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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-168
Administrative Law Judge Division
September 20, 1996

RESOLUTION

Establishes Rules for Implementing the Provisions of Section 252 of the Telecommunications Act of 1996

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. Under this section of the Act a state commission may assist negotiating parties in reaching agreements through mediation and/or compulsory arbitration.

Finally the Act provides that a Bell Operating Company 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.

On July 17, 1996 we adopted Resolution ALJ-167 which provided interim rules governing the procedures to be followed when the commission has received a request :

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

In Resolution ALJ-167, we also provided that members of the public could submit written comments on the interim rules by July 26, 1996. To date we have received comments from 12 parties: the Commission's Division of Ratepayer Advocates (DRA); AT&T Communications of California (AT&T); GTE of California (GTEC); MCI Communications Corporation (MCI); Telecommunications Resellers Association (TRA); TCG-San Francisco et.al. (TCG); ICG Access Services, Inc. (ICG); Sprint Communications Company L.P. (Sprint); Pacific Bell (Pacific); Association of California

State Attorneys and Administrative Law Judges (ACSA); MFS Intelenet of California; Inc. (MFS); and California Department of Consumer Affairs (DCA).

For the purpose of our consideration of these comments, we will group the comments into the following categories:

1. Global issues.
2. The relationship of the timing of completion of unbundling efforts underway in the Open Access and Network Architecture Development (OANAD) 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.
3. Process and procedures to be employed in conducting arbitration proceedings and providing mediation services.
4. Advice Letter Process for approving agreements arrived at through negotiation.

1. Some Global Issues

1.1. Conflict with Rules

The comments reflect that not everyone understands the relationship of our current Rules of Practice and Procedure with the interim rules governing interconnection agreements and the 1996 Act. To be clear, our Rules of Practice and Procedure govern the requests (applications) for arbitration, mediation, and approval of agreements. Where there is a conflict or more specificity in these special rules, then the special rules take precedence. Finally, if there is a conflict between our rules and the Act, or if the Act makes a more specific determination, then the Act takes precedence. (Please note our discussions of ex parte rules, consolidation of proceedings, discovery, etc. below.)

1.2. Intervention and Public Attendance at Arbitration Proceedings

The interim rules provide that 1) only parties to a negotiation may participate in an arbitration proceeding, and 2) the arbitration proceedings are open to the public. Some comments suggested that we should adopt rules with the opposite outcome on each of these two issues.

We will maintain the rules as currently stated. We believe that this outcome balances the rights of the negotiating parties to a speedy arbitration process as provided in the Act with the ability of non-negotiating parties to file meaningful comments within the allowed timeframe when an arbitrated agreement is presented for approval.

If we were to open arbitration proceedings to all parties, it would be very difficult to complete the arbitration hearings within an abbreviated schedule. At the same time, if we did not allow other parties to witness the arbitration proceedings, then non-negotiating

parties would have a very difficult task in filing meaningful comments when the agreement is presented for our approval. The Act provides that we have 30 days to approve or reject an agreement after its presentation to us. Our interim rules provide that members of the public may file comments on the arbitrator's report within 10 days of its filing and on the proposed agreement within 10 days of its filing.

Although members of the public will not be allowed to present testimony and conduct cross-examination, members of the public that appear at an arbitration hearing may request to be served with all documents that will be filed in that proceeding.

1.3. Service and Notice of Applications and Agreements

Several parties seek clarification of the issue of notice of applications and service of filings. We agree that this should be clarified and made more "user-friendly".

On August 9, 1996, a Managing Commissioner's Ruling establishing a process for the Commission to evaluate Pacific's application under Section 271 of the Act for in-region interLATA entry was served on all parties in both the OANAD and Local Competition proceedings. On September 9, 1996 an Administrative Law Judge Ruling adopted a new service list for Section 271 filings. There should be a common area of interest between the two types of proceedings. We will therefore use the service list established in the September 9, 1996 ALJ ruling as the initial service list for Sec 252 filings. This service list will be the service list for all filings received under these rules, including requests for approval of any agreement, responses, comments, advice letters, etc. until a more focused service list is established in any particular proceeding.

It should be pointed out that failure to properly serve an application under these rules will result in the application's rejection. Failure to allow for sufficient time to rehabilitate an improperly served application may result in the agreement's rejection. We believe that an agreement's rejection would have the effect of "re-starting the clock" back to the beginning of negotiations. We, therefore, encourage all parties filing documents under these rules to be most attentive to all procedural requirements. The short timelines contained in the Act gives us no choice but to interpret all of our rules in a strict manner.

1.4. Computation of Time

In reviewing the comments, we recognize that computation of time needs clarification. Our Rules (Rule 8.13) provide for a method for computing time for determining time limits. With one exception, we intend that our Rule 8.13 will apply to time limits provided in these rules also.

The one exception concerns the rule that arbitration hearings will conclude within 10 days of initiation. If the tenth day of a proceeding falls on a weekend then hearings must be completed by the preceding workday. Of course we also provide in these rules that the Arbitrator, for good cause, has authority to extend the number of hearing days, but not the overall time limits.

1.5. Other Minor Modifications

Pacific and other parties provided several suggested technical/editorial refinements of the interim rules. We find these most helpful in clarifying the rules and will adopt many of the suggestions.

2. OANAD Proceeding

Resolution ALJ-167 directed parties to comment on the relationship between the timing of the unbundling efforts in the OANAD proceeding with the agreement approval and dispute resolution processes contemplated in these rules. Parties were to address the effect the relative timing might have on the completion of interconnection agreements, whether negotiated or arbitrated. In their comments, Sprint and GTEC point out that the Act provides state commissions with different yardsticks for evaluating negotiated and arbitrated agreements. State commissions may reject negotiated or voluntary agreements only on narrowly circumscribed grounds. The review standards do not require a state commission to find that agreements arrived at through negotiation are consistent with the requirements and pricing standards of Sections 251 and 252. The Commission can review and approve negotiated agreements without completing the cost and pricing review of unbundled elements currently underway in the OANAD proceeding.

However, the review process mandated for arbitrated agreements requires a state commission to find that the terms of such agreements are consistent with the requirements and pricing standards of the Act. The Act clearly intends that arbitrated agreements will include pricing for the unbundled elements listed in Section 251. We are in a position where we must ensure compliance with the Act, while at the same time we recognize that extensive Commission and party resources have gone into the development of a record in OANAD. Parties should not have two forums to resolve unbundling issues -- OANAD and the arbitration process. Pacific, AT&T, TRA, and MFS propose that we defer to the Commission's pending OANAD decision for final unbundled rates. We agree and determine that all agreements arbitrated before the OANAD pricing decision will include interim rates for unbundled elements which will subsequently be revised on a forward basis once the OANAD pricing order is issued. Therefore, we order that all agreements arrived at by arbitration include the provision that all arbitrated rates for unbundled elements will be subject to change in order to mirror the rates adopted in the Commission's OANAD pricing decision or decisions.

3. Arbitration / Mediation Process

3.1. Mediation Process

Pacific filed the most extensive comments regarding the mediation process. Its comments attempt to make the mediation process more desirable from the point of view of potential users of the process. Pacific would accomplish this by enhancing the confidentiality and flexibility aspects of the mediation process. For the most part we concur with the recommendations of Pacific and will adopt its suggestions.

It is our intention that the mediation process be as unencumbered with rules as possible. This will allow a great range in techniques in conducting the mediation. For instance, one party suggested that a portion of a mediation could be conducted by telephone and requested that we adopt such a rule. We believe that the rules we have in place would allow such a technique if agreed to by the parties. Basically, we see the mediation process as belonging to the parties, with the Commission Mediator there to assist in the negotiations using whatever techniques the parties find helpful.

3.2. Role of the Commissioners

We explicitly invited comments on the role of the Commissioners in the process of arbitrating disputes and considering agreements. The majority of comments indicate that the most helpful role of Commissioners is to provide overall policy guidance on a timely basis and to approve or reject agreements submitted to us in an expeditious manner. We fully intend to fulfill our obligations and to pass judgment on all agreements submitted to us as quickly as possible.

3.3. Ex Parte Rules

One party submitted comments suggesting an explicit rule prohibiting ex parte contacts at a certain point in the process. We currently have "ex parte" rules in place – Article 1.5 of our Rules of Practice and Procedure. We have provided that all requests, except those submitted as Advice Letters, will be treated as applications under our rules. We believe that our current ex parte rules provide sufficient protection against improper ex parte contacts with decision makers. We will not adopt a special rule governing ex parte contacts for applications under the Act.

3.4. Use of Private Arbitrators and Mediators

The Commission asked parties to comment on the use of private mediators and arbitrators to perform the mediations and arbitrations under Rules 2 and 3. All but one party commented on this issue. Almost all of the parties were open to the use of private mediators and arbitrators to supplement Commission staff resources, if needed. However, the parties also believed that if private mediators and arbitrators are used, certain procedural protections, including minimum qualifications, must be established. DRA supports the use of Commission staff as mediators and arbitrators. ACSA contends that it is impermissible to contract out the mediation and arbitration as outlined in the interim rules, citing Art. VII of the State Constitution on the civil service system and California State Employees' Assn. V. Williams (1970) 7 Cal.App.3d 390.

After reviewing the interim rules, we have decided not to make any changes to Rule 2.2, Appointment of a Mediator, and Rule 3.5, Appointment of an Arbitrator. If increased workload requires additional resources, we will pursue all options, including private mediators/arbitrators, through appropriate state procedures, and in accordance with state and federal law.

3.5. Appointment of the Arbitrator

TCG proposed a rule mandating appointment of an arbitrator within 5 days of the filing of a request for arbitration and asked that the parties participate in the appointment process. We believe that the timelines in the Act and in our rules provide more than enough mandates to ensure that arbitrations are handled in a timely manner. Our rules provide that the arbitration will begin within 10 days of a response to a request for arbitration. We do not believe that another mandated time period regarding appointment of the Arbitrator is needed.

Regarding the parties' participation in the appointment process, this is neither necessary nor feasible given the time constraints and the limited resources of the Commission.

3.6. Testimony

TCG also filed comments expressing fairness concerns regarding the due date for testimony. Currently our rules provide that the party requesting arbitration must submit its direct testimony at the time of filing its request for arbitration and that the responding party must submit its direct testimony at the time it files its response. TCG points out that this will give the responding party 25 additional days to review the requesting party's testimony prior to the hearing; TCG regards this as unfair to the requesting party.

We agree that the outcome is as outlined by TCG, and that it is less than ideal. However, we note that TCG's solution -- both parties submit testimony at the time of the response -- would reduce the time the arbitrator has available to review testimony before the hearing begins. We are dealing with inflexible processing deadlines, and on balance we believe the advantage of giving the arbitrator additional time to review testimony before the hearing outweighs the concerns raised by TCG. We will thus not change our rule on this point.

3.7. Consolidation of Arbitration Proceedings

Certain parties made a strong plea for adoption of a rule that would strongly encourage consolidation of arbitration proceedings. The comments argued for this proposal on the basis of increased efficiency and "openness" of information exchange.

We currently have rules in place governing the consolidation of proceedings -- Rule 55 of our Rules of Practice and Procedure. This rule provides that proceedings involving common issues of law or fact may be consolidated. We believe that this is sufficient authority to consolidate proceedings when warranted by the circumstances. Since we have sufficient authority presently, we will not adopt a more detailed rule.

3.8. Confidentiality and Discovery

Extensive comments were filed regarding the need for free exchange of information to provide a complete record versus the need for the protection of proprietary information in a newly competitive environment.

We have had a long history of dealing with the sensitive issues concerning proprietary information under our current rules. We see no need to further augment these rules at this time. It might be helpful to note that with the very compressed timeframes imposed on us by the Act, we have a preference toward the free exchange of information and will discourage parties from refusing to exchange relevant information. We will also be attuned to attempts to "draw out the process" by refusing to provide information in a timely manner. At the same time, we will of course recognize the need to protect certain information and we believe that we have the mechanisms in place to provide this protection—redacting exhibits, testimony/exhibits under seal, nondisclosure agreements, etc. We also note that we have a Law and Motion process currently in place. This process may be used to resolve any discovery disputes occurring before the appointment of an arbitrator.

Generally, arbitration processes do not allow for discovery. Also, we expect that very extensive exchange of information will have occurred before a request for arbitration is filed. For these reasons, and also because of the very compressed timeframes after filing, there generally should be no formal discovery during an arbitration under the Act. However, the Arbitrator or Administrative Law Judge assigned to Law and Motion may compel response to a data request for good cause. Such response typically will be required within three working days or less.

3.9. Request for a Closed Hearing

Our current rules provide for a request for a closed hearing. Pacific suggests that the time for such a request be within 3 days of the response to a request for arbitration. We believe that it should be possible for any party filing either a request for arbitration or a response to a request to file a request for a closed hearing at the same time as their request or response.

3.10. "Paper Arbitration"

One party provided a suggestion that we adopt a rule allowing for a "no hearing" arbitration (to be conducted without oral testimony and cross examination). Again, our current rules accommodate such a practice. We intend that if such a procedure is appropriate given the circumstances of the matter, then it may be employed. No further rule is warranted on this subject.

3.11. Arbitration Timeline

As a general characterization most parties filed comments requesting an expansion of various time limits while at the same time wanting to maintain or shorten the overall processing time. Also there appeared to be some confusion regarding our interpretation of the Act's requirements concerning "resolution of issues" within 9 months.

Our current interim rules do not contain an explicit definition of the term "resolving all issues" as provided in the Act. Our interpretation is that this term means the filing of the complete agreement following the Arbitrator's report. It is this act of filing the complete

agreement which must be accomplished within 9 months from the date the local exchange carrier received the request for negotiations. We note that it is the responsibility of the parties to combine the Arbitrator's report on "arbitrated issues" with all issues previously negotiated by the parties to produce a complete agreement.

We also note that this means we have about 110 days (less than 4 months) to conclude an arbitration -- 270 days (9 months) less 160 days of prior negotiations. Our revised rules provide that the parties have 7 days to file a complete agreement and we have 30 days thereafter to reject or approve the agreements.

We are sympathetic to certain of the suggestions for additional time required for certain milestone events in the arbitration process. We will adopt the following recommended changes:

1. Commencement of the arbitration hearing is changed from 5 days after the response to a request for arbitration to 10 days following a response to a request for arbitration.
2. Filing of post hearing opening briefs shall be extended to 10 days following the receipt of the transcript from the presently mandated 7 days.
3. Current rules provide for no reply briefs. We will allow parties to file reply briefs within 5 days following the filing of opening briefs.
4. Request for a closed session shall be changed from 15 days before the hearing date to coincident with a request for arbitration or a response to a request is made.
5. Maximum duration of the arbitration hearing shall be extended from 5 days to 10 days.
6. Filing of the complete agreement shall be changed from 10 days following the filing of the Arbitrator's report to 7 days following the filing of the Arbitrator's report.

4. Agreement Approval Process and Procedure

4.1. Expedited Process for Negotiated Agreements

The Act provides for a 90-day approval period for agreements reached through negotiation. Our interim rules adopted a procedure consistent with the Act. Several parties (Pacific, GTEC, TCG, and ICG) filed comments recommending that we adopt a much more expedited process. These parties rely on the process adopted in D. 95-12-056 as precedent for a similar process to be adopted for agreements reached through negotiation or mediation. The parties recommend that the approval process be limited to 14 days with approval essentially delegated to the Telecommunications Division.

To buttress their recommendation, the parties point out that the Commission has only 30 days to approve an agreement reached through arbitration and yet 90 days to approve an agreement reached through mediation or negotiation. To counter this argument, we need

only point out that for an agreement reached through arbitration, both an Arbitrator and other interested parties will have been provided notice that an arbitration has been requested, an opportunity to attend all arbitration hearings, an opportunity to comment on the Arbitrator's report and an opportunity to comment on the agreement itself.

This open process makes it much easier for us to consider an agreement reached through arbitration within the 30 day period. By contrast, interested parties will see an agreement reached through negotiation/mediation for the first time at the time it is filed with us.

Furthermore, we assume that Congress has balanced the interests of the various parties in providing for a 90 day approval period for agreements reached through negotiation.

Although the parties' arguments are not convincing, we are attuned to the need for expedited consideration of these agreements. We find that the overall recommendation of an expedited process has merit and should be adopted.

We will adopt an expedited process but not exactly the one recommended by the parties. In Decision 95-12-056, we provided for an advice letter process. We adopted a 14-day "deemed approved" process for certain very limited circumstances and the regular advice letter process for other circumstances.

We also note that the Act requires the Commission to act to approve or reject agreements. We, therefore, find that we cannot delegate to staff the approval process. Instead, we must act by approving or rejecting all agreements either by issuance of a resolution or decision. The "deemed approved" process inherent in the 14 day advice letter approval process cannot be used for these agreements.

In order to provide the Commission and its staff the greatest degree of flexibility in meeting the deadlines specified in the Federal legislation, we will adopt a hybrid approach which uses the advice letter process as the preferred mechanism for consideration of negotiated agreements. However, if an advice letter is protested, the advice letter may be converted to an application. The decision on conversion will be made by the Telecommunications Division in consultation with the Chief Administrative Law Judge. This will allow the Commission, if necessary, to review the merits of the protest within the full time mandated by the Act (90 days).

Under either approach, final approval of agreements will rest with the Commission.

Finally, in Resolution ALJ-167 we ordered Pacific and GTEC to submit certain information designed to assist us in managing the expected workflow associated with reviewing these agreements (Resolution ALJ-167, page 3). While both Pacific and GTEC have provided a list of parties who had requested negotiations pursuant to the Act, as we requested, we wish to augment the request to make it more useful for our planning purposes. We request not only a list of those who have requested negotiations but also

the date on which that request was initially made. While GTEC generally provided these dates, Pacific did not do so in all situations. We also request that these lists be updated every 2 weeks unless no new requests have been received in the intervening period. They should be provided to the Chief Administrative Law Judge, for the sole use of the Commission in carrying out the provisions of this resolution.

IT IS RESOLVED that the rules appended 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 Development proceeding, R.93-04-003/ I.93-04-002.

Due to the need to have revised 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 September 20, 1996, the following Commissioners approving it:

Wesley Franklin

WESLEY M. FRANKLIN
Executive Director

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

Rules Governing Filings made 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 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; unless noted otherwise, all references to sections and subsections are to the Communications Act of 1934 as amended by the 1996 Act.

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 Arbitration for a final decision.

Request means an application or Advice Letter 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.

Arbitrated Agreement means the entire agreement filed by the parties in conformity with the Arbitrator's Report.

Resolved Issues means those issues submitted to and decided by the Arbitrator in compliance with Subsection 252(b)(4)(C).

Rule 1.2 Filing Procedures

All application filings under these rules shall comply with Rule 1 and Rules 2-8 of the Commission's Rules of Practice and Procedure. In addition to all paper copies of documents required, the documents shall be filed in electronic form (PC compatible diskette). Further, any agreement 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 applications filed pursuant to Sections 251 and 252 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. The request shall set forth the identity of all parties to the mediation, and any time constraints on resolution of the issues.

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 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.

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. 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 record, stenographic or otherwise, shall be taken of any portion of the mediation proceeding.

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 2.12 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 2.13 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 only to the parties oral and written recommendations of resolution at any point in the mediation.

Rule 2.14 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 2.15 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 within 10 days of the Mediator's issuance of the proposed agreement.

Rule 2.16 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. The written Mediator's declaration shall be conclusory and neutrally worded so as not to permit any negative inference respecting any party to the mediation.

Rule 2.17 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 2.17.1 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 2.18 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 Section 251 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.

Parties to the arbitration may continue to negotiate an agreement prior to and during the arbitration hearings. Any portions of an agreement which are resolved through continuing negotiations must be filed with the Commission no later than the last day of hearings. These voluntary portions will be reviewed by the Commission pursuant to the standards in Rule 4.1.4.

The party requesting arbitration shall provide a copy of the request to the other party or parties not later than the day the Commission receives the request.