

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
to modify and establish additional procedures for)
arbitration and mediation related to telecommuni-)
cations and broadband deployment.)
_____)

Case No. U-13774

At the May 18, 2004 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

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 Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (METRO Act), MCL 484.2101 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.

On May 2, 2003, the Commission issued an order in this case proposing modified procedures for arbitrations and mediations under the amendments to the MTA and the METRO Act that would permit flexibility in the selection of arbitrators and mediators to fulfill these statutory obligations. The Commission allowed for parties to comment on the proposed modified procedures.

The Commission received comments from one party, SBC Michigan, which supported the effort to modify the procedures for arbitrations and mediations. SBC supported the Commission's proposal for using an outside arbitrator or panel of arbitrators as it would relieve the Commission Staff and the Administrative Law Judge Division from the duty of participating on the panel in every arbitration filed at the Commission. SBC commented that the Commission could either make the appointment or enable the agreement of the parties to make the appointment of an outside arbitrator. SBC also supported the proposal to use an outside mediator with the concurrence of the parties. However, SBC contended that the Commission's proposals didn't go far enough. Specifically, SBC took issue with the Commission's baseball-style arbitration approach and the way that arbitration panels have carried out their duties.

The Commission arbitration procedures have been working very effectively since 1996 and the Commission sees no reason to modify any aspects of the procedures other than allowing for the use of non-staff arbitrators and mediators to be engaged and compensated by the parties.

As a result, the Commission hereby finalizes the modified arbitration and mediation procedures as follows:

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 specifies 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.

Arbitrations may be conducted by a single arbitrator or a panel of arbitrators. If an arbitration panel is used, the arbitration panel shall consist of one or more members of the Commission's staff, appointed by the Director of the Telecommunications Division and/or the Director of the Regulatory Affairs Division 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 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 if a panel is used. Alternatively, a single arbitrator can be selected for resolution of a small number of issues.

If an arbitration panel is used, following their appointment, arbitration panel members will meet to decide how 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 arbitrator/arbitration panel order the production of additional information from the other party. The arbitrator/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 arbitrator/arbitration panel shall issue a decision on the merits of the parties' positions on each issue raised by the request for arbitration and response. Unless the result would be clearly unreasonable or contrary to the public interest, the arbitrator/arbitration panel will limit its decision on each issue to selecting the position of one of the parties on that issue. The arbitrator/arbitration 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 arbitrator/arbitration panel's decision within 10 days of the issuance of that decision. The Commission will then issue an order approving, modifying, or rejecting the arbitrator/arbitration panel's decision and the resulting interconnection agreement.

Mediation

Section 203 of the MTA, MCL 484.2203, and Section 6 of the METRO 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 FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 2002 PA 48, MCL 484.3101 et seq.; 47 USC 252; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

b. Requests for arbitration under the federal Act and the MTA should be handled according to the procedures set out in this order.

c. Requests for mediation under the MTA and the METRO ACT should be handled according to the procedures set out in this order.

THEREFORE, IT IS ORDERED that:

A. Requests for arbitration under the federal Telecommunications Act of 1996, 47 USC 252, and the Michigan Telecommunications Act, 1991 PA 179, as amended, should be handled according to the procedures set out in this order.

B. Requests for mediation under the Michigan Telecommunications Act and the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, should be handled according to the procedures set out 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/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of May 18, 2004.

/s/ Mary Jo Kunkle
Its Executive Secretary

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

Chair

Commissioner

Commissioner

By its action of May 18, 2004.

Its Executive Secretary

In the matter, on the Commission's own motion,)
to modify and establish additional procedures for)
arbitration and mediation related to telecommuni-)
cations and broadband deployment.)
_____)

Case No. U-13774

Suggested Minute:

“Adopt and issue order dated May 18, 2004 modifying the procedures for arbitration and mediation related to telecommunications and broadband deployment, as set forth in the order.”