

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,	)	
to modify and establish additional procedures for	)	
arbitration and mediation related to telecommuni-	)	Case No. U-13774
cations and broadband deployment.	)	
_____	)	

At the May 2, 2003 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman  
Hon. David A. Svanda, Commissioner  
Hon. Robert B. Nelson, Commissioner

**OPINION AND ORDER**

On July 16, 1996, the Commission issued an order in Case No. U-11134, establishing procedures for the arbitration of interconnection agreements pursuant to Section 252 of the federal Telecommunications Act of 1996 (federal Act), 47 USC 252.

In addition to the responsibilities for arbitration under the federal Act, the Commission is also entrusted with implementing mediation requirements under certain amendments to the Michigan Telecommunications Act (MTA), MCL 484.2101 et seq., and the passage of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Rights-of-Way Act), MCL 484.3101 et seq. Those new provisions and the limitations of the Commission's resources lead the Commission to modify its arbitration procedures and establish mediation procedures in a manner that will permit flexibility in the selection of arbitrators and mediators to fulfill these statutory obligations. Therefore, this order modifies the arbitration procedures set out in the

July 16, 1996 order in Case No. U-11134 and establishes procedures for the assignment of mediators pursuant to the MTA and the Rights-of-Way Act.

### Arbitration

47 USC 252 provides for the resolution of interconnection and other issues by negotiation between an incumbent local exchange carrier and a competing local exchange carrier. If the parties are unable to reach agreement, either party may file a petition requesting the Commission to arbitrate the dispute. The Commission proposes that the following procedures will apply to petitions seeking arbitration. The party requesting arbitration shall file a petition with the Commission and serve it on the other party to the negotiations. The petition shall specify the issues for which arbitration is sought and the positions of the parties on each of those issues. The requesting party shall file with the petition all information upon which it intends to rely to support its position. Within 25 days of the filing date, the other party shall file a response, which shall include all information upon which that party intends to rely. The parties to the proceeding may end the arbitration process at any time by settling all matters in dispute.

The arbitration panel shall consist of one or more members of the Commission's technical staff, appointed by the Commission's Chief Administrative Officer, and one administrative law judge appointed by the Director of the Administrative Law Judge Division. The Commission may also designate, with the concurrence of the parties, a non-staff arbitrator to perform the duties of the administrative law judge or the Commission's technical staff. Those persons may be employed by, or contracted with, the State of Michigan or may be a non-employee/contractor who will be engaged and compensated by the parties. The administrative law judge or person performing the duties of the administrative law judge will chair the panel, issue any

communications to the parties, and rule on procedural matters. The arbitration decision will be reached by a majority vote of the panel members.

Following their appointment, arbitration panel members will meet to decide how best to proceed. The process will not be patterned after contested case proceedings, but will be designed to inform the panel. As a result, the parties to the negotiations will be the only parties to the arbitration. There is no right to conduct discovery, although either party may request that the arbitration panel order the production of additional information from the other party. The arbitration panel will use its discretion as to whether the parties will make live presentations, and any questioning shall be accomplished by the panel rather than the parties.

The arbitration panel shall issue a decision on the merits of the parties' positions on each issue raised by the request for arbitration and the response. Unless the result would be clearly unreasonable or contrary to the public interest, the panel will limit its decision on each issue to selecting the position of one of the parties on that issue. The panel will issue a written decision, with a brief explanation of the reasons for the decision on each issue, and will serve that decision on the parties. The parties may file objections to the panel's decision within 10 days of the issuance of that decision. The Commission will then issue an order approving, modifying, or rejecting the resulting agreement.

### Mediation

Section 203 of the MTA, MCL 484.2203, and Section 6 of the Rights-of Way Act, MCL 484.3106, provide for the appointment of mediators under certain circumstances. Additionally, persons occasionally request informal mediation to resolve a formal proceeding or an interconnection arbitration. The Commission proposes that the following procedures will apply to all mediations.

Upon request for mediation pursuant to statutory requirements or for informal dispute resolution, the Commission may designate a member of its staff, an administrative law judge, or a non-staff mediator to conduct the mediation. The mediator will follow the statutory requirements, including time limits, and rule on any procedural matters. If a non-staff mediator is appointed, it shall be with the concurrence of the parties and may be a person employed by, or contracted with, the State of Michigan, or may be a non-employee/contractor, who will be engaged and compensated by the parties.

The Commission concludes that interested parties should have an opportunity to comment on the proposed procedures. Therefore, interested parties may file written comments on the proposed procedures within 20 days of the date of this order.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq., and 2002 PA 48, MCL 484.3101 et seq.

b. Interested parties should be permitted 20 days from the date of this order to comment on the procedures for arbitration and mediation requests pursuant to the federal Act, the MTA and the Rights-of-Way Act described in this order.

THEREFORE, IT IS ORDERED that within 20 days of the date of this order, interested parties may file comments on the procedures for arbitration or mediation pursuant to the Telecommunications Act of 1996, the Michigan Telecommunications Act, and the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act described in this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle  
Chairman

( S E A L )

/s/ David A. Svanda  
Commissioner

/s/ Robert B. Nelson  
Commissioner

By its action of May 2, 2003.

/s/ Dorothy Wideman  
Its Executive Secretary

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Case No. U-13774

Suggested Minute:

“Adopt and issue order dated May 2, 2003 providing notice of the Commission’s intent to adopt procedures to be used for arbitration and mediation requests made pursuant to the federal Telecommunications Act of 1996, the Michigan Telecommunications Act, and the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, and permitting interested parties to comment, as set forth in the order.”