

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-167
Administrative Law Judge Division
July 17, 1996

RESOLUTION

**Establishes Interim Rules for Implementing the Dispute Resolution
Provisions of Section 252 of the Telecommunications Act
of 1996 and Sets Out a Comment Process Prior to Adoption of Final Rules**

The Telecommunications Act of 1996 has provided that in order to encourage competition in the telecommunications market, telecommunications carriers should have certain obligations and duties toward other telecommunications carriers. Section 251 of the act describes these duties and obligations, specifically including interconnection and access to services and network elements. Section 252 provides that agreements may be entered into between incumbent local exchange carriers and other telecommunications carriers. Section 252 of the act also provides that these agreements must be approved by the state regulatory commission according to certain defined standards. This section of the act also provides that a state commission may assist negotiating parties in reaching agreements through mediation and/or compulsory arbitration.

Finally the Act provides that an incumbent local exchange carrier may file with the state commission a statement of generally available terms. The state commission must approve or reject this statement within 60 days of its submission or allow the statement to go into effect while the commission continues its review.

The following interim rules, Appendix A to this Resolution, provide the procedures to be followed when the commission has received a:

1. request to provide mediation;
2. request for arbitration;
3. request to approve an agreement;
4. request to approve a statement of generally available terms.

If the agreement was arrived at through negotiations or mediation, then the state commission shall approve or disapprove the agreement within 90 days of the submittal of the agreement for approval. If the negotiating parties fail to voluntarily enter into an agreement, then a party may request arbitration between day 135 and day 160 following the request for negotiations. If the agreement is arrived at through arbitration, then the total time from the initial request to the LEC for negotiations and the arbitrator's

proposed resolution shall take no longer than 9 months. The state commission must approve or disapprove the agreement within 30 days of submittal.

These rules will accommodate requests for dispute resolution presented to the Commission pursuant to Section 252 of the Telecommunications Act of 1996. Interested parties are invited to file comments on or before July 26, 1996. Comments should identify any proposed changes to the interim rules and provide an explanation for such requests.

In addition to commenting on the specific processes set forth in the rules, parties are encouraged to comment on two additional topics. First, parties should comment on whether the Commission should consider the use of private mediators or arbitrators to undertake the mediations and arbitrations requested in sections 2 and 3 of the rules. In commenting on this topic parties should address who should bear the costs for such private mediators and arbitrators and how they should be selected. Second, parties should address the relationship of the timing of completion of unbundling efforts underway in the Open Access and Network Architecture proceeding, R. 93-04-003/I. 93-04-002, with the approval of interconnection agreements and resolution of interconnection disputes contemplated pursuant to the rules and the effect the relative timing may have on the completion of interconnection agreements, whether negotiated or arbitrated.

Comments are to be filed in the Commission's Local Exchange Competition docket, Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044. An additional copy shall be provided to the Chief of the Telecommunications Branch of the Commission Advisory and Compliance Division.

Finally, so that the Commission may anticipate potential requests for resolution under these rules, we will require Pacific Bell and GTE California to provide to the Chief Administrative Law Judge current and updated lists of parties who have requested negotiations pursuant to the Telecommunications Act of 1996.

IT IS RESOLVED that the interim rules set forth in Appendix A to this Resolution for implementation of Section 252 of the Telecommunications Act of 1996 are hereby adopted for implementation.

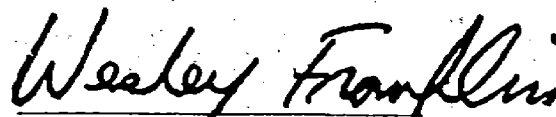
The Executive Director shall cause a copy of this resolution to be mailed to each appearance in the Local Exchange Competition proceeding, R.95-04-043/I.95-04-044 and the Open Access and Network Architecture proceeding, R.93-04-003/I.93-04-002.

Interested parties may file comments on the interim rules on or before July 26, 1996. Comments should be filed in the Local Competition dockets, R. 95-04-043/ I.95-04-044. A separate copy of any comments shall be provided to the Chief of the Telecommunications Branch of the Commission Advisory and Compliance Division. Comments should indicate requested changes and provide an explanation for any request.

Pacific Bell and GTB California shall within 10 days notify the Chief Administrative Law Judge of any parties who have requested negotiations pursuant to the Telecommunications Act of 1996 and the date on which each initial request for negotiations was received. They shall also notify the Chief Administrative Law Judge of any additional requests for negotiations within 10 days of when those initial requests are received.

Due to the imminent need to have interim rules in effect, this resolution becomes effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on July 17, 1996, the following Commissioners approving it:



WESLEY M. FRANKLIN

Executive Director

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

Interim Rules Governing Applications pursuant to the Telecommunications Act of 1996

Rule 1. General Rules

Rule 1.1 Definitions

The terms defined in the Telecommunications Act of 1996 are generally applicable to these interim rules. Certain exceptions are as follows:

Commission means the California Public Utilities Commission

FCC means the Federal Communications Commission

1996 Act means the Telecommunications Act of 1996

Mediation means a process in which the Commission assists negotiating parties to reach their own solution.

Arbitration means the submission of a dispute to a Commission arbitrator for a final decision.

Request means an application to the Commission for relief under the 1996 Act.

Request for Negotiation means the first date on which an incumbent local exchange carrier receives a written request to negotiate pursuant to the 1996 Act.

Rule 1.2 Filing Procedures

All filings under these rules shall comply with Rule 1 and Rules 2-8 of the Commission's Rules of Practice and Procedure. In addition, any agreements filed pursuant to these rules shall also be filed in electronic form (PC compatible diskette) in Hyper Text Markup Language (HTML) format.

Rule 1.3 Conflicting Rules

All requests filed pursuant to Sec. 251 and 252 of the 1996 Act will be governed by the Commission's Rules of Practice and Procedure unless such rules are in conflict with the rules contained herein. If there is a conflict, the rules herein will apply.

Rule 2. Request for Mediation

Rule 2.1 Who may Request

Any party to a negotiation may file a request at any time that the Commission mediate any differences preventing an agreement.

Rule 2.2 Appointment of Mediator

Upon receipt of a request for mediation from a party engaged in negotiations for an agreement for interconnection, services, or unbundling of network elements, the Commission's President or a designee in consultation with the Chief Administrative Law Judge, shall appoint a qualified Mediator to facilitate resolution of all disputes involved in the negotiations.

Rule 2.3 Filing of Parties' Statements

Within 15 days of the filing of a request for mediation, each party to the negotiations shall submit to the Mediator a written statement summarizing the dispute and shall furnish such other material and information to familiarize the Mediator with the dispute. The Mediator may require any party to supplement such information. At the Mediator's discretion, following consultation with the parties, such statements may be mutually exchanged by the parties.

Rule 2.4 Initial Mediation Conference

Within 10 days of the filing of the parties' statements, the Mediator shall convene an Initial Mediation Conference. At the Initial Mediation Conference, the parties and Mediator shall discuss a procedural schedule. The parties and Mediator shall also attempt to identify, simplify, and limit the issues to be resolved. Each party should be prepared to present its case informally to the Mediator at the Initial Mediation Conference.

Rule 2.5 Conduct of the Mediation

The Mediator, subject to the rules contained herein, shall control the procedural aspects of the mediation.

Rule 2.6 Mediations Closed to the Public

To provide for effective mediation, participation in mediations is strictly limited to the parties that were negotiating an agreement contemplated by Sections 251 and 252 of the 1996 Act. All mediation proceedings shall remain closed to the public.

Rule 2.7 Caucusing

The Mediator is free to meet and communicate separately with each party. The Mediator shall decide when to hold such separate meetings. The Mediator may request that there be no direct communication between the parties or between their representatives without the concurrence of the Mediator.

Rule 2.8 Joint Meetings

The Mediator shall decide when to hold joint meetings with the parties and shall fix the time and place of each meeting and the agenda thereof. Formal rules of evidence shall not apply for these meetings or any portion of the mediation proceeding.

Rule 2.9 No Stenographic Record

No stenographic record of any portion of the mediation proceeding shall be taken.

Rule 2.10 Exchange of Additional Information

If any party has a substantial need for documents or other material in the possession of another party, the parties shall attempt to agree on the exchange of requested documents or other material. Should they fail to agree, either party may request a joint meeting with the Mediator who shall assist the parties in reaching agreement. At the conclusion of the mediation process, upon the request of a party which provided documents or other material to one or more mediating parties, the recipients shall return such documents or material to the originating party without retaining copies thereof.

Rule 2.11 Request for Further Information by the Mediator

The Mediator may request any mediating party to provide clarification and additional information necessary to assist in the resolution of the dispute.

Rule 2.13 Responsibility of the Parties to Negotiate and Participate

The parties are expected to initiate proposals for resolution. Each party shall provide a justification for any terms of resolutions that it proposes.

Rule 2.14 Authority of the Mediator

The Mediator does not have the authority to impose a settlement on the parties but shall attempt to help them reach a satisfactory resolution of the dispute. The Mediator is authorized to make oral and written recommendations of resolution at any point in the mediation.

Rule 2.15 Reliance by Mediator Upon Experts

During the mediation the Mediator may rely on experts retained by, or on the Staff of, the Commission. Such expert(s) shall assist the Mediator during the mediation process.

Rule 2.16 Impasse and Recommended Resolution of Mediator

In the event that the parties fail to reach resolution of their differences, the Mediator, before terminating the mediation, shall submit to the parties a final proposed agreement.

If a party does not accept the Mediator's proposed agreement, it shall advise the Mediator of the specific reasons for its refusal within the 10 days of the Mediator's issuance of the proposed agreement.

Rule 2.17 Termination of the Mediation

The mediation shall be terminated upon any of the following (1) execution of a mediated agreement by the mediating parties, (2) serving of a written declaration on the other parties and the Mediator, by a party that the mediation proceedings are terminated, or (3) presentation of a written declaration to the parties and to the Commission by the Mediator that further efforts at mediation would be futile.

Rule 2.18 Confidentiality

(a) The entire mediation process is confidential, except for the terms of the final mediated agreement. The parties, the Mediator and any participating Commission experts shall not disclose information regarding the mediation process, except the final mediated terms, to any Commissioner or nonparticipating Commission Staff, nor to any other third parties, unless all parties agree to disclosure, provided, however, that the Commissioners may be informed of the identify of the participants and in the most general manner of the progress of the mediation. The confidentiality of the mediation is covered by Rule 51.9 of the Commission's Rules of Practice and Procedure.

(b) Except as the parties otherwise agree, the Mediator shall keep confidential any written materials or other information submitted to the Mediator. All records, reports, or other documents received by the Mediator while serving in that capacity shall remain confidential. The mediating parties and their representatives are not entitled to receive or review any such materials or information submitted to the Mediator by another party or representative, without the concurrence of the submitting party. At the conclusion of the mediation, the Mediator shall return to the submitting party all written materials and other information which that party had provided the Mediator.

Rule 2.18.1 Confidentiality To Be Maintained in Subsequent Proceedings

The Mediator shall not be compelled to divulge records, documents and other information submitted to him or her during the mediation proceeding, nor shall The Mediator be compelled to testify in regard to the mediation, in any subsequent adversarial proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitration, judicial or other proceeding, any of the following (a) views expressed or suggestions made by another party with respect to a possible resolution of the dispute, (b) admissions made by another party in the course of the mediation, (c) proposals made or views expressed by the Mediator, or (d) the fact that another party had or had not indicated willingness to accept a proposed agreement made by the Mediator.

Rule 2.19 Post-Agreement Procedure

Once the parties reach final agreement during this process, they shall submit the proposed agreement to the Commission for approval. The proposed agreement should contain a showing that (1) the negotiated agreement would not discriminate against a telecommunications carrier not a party to the mediated agreement; (2) its implementation would be consistent with the public interest, convenience and necessity; and (3) the agreement would meet the Commission's service quality standards for telecommunications services as well as the requirements of all other rules, regulations, and orders of the Commission.

Rule 3 Request for Arbitration

Rule 3.1 Filing

A party to a negotiation entered into pursuant to Sec. 251 of the 1996 Act may file a request for arbitration.

Rule 3.2 Time to File

A request for arbitration may be filed not earlier than the 135th day nor later than the 160th day following the date on which an incumbent local exchange carrier receives the request for negotiation. The arbitration shall be deemed to begin on the date of the filing before the Commission of the request for arbitration.

Rule 3.3 Content

A request for arbitration must contain:

- a. A statement of all unresolved issues.
- b. A description of the position of all parties to the negotiation on the unresolved issues.
- c. A description of all issues discussed and resolved by the parties.
- d. Direct testimony supporting the requester's position.
- e. Documentation that the request complies with the time requirements of the 1996 Act.

Rule 3.4 Opportunity to Respond

Pursuant to Subsection 252(b)(3) of the 1996 Act, any party to a negotiation which did not make the request for arbitration ("respondent") may file a response to the request with the Commission within 25 days of the request for arbitration. The response shall address each issue listed in the request and describe the respondent's position on these issues. The response shall also present any additional issues for which respondent seeks

resolution and provide such additional information and evidence necessary for the Commission's review. Finally, the response should contain any direct testimony supporting the respondent's position.

On the same day that it files its response before the Commission, the respondent must serve a copy of the Response and all supporting documentation on any other party to the negotiation.

Rule 3.5 Appointment of Arbitrator

Upon receipt of a request for arbitration, the Commission's President or a designee in consultation with the Chief Administrative Law Judge, shall appoint an Arbitrator to facilitate resolution of the issues raised by the request and response.

Rule 3.6 Initial Arbitration Meeting

An Arbitrator may call an initial meeting for the purpose of setting a schedule, simplifying issues, or resolving the scope and timing of discovery.

Rule 3.7 Arbitration Hearing

Within 5 days of the filing of a response to the request for arbitration, the arbitration hearing shall begin. The conduct of the hearing shall be noticed on the Commission calendar and notice shall be provided to all parties on the service list.

Rule 3.8 Limitation of Issues

Pursuant to Subsection 252(14)(A) of the 1996 Act, the Arbitrator shall keep the arbitration limited to the resolution of issues raised by the negotiating parties. However, in resolving these issues, the Arbitrator shall ensure that such resolution meets the requirements of the 1996 Act.

Rule 3.9 Arbitrator's Reliance on Experts

During the arbitration, the Arbitrator may rely on experts retained by, or on the Staff of, the Commission. Such expert(s) shall assist the Arbitrator prior to and during the hearing process and shall also assist the Arbitrator in reviewing the record for purposes of formulating an arbitrated agreement.

Rule 3.10 Close of Arbitration

All evidence shall be presented and heard within five days of the hearing's commencement, unless the Commission determines otherwise.

Rule 3.11 Expedited Stenographic Record

An expedited stenographic record of each arbitration hearing shall be made. The cost of preparation of the expedited transcript shall be borne in equal shares by the parties.

Rule 3.12 Filing of Post-Hearing Briefs and Recommended Arbitrated Agreements

Each party to the arbitration may file a post-hearing brief with an attached recommended arbitrated agreement. Such documents shall be filed within seven days of the filing of the expedited hearing transcript unless the Arbitrator rules otherwise. Post-hearing briefs shall summarize relevant portions of the recommended arbitrated agreement and shall present a party's argument in support of adopting its recommended arbitrated agreement with all supporting evidence and legal authorities cited therein. The length of post-hearing briefs may be limited by the Arbitrator and shall otherwise comply with the Commission's Rules of Practice and Procedure.

Rule 3.13 Authority of the Arbitrator

The Arbitrator shall have the same authority to conduct the arbitration hearing as an Administrative Law Judge has in conducting hearings under the Rules of Practice and Procedure.

Rule 3.14 Participation in the Arbitration Hearings

Participation in the arbitration process is strictly limited to the parties that were negotiating an agreement pursuant to Sec. 251 and 252 of the 1996 Act.

Rule 3.15 Arbitration Open to the Public

Though participation at arbitration hearings is strictly limited to the parties that were negotiating the agreements being arbitrated, the general public is permitted to attend arbitrating hearings unless circumstances dictate that a hearing, or portion thereof, be conducted in closed session. Any party to an arbitration desiring such treatment shall file a motion seeking this relief and describe the circumstances compelling such relief no later than 15 days before the scheduled hearing date. The Arbitrator shall consult with the assigned commissioner and issue a decision on such motion before hearings begin.

Rule 4 Applications for Approval of Agreements entered into pursuant to Sections 251 and 252**Rule 4.1 Agreements reached by negotiation or mediation****Rule 4.1.1 Content**

Applications for approval of agreements reached by negotiation or mediation shall contain a copy of the agreement. The agreement shall itemize the charges for interconnection and each service or network element included in the agreement.

Rule 4.1.2 Time for Commission Action

The Commission shall reject or approve the agreement within 90 days of submission of an application for approval. If the commission fails to act within the specified time then the agreement is deemed approved.

Rule 4.1.3 Comments by members of the Public

Any member of the public (including the parties to the agreement and competitors) may file comments concerning the negotiated agreement within 30 days of the submission of an application for approval. Such comments shall be limited to the standards for rejection provided in Rule 4.1.4

Rule 4.1.4 Standards for Rejection

The Commission shall reject an agreement if it finds that:

- a. the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- b. the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or
- c. the agreement violates other requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission.

Any order rejecting an agreement shall contain written findings as to the deficiencies.

Rule 4.2 Agreements reached by arbitration

Rule 4.2.1 Filing of Arbitrator's Report

Within 20 days following the submission (Rule 77 of the Rules of Practice and Procedure) of the proceedings, the Arbitrator shall adopt and file an Arbitrator's Report. The Arbitrator's Report will include (a) a concise summary of the arbitrated agreement, (b) a summary of the material evidence present, (c) a summary of the arbitrating parties' respective positions, (d) a discussion of the issues, and (e) the final recommendation of the Arbitrator discussing in detail, with citations to relevant legal authorities and evidentiary support, the merits of the arbitrated agreement. The arbitrating parties' respective recommended arbitrated agreements shall be attached as exhibits to the Arbitrator's Report.

Rule 4.2.2 Filing of Arbitrated Agreement

Within 10 days of the filing of the Arbitrator's report, the parties shall file the entire agreement.

Rule 4.2.3 Comments by members of the Public

Any member of the public (including the parties to the agreement) may file comments concerning the arbitrator's report and/or the arbitrated agreement within 10 days of the filing of each. The scope of such comments shall be limited to the standards for review provided in Rule 4.2.5.

Rule 4.2.4 Commission Review of Arbitrated Agreement

Within 30 days following filing of the arbitrated agreement, the Commission shall issue a decision approving or rejecting the arbitrated agreement pursuant to Subsection 252(e) and all its subparts, of the 1996 Act. If the commission fails to act within the specified time then the agreement is deemed approved.

Rule 4.2.5 Standards for Review

Pursuant to Subsection 252(3)(2)(B) of the 1996 Act, the Commission may reject arbitrated agreements that do not meet the requirements of Section 251 of the 1996 Act, the FCC's regulations prescribed under Section 251, or the pricing standards set forth in Subsection 252(d) of the 1996 Act. Pursuant to Subsection 252(e)(3) of the 1996 Act, the Commission may also reject agreements which violate other requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission.

Rule 4.2.6 Written Findings

The Commission's decision approving or rejecting an arbitration agreement shall contain written findings. In the event of rejection, the Commission shall address the deficiencies of the arbitrated agreement in writing and may state what modifications of such agreement would make the agreement acceptable to the Commission.

Rule 5 Application for Approval of Statement of Generally Available Terms**Rule 5.1 Time for Filing**

A Bell Operating Company may file a statement of generally available terms to comply with Sec 251 of the 1996 Act.

Rule 5.2 Comments by members of the Public

Any member of the public may file comments concerning the statement of generally available terms within 30 days of the submission of the statement for approval. Such comments shall be limited to the standards for review provided in Rule 5.4.

Rule 5.3 Commission Review of Statement of Generally Available Terms

The Commission shall reject the statement of generally available terms within 60 days of its submission or the statement shall go into effect. The Commission may continue to review the statement after it has gone into effect.

Rule 5.4 Standards for Review

The Commission shall reject a statement if it finds that it does not meet the requirements of Section 251 of the 1996 Act, the FCC's regulations prescribed under Section 251, or the pricing standards set forth in Subsection 252(d) of the 1996 Act. Pursuant to Subsection 252(e)(3) of the 1996 Act, the Commission may also reject agreements which violate other requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission