addressed in this docket. While comments covered numerous issues, parties generally commented that the Commission should carefully utilize and target its resources to complete activities required under the Act. Staff agrees with this advice and recommends that further study be given to

the issues and the resources needed to deal with each issue. Therefore, staff stands by the recommendation it made in its reply comments that staff should "submit for the Commission's approval by June 30, 1996, a comprehensive list of issues to be addressed in this docket, including a timeline for dealing with the listed issues."

The Commission should, however, decide whether it should open a separate docket to determine whether and when Ameritech has satisfied the requirements of 47 U.S.C. §271, for entry by regional Bell operating companies into the market for interLATA services. Several parties have requested such a proceeding be opened to develop procedures to determine if Ameritech has complied with the competitive checklist detailed in §271. Ameritech responds to these requests as being "premature" and that the Commission is only required to consult with the Federal Communications Commission, not conduct "formal proceedings."

Ameritech regulatory officials, however, have met several times with staff to discuss the process for Ameritech to comply with the competitive checklist. For administrative purposes alone (e.g., billing), staff recommends that a docket be open to determine Ameritech's compliance with the checklist, including the review of tariffs filed to comply with the checklist (e.g., wholesale tariffs, unbundling tariffs). Staff does not recommend, however, that the Commission hold a hearing or seek comments, but defer all procedural matters to a later date.

**7. Should the Commission hold any hearings on the implementation of any of the Act's provisions? Please identify issues as to which disputes of material fact are likely to arise.**

Very few parties provided any specific recommendations as to whether any hearings were necessary. In staff's view, the best advice was to evaluate each issue on a case-by-case

basis. Several parties, however, suggested that hearings may be required to establish standards for cost studies. As discussed in staff's proposed interim procedures, cost studies are the subject of good faith negotiations between parties. A separate hearing could prejudice the course, and potentially, the outcome of such negotiations. As detailed in staff's interim procedures, parties will be given the opportunity to discuss the merits of cost studies when the Commission is requested to arbitrate interconnection arrangements or tariffs (e.g., wholesale and unbundling tariffs) are filed with the Commission. Staff recommends, therefore, that the Commission not open any proceeding or hearing on cost studies but wait for requests for arbitration.

### Conclusion

Staff recommends the following actions:

1. Adopt by minute action the proposed interim procedures for use until such time as they are superseded by anticipated rules.
2. (a) Determine that §251 of the Act requires the filing of interconnection agreements in effect as of that date, regardless of whether they have expired or been noticed for termination.  
  
(b) Issue the first proposed letter order setting forth a schedule for filing of the agreements for approval as required by the Act.
3. Determine that agreements with end-users need not be filed.
4. Except as approved in other proceedings, approve for resale under s. 196.01(9), Stats., all services presently offered to end-users, except those services tariffed with a specific resale restriction.

5. (a) Order all restrictions against the resale of basic local exchange service under s. 196.219(3)(j), Stats., be removed, except in the case of telecommunications utilities having 150,000 or fewer access lines in use in this state. For those utilities, determine that the removal of a resale restriction may be determined in a Commission proceeding initiated by the utility after it has received a bona fide request for resale.

(b) The Commission has determined not to suspend this provision Determine that, where residential and business prices for a service differ, services purchased at residential rates may not be resold to business customers.

(c) Direct staff to incorporate treatment of "class-of-service" restrictions in docket 1-AC-158, as appropriate.

(d) Order tariffs to be modified within 60 days to segregate restrictions against resale for easier identification.

The above orders amount to authorizing issuance of the second letter order regarding resale.

6. (a) Order staff to prepare by June 30, 1996, a comprehensive list of issues to be addressed in this docket's further proceedings.

(b) Order staff to open a separate proceeding for the Ameritech "checklist" compliance.

7. Refrain from ordering cost study hearings or proceedings.

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Attachments

**STAFF'S PROPOSED GUIDELINES INTERIM PROCEDURES FOR  
NEGOTIATIONS, MEDIATION, ARBITRATION  
AND APPROVAL OF AGREEMENTS  
(Modifications in redline and strikeout)**

**1. Purpose of Guidelines Procedures.**

The purpose of these ~~guidelines interim procedures~~ is to timely implement 47 U.S.C. §252. ~~of the created by the~~ federal Telecommunications Act of 1996 (hereinafter referred to as "Act"), which establishes procedures to resolve disputes between carriers, namely through voluntary negotiations or, in the case of impasse, through state commission mediation and arbitration. This section of the Act also provides for state commission approval of voluntary agreements. Experience using these ~~guidelines interim procedures~~ in the near-term will assist the Commission in developing final administrative rules consistent with the Act and ~~s-196.219(5), Stats.~~ affected provisions of ch. 196, Stats.

**2. Voluntary Negotiations**

Voluntary Negotiations Defined: Negotiation is a process whereby representatives (negotiators) of the parties in dispute (disputants) communicate their differences to one another and with this knowledge try to resolve them. Successful negotiations produce voluntary agreement over terms and conditions regarding those items in dispute, which may even include methods for resolving disputes over the interpretation and application of terms and conditions under an existing agreement.

Initiation of Negotiation. Notice to the Commission: A telecommunications carrier or carriers requesting voluntary negotiations under §252(a)(1) should simultaneously notify the Commission of its request of the incumbent local exchange carrier.

Duty to Negotiate in Good Faith (or Good Faith Bargaining): For the purpose of determining whether a telecommunications carrier has discharged its duty to negotiate in accordance with §251(c)(1), the Commission defines the duty to negotiate in good faith as the requirement or obligation of parties to meet and confer at reasonable times and places with minds open to persuasion and an eye toward reaching agreement over terms and conditions for interconnection, services, or network elements pursuant to §251. Good faith bargaining does not imply that either party is required to reach agreement on any proposal. Moreover, "good faith" is not necessarily incompatible with stubbornness or even with what an outsider may consider unreasonableness.

~~As an element in~~ ~~in~~ determining whether a telecommunications carrier has met the obligation of good faith bargaining imposed by §251(c)(1), the Commission ~~will~~ ~~may~~ consider any party's refusal to give information about its costs or other pertinent data upon the request of the other party, so that the requesting party can substantiate the claims made

by the telecommunications carrier in negotiations. The Commission will adjudicate disputes over furnishing information upon complaint of any party to the negotiations under s. 196.37, Stats.

### 3. Mediation

Mediation Defined: Mediation is a process in which a neutral party assists the disputants in reaching their own settlement but does not have the authority to make a binding decision.

Initiation of Mediation: Any party requesting mediation pursuant to 47 U.S.C. §252(a)(2) of the Act shall do so in writing to Commission. A copy of this mediation request to the Commission should be simultaneously served on the other party(ies) in the dispute. Alternatively, parties may jointly submit in writing their request for Commission mediation.

Docketing and Assessment of Costs: Requests for mediation will be generically docketed and costs will be directly and equally assessed to the parties involved in the negotiation.

Appointment of Mediator(s): The Commission, or its designee, may appoint its own staff or any competent, impartial, disinterested person of character and ability to act as mediator in any dispute for which mediation under the Act is available, upon the Commission's own initiative or upon the request of the parties to the dispute. If someone other than Commission staff is appointed as a mediator, the cost of mediation shall be shared equally by the parties.

Role and Duties of the Mediator(s): It is the function of the mediator(s) to encourage voluntary settlement by the parties. Mediator(s) may not compel a settlement. Mediator(s) shall schedule meetings of the parties, direct the parties to prepare for those meetings, hold private caucuses with each party in an attempt to bring disputants closer together, attempt to achieve a mediated resolution and, if the parties request, assist the parties in preparing a written agreement.

Confidentiality: All mediators shall keep confidential all information and records obtained in conducting mediation, provided parties have entered into proprietary agreements and, further have agreed to hold in-camera proceedings, consistent with their obligations under 47 U.S.C. §702(b).

Mediators Acting as Arbitrators (med-arb): Mediator(s) may also be appointed by the Commission to act as arbitrators in the same dispute if no mediated resolution is reached. In so doing, the Commission can assign staff to serve as both mediator(s) and arbitrator(s) in a dispute. This form of dispute resolution is sometimes referred to as med-arb. It combines the voluntary techniques of persuasion and discussion, as in mediation, with an arbitrator's authority to issue a decision, when necessary.

#### 4. Arbitration

Arbitration Defined: Arbitration is the investigatory process whereby a dispute is submitted to one or more impartial persons (arbitrators) for decision (award), subject to Commission approval pursuant to §252(e).

Initiation of Arbitration: The Commission will not accept and therefore will return any petition for arbitration pursuant to §252(b)(1) that is untimely, or that does not fully comply with the filing requirements as set forth in §252(b)(2). A petition for arbitration shall state whether a hearing is necessary as part of the arbitration, and shall include any request for orders for production of information (see "Discovery" section below).

Docketing and Assessment of Costs: Petitions for arbitration will be generically docketed and costs will be directly and equally assessed to the parties involved in arbitration.

Appointment of Arbitration Panel: Upon receipt of a timely and complete petition for arbitration, the Commission, or its designee, shall appoint a chair and other members of its own staff, with or without the advice of the parties, to serve on an arbitration panel. The size and composition of this ad hoc arbitration panel shall be appropriate to the nature of the instant dispute.

Arbitrators Acting as Mediators (med-arb): The arbitration panel may request the parties to mediate prior to initiating the arbitration process if impasse has not been reached. The parties are under no obligation to participate in mediation as part of the arbitration process. If impasse is reached, or after a reasonable period of unsuccessful meditation, arbitration should proceed expeditiously.

Voluntary Agreement After the Initiation of Arbitration: If the parties reach voluntary agreement, with or without mediation, after the initiation of arbitration, the arbitration panel will issue a consent award. Consent awards will be submitted to the Commission for 30-day approval or rejection like any other arbitration award. Alternatively, the parties may jointly submit their voluntary agreement to the Commission for 90-day approval or rejection, along with a joint petition to dismiss the arbitration petition.

Role and Duties of the Arbitration Panel: It is the function of the arbitration panel to decide the issues in dispute in accordance with these procedures if the parties cannot reach voluntary agreement.

Procedural Arbitrability: Disputes over whether an issue is properly subject to the arbitration process shall be decided by the arbitration panel before hearing evidence on the merits of the dispute. The arbitration panel should presume arbitrability unless a clear and convincing case is made to the contrary by the non-petitioning party challenging procedural arbitrability.

A non-petitioning party to the negotiation will be deemed to have waived its right to challenge procedural arbitrability if it fails do so when responding to the petition pursuant to §252(b)(3).

Confidentiality: All arbitrators shall keep confidential all information and records obtained in conducting mediation, provided parties have entered into proprietary agreements and, further ~~have~~ agreed to hold in-camera proceedings, consistent with their obligations under §702(b).

Fact Gathering Arbitration Hearing Procedures: In accordance with §252(b)(4)(B), which requires parties to provide such information as may be necessary to reach a decision on the unresolved issues, each arbitration panel shall investigate and gather factual information and secure relevant argument ~~conduct the hearing process~~ according to the following procedures:

*Application of Procedures*. The arbitration panel should apply these hearing procedures in a manner appropriate for the issues presented, with a view to fair, expeditious and economical conduct of the arbitration.

*Parties*. Only parties to the negotiations will be permitted to participate as parties to the arbitration hearing, unless the Commission consolidates proceedings pursuant to §252(g). Commission staff participation is limited to those staff members serving on the arbitration panel, except that the arbitration panel may in a hearing call other staff members as witnesses within the scope of 47 U.S.C. §262(b)(4)(B).

*Issue Determination*. If, after the submission of the petition and any response, the issues remain uncertain, or the parties have been unable to stipulate as to a statement of issues, the arbitration panel will determine the statement of disputed issues as part of its written award.

*Factual stipulations*. Whenever possible, parties should enter into factual stipulations to expedite the arbitration hearing. If there are no material factual disputes, the arbitration panel may decide the disputed issues without hearing by relying on written material submitted by the parties. If a hearing is conducted, factual stipulations should be made a part of record of the hearing.

*Discovery*. ~~The arbitration panel will permit discovery by establishing a schedule and by resolving disputes which may arise during discovery.~~

No party-to-party discovery is permitted; however, any party to the proceeding may request the arbitration panel to order the other party, pursuant to §252(b)(4)(B), to produce certain information for the record. The arbitration panel may alter, amend, or supplement the information request as it deems appropriate. Such requests should be made in the petitioning process for arbitration (§252(b)(2)(A)).

*Hearing.* The arbitration panel shall attend the arbitration hearing, if held. The chair of the arbitration panel will preside over the hearing.

*Notice of Hearing.* The arbitration panel will set the time and place of the arbitration hearing upon a at least 10-day written notice to the parties. This notice will be signed by the chair of the arbitration panel.

*Issue Determination.* Each party shall be directed to submit an issues statement at the beginning of the arbitration hearing. If parties cannot agree upon an issues statement, the arbitration panel will decide how to frame the issues as part of its written award.

*Order of Presentation.* The petitioning party will usually present its case first followed by the non-petitioning party, unless otherwise determined by the arbitration panel.

*Opening Statement.* Each party will be given an opportunity to make an opening statement. Any party may waive the opportunity to make an opening statement.

*Rules of evidence.* The arbitration panel should generally follow the rules of evidence used in Commission proceedings, but need not strictly apply those rules.

*Record evidence.* Testimony and exhibits or position papers will be prefiled, as directed by, and in accordance with a schedule established and noticed by the arbitration panel. The arbitration panel may limit the amount of evidence presented by the parties.

*Transcripts.* No written transcripts will be prepared. The arbitration panel will make a tape (audio or video) of the arbitration hearing for its own use. Provided that it does not violate any applicable Commission agreement for contract reporting service, a party is permitted to elect stenographic reporting at its own expense, but a free copy must be made available to the Commission, and a copy to any other party to the proceeding requesting same for the customary copy charge.

*Witnesses.* The arbitration panel may issue subpoenas for witnesses and may call members of the Commission staff as witnesses. Witnesses will be sworn to tell the truth before giving testimony. Witnesses may be cross-examined on their testimony. The arbitration panel may limit the number of witnesses offering testimony on behalf of any party.

*Participation of arbitrators in the hearing.* Members of arbitrator panel may

ask witnesses questions. The arbitration panel may also require parties to provide and submit information for the record pursuant to §252(b)(4)(B).

*Argument.* An opportunity for oral argument will be afforded to each party in lieu of post-hearing written briefs. Any party may waive its opportunity to make oral argument. Following oral argument, the record in the arbitration proceeding will be closed. At the sole discretion of the arbitration panel, written briefs may be substituted for oral argument.

*Ex parte communications.* Although arbitration under the Act is not considered a Class 1 proceeding under the Wisconsin statutes, rules under s. 227.50, Stats., governing ex parte communications will apply in these arbitration procedures will apply as if an arbitration were a Class 1 proceeding. This provision will also apply through the Commission approval process.

*Written award.* The arbitration panel will timely make its decision by applying the record evidence to the standards for arbitration set forth in the Act by making a written arbitration award. It must be signed by at least a majority of the arbitration panel. The written arbitration award will be served on the Commission for its approval or rejection, the parties, and anyone on the Commission's standing mailing list for such awards. The time period for Commission approval shall be measured from the date of mailing.

## **5. Commission Approval of Agreements.**

The Commission will consider receipt of an arbitration award by the arbitration panel as a submission of an agreement for Commission approval pursuant to §252(e)(1).

For the purpose of implementing §252(e) of the Act, amendments, addenda, memoranda of agreement, letters of understanding and other written documents which materially add, delete or modify provisions of an existing agreement should be submitted to the Commission for its approval under these guidelines procedures.

Within 10 days following the issuance (mailing) of the arbitration award or submission of a voluntary agreement for Commission approval or rejection pursuant to 47 U.S.C. §252(e), of the Act, the parties involved in the negotiations or arbitration, and any other interested party, may submit written comments to the Commission supporting either approval or rejection of the agreement.

The Commission will record its action in its minutes and direct that a letter be promptly mailed to the parties advising as to approval or rejection of the agreement. A statement of any deficiencies, as required by the Act, shall accompany any rejection.

If the Commission rejects a voluntary agreement or arbitration award pursuant to 47 U.S.C. §252(e), ~~of the Act~~, the parties may resubmit the agreement for Commission approval within 30 days following such rejection, if the parties have remedied the deficiencies set forth in the Commission's findings.

**6. Disputes under an Existing Agreement.**

To the extent the parties have not made provision for resolving disputes arising under the terms of an existing agreement, such disputes over interpretation and application of existing agreements may be submitted to the Commission for arbitration under these guidelines procedures.

**7. Alternative Mediation and Arbitration Procedures.**

Notwithstanding any provision in these guidelines procedures, parties may propose, and the Commission may approve, alternative mediation and arbitration procedures.

**8. Amendment of Guidelines Procedures.**

The Commission may amend these guidelines procedures, as necessary upon due notice, to effect the purposes of the Telecommunications Act of 1996 and provisions of Chapters 196 and 227, Stats., as appropriate.

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Attachments



# Public Service Commission of Wisconsin

Cheryl L. Parrino, Chairman  
Scott A. Neitzel, Commissioner  
Daniel J. Eastman, Commissioner

Jacqueline K. Reynolds, Executive Assistant  
Lynda L. Dorr, Secretary to the Commission  
Steven M. Schur, Chief Counsel

To: All Local Exchange Carriers

Re: Investigation of the Implementation of the Telecommunications  
Act of 1996 in Wisconsin

05-TI-140

At its open meeting of May 16, 1996, the Commission determined that § 252(a)(1) of the Telecommunications Act of 1996 ("Act") requires that all incumbent local exchange carriers (LECs) obtain Public Service Commission (PSC) approval of all agreements with other providers covering telecommunications services. All approved agreements will then become generally available to other telecommunications providers. Such agreements must also be made available to the general public by the PSC for copying ten days after approval. Except for services purchased under generally available tariffs at tariffed rates, § 252 covers all agreements for telecommunications services provided to other telecommunications providers. Agreements requiring filing and approval include those under s. 196.194(1), Wis. Stats., and contracts or agreements associated with a tariff, per s. 196.19(2), Wis. Stats., if made with other telecommunications providers.

Contracts and agreements which had expired and had not been renewed and agreements which had been completely terminated and/or renegotiated prior to February 8, 1996, (the date on which the Act became effective) need not be filed.

Agreements should be filed with the Commission according to the schedule listed below. Five copies are required of the agreement and cover letters. The agreements should be addressed to **Lynda L. Dorr**, Secretary to the Commission, Public Service Commission of Wisconsin, P.O. Box 7854, Madison, Wisconsin 53707-7854. If electronic copies of these agreements exist, the providers should also file an electronic version, in WordPerfect 5.1 format.

All agreements should be filed as joint filings, with both providers filing cover letters. The joint filings will prevent duplicate filings and problems due to an agreement being filed simultaneously as both confidential and nonconfidential. Each cover letter should state whether the signatory party recommends that the Commission approve or reject the agreement. If a party to the agreement recommends that the agreement not be approved, the party must provide a full explanation of why that agreement should not be approved.