

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)
to promulgate rules for the arbitration of)
interconnection agreements and the mediation)
of complaints.)
_____)

Case No. U-16250

At the February 8, 2011 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

ORDER FORMALLY ADOPTING ADMINISTRATIVE RULES

On December 8, 2009, the Commission sought permission from the State Office of Administrative Hearings and Rules (SOAHR) to adopt new rules codifying existing telecommunications arbitration and mediation procedures. SOAHR approved the request for rulemaking, SOAHR #2009-067 LG, on December 8, 2009. The Commission submitted the draft rules to SOAHR and the Legislative Service Bureau (LSB) for informal approvals, which were granted on March 8, 2010.

On April 13, 2010, the Commission issued an order providing the public with an opportunity to comment on the proposed rules. A public hearing was held on May 11, 2010, at which no one testified. The Commission received written comments. On August 30, 2010, the Commission approved revised rules and submitted them to LSB and SOAHR for their formal approvals, which were granted on October 7 and 13, 2010, respectively. On October 14, 2010, the rules were filed

with the Joint Committee on Administrative Rules (JCAR), which, by virtue of MCL 24.245a(1), had 15 session days to object to the rules by filing a notice of objection. JCAR did not take any action to prevent the rules from being transmitted to the Secretary of State. The Commission therefore has the authority to formally adopt these rules.

THEREFORE, IT IS ORDERED that the new rules codifying existing telecommunications arbitration and mediation procedures, attached to this order as Exhibit A, are adopted, and transmitted to the State Office of Administrative Hearings and Rules for filing with the Secretary of State.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Greg R. White, Commissioner

By its action of February 8, 2011.

Mary Jo Kunkle, Executive Secretary

DEPARTMENT OF ENERGY, LABOR, AND ECONOMIC GROWTH
MICHIGAN PUBLIC SERVICE COMMISSION

PROCEDURES FOR TELECOMMUNICATIONS ARBITRATIONS AND MEDIATIONS

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, 45a(6), or 48 of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the Michigan public service commission by section 213 of 1979 PA 179, MCL 484.2213.)

R 484.701, R 484.702, R 484.703, R 484.704, R 484.705, R 484.706, R 484.707, R 484.708, R 484.709, and R 484.710 of the Michigan Administrative Code are added as follows:

PART 1. GENERAL PROVISIONS

R 484.701 Applicability.

Rule 1. These rules govern practice and procedure before the Michigan public service commission in the arbitration proceedings required by section 252(b) of the federal telecommunications act of 1996, 47 USC 252(b), and in the mediation proceedings conducted under MCL 484.2203a, MCL 484.3106, MCL 484.3107, or MCL 484.3310(5)(b)(i) and (6)(b).

R 484.702 Definitions.

Rule 2. As used in these rules:

- (1) "Commission" means the Michigan public service commission.
- (2) "Interconnection agreement" means an agreement between 2 or more providers entered into under sections 251 and 252 of the federal telecommunications act of 1996.
- (3) "Panel" means an arbitration panel.

PART 2. ARBITRATION

R 484.703 Filing of petition for arbitration.

Rule 3. (1) The party initiating arbitration shall file a petition with the commission and serve it on the other party to the negotiations. Service of the petition shall be under the rules of practice and procedure before the commission, R 460.17101 et seq.

(2) The first page of all petitions for arbitration shall set forth the date upon which the request for negotiation under section 252 of the federal telecommunications act of 1996 was received and the dates 135 days, 160 days, and 9 months after the date of the request.

(3) The petition shall specify and explain the issues for which arbitration is sought and the positions of the parties on each of those issues.

(4) The party initiating a petition for arbitration shall file with the petition all information upon which it intends to rely to support its position.

(5) Within 25 days of the filing date, the party responding to the petition for arbitration shall file a response. The response shall include all information upon which that party intends to rely. A party responding to a petition may raise issues not included in the petition.

(6) By stipulation signed by all parties, the petition for arbitration may be amended to restate the information described in subrule (2) of this rule.

R 484.704 Designation of arbitration panel or arbitrator.

Rule 4. (1) Arbitrations may be conducted by a single arbitrator or a panel.

(2) If a panel is used, it shall consist of 1 or more members of the commission's staff to be appointed by the director of the telecommunications division and the director of the regulatory affairs division, and 1 administrative law judge appointed by the administrative law manager assigned to the commission. If a non-staff arbitrator 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 shall be engaged and compensated by the parties.

(3) The administrative law judge or person performing the duties of the administrative law judge shall chair the panel, issue any communications to the parties, and rule on procedural matters.

(4) The administrative law judge or person performing the duties of the administrative law judge shall send a letter to each party to the arbitration containing a schedule for the proceedings.

R 484.705 Information for the panel or arbitrator; arbitration proceedings.

Rule 5. (1) The arbitration shall not be patterned after a contested case proceeding, but rather shall be designed to inform the panel or arbitrator regarding the positions of the respective parties. As a result, the parties to the negotiations shall be the only parties to the arbitration.

(2) There is no right to conduct discovery, although either party may request that the panel or arbitrator order the production of additional information from the opposing party.

(3) The panel or arbitrator shall exercise discretion in determining whether the parties shall provide additional information or make live presentations. Any questioning shall be conducted by the panel or arbitrator rather than the parties.

(4) The parties shall be present for the arbitration proceedings and shall provide the panel or arbitrator with additional information as requested.

(5) Failure of a party to provide the required information or attend the arbitration proceedings may result in a default or a dismissal of the proceeding.

(6) Unless otherwise ordered by the panel or arbitrator, the parties shall submit a proposed decision of the panel or arbitrator within the time frame established by the panel or arbitrator. The proposed decision of the panel or arbitrator shall address each issue presented by the parties during arbitration.

R 484.706 Decision of the panel or arbitrator.

Rule 6. (1) The panel or arbitrator shall issue a written decision, with a brief explanation of the reasons for the decision on each issue in dispute, and shall serve that decision on the parties.

(2) Unless the result would be clearly unreasonable or contrary to the public interest, the panel or arbitrator shall limit its decision on each issue to selecting the position of 1 of the parties.

(3) The decision of the panel shall be reached by a majority vote.

(4) The parties may file objections to the panel or arbitrator's decision within 10 days of the issuance of the decision.

(5) The parties to the arbitration may end the arbitration process at any time by settling all issues in dispute.

(6) The commission shall issue an order approving, modifying, or rejecting the panel or arbitrator's decision and the resulting interconnection agreement.

PART 3. MEDIATION

R 484.707 Designation of mediator.

Rule 7. For mediation required by statute, or for informal dispute resolution, the commission may designate a member of its staff, request the assignment of an administrative law judge from the state office of administrative hearings and rules, or designate a non-staff mediator to conduct the mediation. 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 shall be engaged and compensated by the parties.

R 484.708 Recommended settlement.

Rule 8. The mediator shall issue a recommended settlement and may include such information in the recommended settlement as he or she determines is necessary to support the recommendation. This rule does not apply to disputes mediated pursuant to MCL 484.3310(5)(a) or MCL 484.3310(6)(a).

R 484.709 Recommended settlement disclosure.

Rule 9. (1) The recommended settlement issued by the mediator shall be disclosed only to the parties to the mediation. The mediator's recommended settlement may be disclosed to the commission after the commission has issued a final order.

(2) The administrative law judge assigned to any contested case proceeding arising from the mediation shall not be made aware of the acceptance or rejection by the parties of the recommended settlement, or the terms of the recommended settlement. The parties to the mediation shall not disclose or reveal the terms of the recommended settlement to anyone other than the parties to the mediation.

(3) The parties shall not use the recommended settlement produced under these rules for any purpose unrelated to the mediation covered by these rules.

R 484.710 Acceptance or rejection of recommended settlement.

Rule 10. (1) This rule applies to mediations conducted under MCL 484.2203a or MCL 484.3310(5)(b)(ii) and (6)(b).

(2) At the time the mediator serves the recommended settlement upon the parties, the mediator shall file the recommended settlement, in a separate envelope under seal, with the executive secretary of the commission along with a cover letter stating the recommended settlement is now being filed. In e-file cases, an electronic version of the recommended settlement shall not be posted to the web.

(3) The parties shall file their acceptance or rejection of the recommended settlement in a separate envelope under seal with the executive secretary of the commission with a cover letter stating the party is now filing its position on the recommended settlement. At the same time, the parties shall serve their acceptance or rejection of the recommended settlement on the administrative law manager. The parties shall not serve their acceptance or rejection of the recommended settlement on each other.

(4) The administrative law manager shall review the parties' filings and advise the executive secretary of the commission and the parties if a hearing is required by the applicable statute.

(5) The executive secretary of the commission shall retain the recommended settlement and the parties' positions on the recommended settlement under seal until the commission has issued a final order after a contested case hearing.