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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-178
Administrative Law Judge Division
November 18, 1999

RESOLUTION

RESOLUTION 178. Revises Resolution ALJ-174 Implementing the Provisions of Section 252 of the Telecommunications Act of 1996.

The Telecommunications Act of 1996 (the Act) creates certain obligations and duties of telecommunications carriers in order to encourage competition in the telecommunications market. Section 251 of the Act describes these duties and obligations, including interconnection and access to services and network elements. Section 252 provides that incumbent local exchange carriers must enter into interconnection agreements with other telecommunications carriers. Section 252 of the Act provides specific standards for the approval of these agreements by the state regulatory commission. Under this section of the Act a state commission may assist negotiating parties in reaching agreements through mediation and/or compulsory arbitration. Section 252 also requires a local exchange carrier to make available any interconnection, service, or network element provided under an agreement approved under this section to any other requesting telecommunications carrier, upon the same terms and conditions as those provided in the agreement.

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 Commission has received a request. We amended those rules on September 20, 1996 in ALJ-168, with further amendments on June 25, 1997 in ALJ-174. Today we approve revised rules to clarify the process that carriers should use under 252(i) to adopt the provisions of a previously-approved agreement.

The FCC recently clarified that although state commissions have no role in approving agreements under a 252(i) "opt-in" arrangement, states may adopt

procedures for making agreements available to carriers on an expedited basis.[1] Rule 7 that we adopt today provides for an expedited procedure for carriers to opt-in to preexisting agreements, with little Commission intervention in the process, unless the Incumbent Local Exchange Carrier (ILEC) disputes the adoption on the basis of the requirements of § 51.809.[2] Under § 51.809, individual interconnection, services or elements must be made available upon the same rates, terms and conditions as in the underlying agreement for a reasonable period of time after the agreement is available. The obligation to provide those services does not apply if the ILEC proves to the state commission that the costs of providing the service to the carrier making the request are greater, or that the carrier's request is not technically feasible.

Many carriers have already successfully adopted the terms of agreements approved for other carriers. We would expect that most requests to adopt the terms of an existing agreement will be handled routinely by the parties and not need to resort to the arbitration process outlined in Rule 7. The burden will be on the ILEC to prove that the request is not consistent with the requirements of § 51.809.

Some carriers have already filed Advice Letters with the Telecommunications Division stating their intent to adopt a specific interconnection agreement approved by the Commission. For a carrier whose filing is consistent with the rules adopted in this resolution, the date of issuance of this resolution will be considered the date of filing of the Advice Letter. The ILEC will have 15 days from the issuance date to approve a carrier's request or file a request for arbitration pursuant to the adopted rules.

We will continue to honor the principles contained in ALJ-168 that are not inconsistent with the changes adopted today. However, we re-emphasize the following concepts as they were discussed in ALJ-168.

First, we will continue to use the service list established in the September 9, 1996 ALJ ruling as the initial service list for Section 252 filings. This 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

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[1] FCC 99-199, In the Matter of Global NAPS, Inc. Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities Regarding Interconnection Dispute with Bell Atlantic-New Jersey, Inc., Adopted August 3, 1999, ¶ 4.
[2] FCC 96-325, Released August 8, 1996.

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 give us no choice but to interpret all of our rules in a strict manner.

Second, we emphasize, once again, that our rules (Rule 8.13) provide 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.

Third, we will continue to require that all agreements arbitrated before the Open Access and Network Architecture Development (OANAD) pricing decision goes into effect will include interim rates for unbundled elements which will subsequently be revised on a forward basis. 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.

Finally, in Resolution ALJ-167 we ordered Pacific Bell (Pacific) and GTE California Incorporated (GTEC) to submit certain information designed to assist us in managing the expected workflow associated with reviewing these agreements (Resolution ALJ-167, page 3). In Resolution ALJ-168, we noted that while both Pacific and GTEC had provided a list of parties who had requested negotiations pursuant to the Act, as we requested, we wanted them to augment the request to make it more useful for our planning purposes. We continue to request not only a list of those who have requested negotiations but also the date on which that request was initially made and ask that these lists be updated every two 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.

Comments on Draft Resolution

The draft resolution of the Administrative Law Judge Division was mailed to the parties in accordance with Public Utilities Code § 311(g). Comments were filed on October 25, 1999, by Electric Lightwave, Inc. (ELI), Pac-West Telecom Inc. (Pac-West), MCI Worldcom, Inc. and Sprint Communications Co., L.P. (MCI/Sprint), and Pacific. Reply comments were filed on November 1, 1999 by

ELI, Pac-West, and MCI/Sprint. GTEC filed reply comments on November 2, 1999, with a motion for leave to file reply comments one day late.

ELI proposes three amendments to the proposed rules: (1) clarify that an ILEC must meet a burden of proof in filing a request for arbitration, (2) specify that the effective date of the agreement will be the date on which the Competitive Local Exchange Carrier (CLEC) serves the Advice Letter on the ILEC, and (3) clarify that the rule applies retroactively to all previously filed Notices of Adoption.

MCI/Sprint propose the following changes to Rule 7: (1) An adoption should be deemed effective on the date of the notice to the ILEC, (2) the Commission should implement an expedited procedure for handling disputed issues under § 51.809(b), and (3) the ILEC should be required to immediately honor the adoption of terms that are not disputed. Also, the ILEC should immediately honor any terms the ILEC objected to solely for cost reasons, subject to retroactive price true-up.

Pac-West proposes that, where the requesting carrier prevails in the arbitration, the effective date of the interconnection agreement approved in the arbitration should be retroactive to the same day it would have been effective if the ILEC did not file for arbitration, namely the 16th day after the ILEC receives the request for arbitration.

Pacific comments on two issues: (1) Proposed Rule 7.2 impermissibly limits the bases for objection and should be modified to allow objection on any basis afforded by 47 C.F.R. § 51.809 or any other provision of federal law, and (2) Rule 7.1 should be changed to allow for parties to discuss their differences and reach a mutually agreeable resolution before having to resort to arbitration. After the 30 days for discussion have elapsed, the CLEC may file a request for arbitration with the Commission.

In its Reply Comments, ELI asks the Commission to reject Pacific's comments, which attempt to prevent carriers from exercising their Section 252(i) opt-in rights by (1) broadening the scope of grounds on which incumbent carriers may object under proposed Rule 7.2 and (2) shifting the burden of establishing a need for arbitration from the ILEC to the CLEC, and (3) lengthening the process.

MCI/Sprint's Reply Comments refute two points raised by Pacific: (1) the basis for objection to a 252(i) adoption should not be open-ended, and (2) Pacific's proposal for a 30-day negotiation period before the CLEC files for arbitration unnecessarily delays the process and shifts the burden of proof from the ILEC to the requesting carrier.

Pac-West endorses the comments filed by ELI and MCI/Sprint, and asks the Commission to revise the final rule to make it clear that all cases, whether or not the ILEC requests arbitration, all adopted interconnection agreements, including those notices of adoption filed prior to the effective date of Resolution ALJ-178, are effective no later than the 16th day after filing. Pac-West also recommends that the Commission reject Pacific's proposal to expand the bases for rejection of an adopted agreement beyond those set forth in 47 CFR § 51.809(b).

GTEC provided late-filed reply comments in support of Pacific's comments. GTEC also stated that Rule 7.1 imposes unreasonable time constraints on ILECs especially in those cases where a CLEC does not adopt an entire agreement, but adopts individual interconnection, service or network element arrangements. It takes time for the ILEC to provide the requesting CLEC with the requested arrangement language and legitimately related terms.

We have revised the Resolution and Rule 7 to adopt some of the proposals made by parties. We modify Rule 7.2, as Pacific suggests, to include the opt-in requirements under FCC Rule 51.809, not just the exclusions listed under § 51.809(b). Subsection (a) states that the interconnection or element must be available on the same rates, terms and conditions, which is a key element of an opt-in request. Subsection (c) states that the opt-in arrangement will be available for a reasonable time after an interconnection agreement becomes available. Some parties asked that we define what constitutes a "reasonable" period of time in our rules, but since circumstances may vary, we will make that determination on a case-by-case basis.

Some parties who are anxious to opt-in to an agreement we have previously adopted have already filed advice letters pursuant to these rules, and would have us make their advice letters effective on a retroactive basis. We are not willing to do that, because the ILEC must have an opportunity to review the request and act on it within the 15 days specified in Rule 7.2. We will not take away the ILEC's opportunity to review those requests. However, we have determined that those previously-filed advice letters will be considered to be filed under these rules, as of the issuance date of this resolution. Therefore, the ILEC will be expected to respond to any such requests within the 15 days following issuance of this resolution.

We clarify that the ILEC has the burden of proof in the arbitration and require the ILEC to include specific facts and evidence that the carrier's request is inconsistent with the requirements of Rule 7.2. Since any arbitration initiated under this Rule will be narrowly focused, it is important to have the ILEC's specific concerns on the table from the beginning.

For those cases where the ILEC files for arbitration, we would like to ensure that there is no incentive for the ILEC to use that process merely to delay the effective date of the agreement. ELI, Pac-West, and MCI/Sprint all express the need to expedite the approval process and suggest that the arbitrated agreement should be made effective back to the date when the advice letter requesting the adoption is filed. We do not want to make the agreements effective on a retroactive basis, but will eliminate any incentive for gaming the process by making any uncontested portions of the agreement effective as of the date the arbitration request is filed. For any disputes relating to costs, the ILEC must provide the service, subject to a retroactive true-up back to the filing date once the issue is decided by the Commission. We will determine the effective date of other disputed issues during the arbitration process and reserve the right to make the outcome retroactive to the date when the arbitration request was filed.

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.

IT IS RESOLVED that GTE California Incorporated's late-filed Reply Comments on Draft Resolution ALJ-178 are accepted for filing one day late.

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 OANAD proceeding, R.93-04-003/I.93-04-002, and to each Local Exchange Carrier and Competitive Local Exchange Carrier holding a certificate of public convenience and necessity to provide service in California.

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 November 18, 1999, the following Commissioners approving it:

Wesley Franklin

WESLEY M. FRANKLIN
Executive Director

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners

California Public Utilities Commission
Revised 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-appointed neutral third party to be resolved.

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 petition filings under these rules shall comply with Rule 1 and Rules 2-8 of the Commission's Rules of Practice and Procedure. In addition the final conformed agreement filed pursuant to these rules shall also be filed in electronic

form (PC compatible diskette) in accordance with instructions provided by the Commission's Webmaster.

Rule 1.3 Conflicting Rules
All petitions 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 identity 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 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. Parties to the arbitration may continue to negotiate an agreement prior to and during the arbitration hearings. 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.

Rule 3.3 Content
A request for arbitration must contain:

a. A statement of all unresolved issues.

b. A description of each party's position on the unresolved issues.

c. A proposed agreement addressing all issues, including those upon which the parties have reached an agreement and those that are in dispute. Wherever possible, the petitioner should rely on the fundamental organization of clauses and subjects contained in an agreement previously arbitrated and approved by this Commission.

d. Direct testimony supporting the requester's position on factual predicates underlying disputed issues.

e. Documentation that the request complies with the time requirements of Rule 3.2.

Rule 3.4 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 and immediately notify the parties of the identity of an Arbitrator to facilitate resolution of the issues raised by the request. The Assigned Commissioner may act as Arbitrator if he/she chooses. The Arbitrator must attend all meetings, conferences and hearings as described in Rules 3.8 and 3.9.

Rule 3.5 Discovery
Discovery should begin as soon as possible prior to or after filing of the request for negotiation and should be completed before a request for arbitration is filed. For good cause, the Arbitrator or Administrative Law Judge assigned to Law and Motion may compel response to a data request; in such cases, the response normally will be required in three working days or less.

Rule 3.6 Opportunity to Respond
Pursuant to Subsection 252(b)(3), any party to a negotiation which did not make the request for arbitration ("respondent") may file a response with the Commission within 25 days of the request for arbitration. In the response, the respondent shall address each issue listed in the request, describe the respondent's position on these issues, and identify and present any additional issues for which the respondent seeks resolution and provide such additional information and evidence necessary for the Commission's review. Building upon the contract language proposed by the applicant and using the form of agreement selected by the applicant, the respondent shall include, in the response, a single-text mark-up document containing the language upon which the parties agree and, where they disagree, both the applicant's proposed language (bolded) and the respondent's proposed language (underscored). Finally, the response should contain any direct testimony supporting the respondent's position on underlying factual predicates. 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 3.7 Revised Statement of Unresolved Issues
Within 7 days of receiving the response, the applicant and respondent shall jointly file a revised statement of unresolved issues that removes from the list presented in the initial petition those issues which are no longer in dispute based on the contract language offered by the respondent in the mark-up document and adds to the list only those other issues which now appear to be in dispute based on the mark-up document and other portions of the response.

Rule 3.8 Initial Arbitration Meeting
An Arbitrator may call an initial meeting for purposes such as setting a schedule, simplifying issues, or resolving the scope and timing of discovery.

Rule 3.9 Arbitration Conference and Hearing
Within 10 days after the filing of a response to the request for arbitration, the arbitration conference and hearing shall begin. The conduct of the conference and hearing shall be noticed on the Commission calendar and notice shall be provided to all parties on the service list.

Rule 3.10 Limitation of Issues
Pursuant to Subsection 252(b)(4)(A), the Arbitrator shall limit the arbitration to the resolution of issues raised in the petition, the response and the revised statement of unresolved issues (where applicable). However, in resolving these issues, the Arbitrator shall ensure that such resolution meets the requirements of the 1996 Act. In resolving the issues raised, the Arbitrator may take into account any issues already resolved between the parties.

Rule 3.11 Arbitrator's Reliance on Experts
The Arbitrator may rely on experts retained by, or on the Staff of, the Commission. Such expert(s) may assist the Arbitrator throughout the arbitration process.

Rule 3.12 Close of Arbitration
The arbitration shall consist of mark-up conferences and limited evidentiary hearings. At the mark-up conferences, the arbitrator will hear the concerns of the parties, determine whether the parties can further resolve their differences, and identify factual issues that may require limited evidentiary hearings. The arbitrator will also announce his or her rulings at the conferences as the issues are resolved. The conference and hearing process shall conclude within 10 days of the hearing's commencement, unless the Arbitrator determines otherwise.

Rule 3.13 Expedited Stenographic Record
An expedited stenographic record of each evidentiary hearing shall be made. The cost of preparation of the expedited transcript shall be borne in equal shares by the parties.

Rule 3.14 Authority of the Arbitrator
In addition to authority granted elsewhere in these rules, the Arbitrator shall have the same authority to conduct the arbitration process as an Administrative Law Judge has in conducting hearings under the Rules of Practice and Procedure. The Arbitrator shall have the authority to change the arbitration schedule contained in these rules as long as the revised schedule adheres to the deadlines contained in the 1996 Act.

Rule 3.15 Participation in the Arbitration Conferences and Hearings
Participation in the arbitration conferences and hearings is strictly limited to the parties that were negotiating an agreement pursuant to Sections 251 and 252.

Rule 3.16 Arbitration Open to the Public
Though participation at arbitration conferences and hearings is strictly limited to the parties that were negotiating the agreements being arbitrated, the general public is permitted to attend arbitration hearings unless circumstances dictate that a hearing, or portion thereof, be conducted in closed session. Any party to an arbitration seeking a closed session must make a written request to the Arbitrator describing the circumstances compelling a closed session. The Arbitrator shall consult with the assigned Commissioner and rule on such request before hearings begin.

Rule 3.17 Filing of Draft Arbitrator's Report
Within 15 days following the hearings, the Arbitrator, after consultation with the Assigned Commissioner, shall file a Draft Arbitrator's Report. The Draft Arbitrator's Report will include (a) a concise summary of the issues resolved by the Arbitrator, and (b) a reasoned articulation of the basis for the decision.

Rule 3.18 Filing of Post-Hearing Briefs and Comments on the Draft Arbitrator's Report
Each party to the arbitration may file a post-hearing brief within 7 days of the end of the mark-up conferences and hearings unless the Arbitrator rules otherwise. Post-hearing briefs shall present a party's argument in support of adopting its recommended position 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. Each party and any member of the public may file comments on the Draft Arbitrator's Report within 10 days of its release. Such comments shall not exceed 20 pages.

Rule 3.19 Filing of the Final Arbitrator's Report
The Arbitrator shall file the Final Arbitrator's Report no later than 15 days after the filing date for comments. Prior to the report's release, the Telecommunications Division will review the report and prepare a matrix comparing the outcomes in the report to those adopted in prior Commission arbitration decisions, highlighting variances from prior Commission policy. Whenever the Assigned Commissioner is not acting as the Arbitrator, the Assigned Commissioner will participate in the release of the Final Arbitrator's Report consistent with the Commission's filing of Proposed Decisions as set forth in Rule 77.1 of the Commission's Rules of Practice and Procedure.

Rule 4. Applications for Approval of Agreements entered into pursuant to Sections 251 and 252

Rule 4.1 Agreements Reached by Mediation
Rule 4.1.1 Content
Applications for approval of agreements reached by 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 mediated 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 (or portion thereof) 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 the agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity; or

c. the agreement (or portion thereof) 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 Arbitrated Agreement
Within 7 days of the filing of the Final Arbitrator's Report, the parties shall file the entire agreement for approval.

Rule 4.2.2 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 (including those parts arrived at through negotiations) pursuant to Subsection 252(e) and all its subparts.

Rule 4.2.3 Standards for Review
Pursuant to Subsection 252(3)(2)(B), the Commission may reject arbitrated agreements or portions thereof that do not meet the requirements of Section 251, the FCC's regulations prescribed under Section 251, or the pricing standards set forth in Subsection 252(d). Pursuant to Subsection 252(e)(3), the Commission may also reject agreements or portions thereof which violate other requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission.

Rule 4.2.4 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 4.2.5 Application for Rehearing
A party wishing to appeal a Commission decision approving an arbitration must first seek administrative review pursuant to the Commission's Rules of Practice and Procedure.

Rule 4.3 Approval of Agreements Reached by Negotiation
Rule 4.3.1 Content

Request for approval of an agreement reached by negotiation shall be filed as an Advice Letter as provided in General Order 96-A and must state that it is a voluntary agreement being filed for approval under Section 252 of the Act. The request for approval of agreements reached by negotiation shall contain a copy of the agreement and a showing that the agreement meets the standards contained in Rule 2.18. The agreement shall itemize the charges for interconnection and each service or network element included in the agreement.

Rule 4.3.2 Comments by Members of the Public
Any member of the public (including the parties to the agreement and competitors) may file a protest concerning the negotiated agreement as provided by General Order 96-A. Such protest shall be limited to the standards for rejection provided in Rule 4.1.4.

Rule 4.3.3 Time for Commission Action
The Commission shall reject or approve the agreement based on the standards contained in Rule 4.1.4 within 90 days of submission of the Advice Letter. If the Commission fails to act within the specified time then the agreement is deemed approved.

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 Section 251.

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 permit the statement to 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, the FCC's regulations prescribed under Section 251, or the pricing standards set forth in Subsection 252(d). Pursuant to Subsection 252(e)(3), the Commission may also reject statements which violate other requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission

Rule 6. Approval of Amendments to Agreements Approved under These Rules

Rule 6.1. Filing Requirements
Amendments to any agreements approved under these rules shall be submitted to the Telecommunications Division by Advice Letter.

Rule 6.2 Amendment Approval Process
Such Advice Letters will be deemed approved without a Commission Resolution 30 days from the date the Advice Letter is filed, unless the Commission takes formal action to reject an Advice Letter. The Director of the Telecommunications

Division shall have authority to require additional information explaining the contents of an Advice Letter and to require parties to file supplements to their Advice Letters. The Director of the Telecommunications Division may also stay the effective date of an Advice Letter, pending action by the Commission.

Rule 7. Process for Adopting a Previously Approved Agreement (or Portions of an Agreement) Pursuant to 252(i)

Rule 7.1 Notification and Scope
Requests to adopt an interconnection agreement (or portion(s) of an agreement) previously approved by the Commission shall be submitted to the Telecommunications Division by Advice Letter.

The Advice Letter shall state the intent to adopt a specific agreement in its entirety or clearly identify specific portions of a particular agreement the carrier proposes to adopt.

The Advice Letter shall be served on the Incumbent Local Exchange Carrier (ILEC) with whom the carrier wishes to execute the interconnection agreement no later than the date the Advice Letter is filed with the Commission's Telecommunications Division.

The Advice Letter shall also be mailed to all parties on the Service List specified in Resolution ALJ-174, R.93-04-003/I.93-04-002 and R.95-04-043/I.95-04-044.

Neither carrier may propose alterations to the terms of the underlying agreement.

Rule 7.2 Incumbent Local Exchange Carrier's Response
Within 15 days of its receipt of the Advice Letter, the ILEC shall either send the requesting carrier a letter approving its request or file a request for arbitration based solely on the requirements in § 51.809:

a. Any individual interconnection, service, or network element arrangement contained in any agreement approved by the Commission pursuant to Section 252 of the Telecommunications Act of 1996, must be made available upon the same rates, terms, and conditions as those provided in the agreement.

b. The obligations of section (a) above shall not apply where the ILEC proves to the state commission that:

(1) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement.

(2) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible.

c. Individual interconnection, service, or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under 252 (f) of the Act .

If the ILEC does not act to approve the request or to file a request for arbitration, the carrier's request will be deemed effective on the 16th day.

Rule 7.3 Rules for Arbitrations conducted Pursuant to this Rule

Rule 7.3.1 Content of Arbitration Request
In any application for arbitration filed pursuant to Rule 7, the ILEC has the burden of proof that the carrier's request does not meet the requirements of § 51.809. The ILEC's request for arbitration must include facts and evidence that its request for arbitration is consistent with the requirements of § 51.809 and Rule 7.2.

Rule 7.3.2 Effective Date of Arbitrated Agreement
Should the ILEC file for arbitration, the ILEC shall immediately honor the adoption of those terms not subject to objection pursuant to Rule 7.2, effective as of the date of the filing of the arbitration request. Furthermore, to the extent the ILEC seeks arbitration of the costs of a particular interconnection, service or element, the ILEC shall immediately honor such provisions subject to retroactive price true-up back to the date when the arbitration request was filed, based on the Commission's resolution of the arbitration. The effective date of other disputed issues will be set in the arbitration process and could be made effective retroactive to the date when the arbitration request was filed.

Rule 7.3.3 Modifications to Existing Arbitration Rules
The existing rules for arbitration cases, "Rule 3. Request for Arbitration" remain in effect, with the following exceptions:

Rule 3.1 "Filing" is amended to state that the ILEC which disputes a carrier's request to adopt another carrier's agreement may file a request for arbitration.

Rule 3.2 "Time to File" does not apply. The ILEC has 15 days from receipt of the Advice Letter to file a request for arbitration.

Rule 3.3 "Content" is amended as follows:

A request for arbitration must contain:

a. A statement of why the request should be denied pursuant to § 51.809(b).

b. For those cases where the carrier is requesting to adopt portions of an agreement, the ILEC shall include the entire agreement, with the portions the carrier is requesting clearly marked.

c. Direct testimony supporting the ILEC's position

Rule 3.5 "Discovery" is amended as follows:

Discovery should begin as soon as the ILEC files the request for arbitration. For good cause, the Arbitrator or Administrative Law Judge assigned to Law and Motion may compel response to a data request; in such cases, the response normally will be required in three working days or less.

Rule 3.6 "Opportunity to Respond" is amended to delete the statement that the respondent may identify additional issues for which the respondent seeks resolution. The respondent does not need to file a "mark-up" of the proposed agreement.

Rule 3.7 Does not apply.