

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. C-1128
of the Nebraska Public Service)	
Commission on its own motion)	
to conduct an investigation into)	PROGRESSION ORDER #3
the effects of local competition)	
on the telecommunications)	
industry in Nebraska.)	Entered: July 16, 1996

PRELIMINARY MATTERS

Under the Telecommunications Act of 1996 ("the Act"), Section 252, the Nebraska Public Service Commission ("the Commission") is authorized to mediate and arbitrate disputes between companies concerning interconnection agreements, services, or network elements.

The Act provides for the resolution of issues through compulsory arbitration. Between the 135th and 160th day after negotiations begin between the parties, either party may petition the Commission to arbitrate the remaining unresolved issues.

Since the Commission's responsibilities under Section 252 begin immediately and the time necessary to promulgate formal rules takes at least six months, the Commission proposes to adopt some form of the attached policy so that companies will know how to request mediation and arbitration and how it will be handled by the Commission. All interested parties are encouraged to provide their comments to the proposed policy on or before July 30, 1996.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that all interested parties who wish to comment on the proposed policy do so on or before July 30, 1996.

MADE AND ENTERED at Lincoln, Nebraska this 16th day of July, 1996.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson
 //s//Rod Johnson
 //s//Frank E. Landis
 //s//James F. Munnelly
 //s//Daniel G. Urwiller

Chairman

ATTEST:

Robert R. Lagsdon
 Executive Director

Policy on Mediation and Arbitration

The Nebraska Public Service Commission has formulated a general policy statement on mediation and arbitration under the Telecommunications Act of 1996. The policy statement is in draft form and subject to change. In addition, the policy is not binding on the Commission.

Mediation

1. The parties may independently seek the assistance of an outside mediator to help them reach an agreement. However, either negotiating party may ask for the Commission to assist in mediation. If the Commission receives a request for mediation, the Commission will use an outside mediator. The individual will be an unbiased, qualified mediator.
2. The Commission will propose a list of at least five (5) acceptable mediators. Each negotiating party must select three mediators from the list of who would be acceptable. The Commission will assign a mediator from those selected by the parties.
3. A staff member can be assigned, by the Commission or the mediator, to assist in the mediation process. The Executive Director and the Communications Department Director will confer and decide upon who should be assigned.
4. Only the negotiating parties, the mediator, and the assigned staff member will participate in the mediation.
5. After an agreement has been reached, the agreement will be filed with the Commission, and notice will be served by publication in the Omaha Daily Record. The public will have 15 days to file comments on the agreement.
6. The Commission has 90 days to accept or reject the agreement or the agreement shall be deemed approved. The grounds for rejection (Section 252 (e)(2)) are that the agreement discriminates against a non-party to the agreement, that the implementation of the agreement is not consistent with the public interest, convenience, and necessity, and that the agreement does not meet the requirements of Section 251 or the standards set forth in section 252 (d).
7. Although mediation is generally a voluntary process, the Commission interprets 47 USC § 252(a)(2) to require all parties to participate in a Commission mediation, once requested, on a good faith basis. The mediator may terminate the mediation if it appears that the likelihood of agreement is remote or if a party is not participating in good faith, or for other good cause. A mediation should not be terminated prior to the completion of at least one mediation session.
8. Each party will pay for its own fees and costs. In addition, the outside mediator's expenses will be split equally by both mediating



parties. If all negotiating parties agree, separate mediations may be consolidated.

Arbitration

1. If any negotiating party petitions the Commission to arbitrate their dispute, the Commission will use an outside arbitrator. The Commission will develop a list of at least five unbiased, qualified arbitrators. Each negotiating party must select three individuals from the list of who would be acceptable. The Commission will assign an arbitrator from those selected by the parties.

2. At the Arbitrator's request the Commission will assign a staff member to assist in the proceeding to answer technical questions that may arise and to provide other relevant information.

3. The Arbitration will be conducted in a manner similar to a contested case, but will be streamlined to meet the time requirements of the Telecommunications Act. At this time we see no reason for adopting a new set of procedures. Since the parties will have been negotiating for some time, and the time for arbitration is limited, extensive formal discovery procedures will be allowed only to the extent deemed necessary by the arbitrator. Parties will be required to cooperate in good faith in voluntary, prompt, and informal exchanges of information relevant to the matter. Unresolved discovery disputes will be resolved by the arbitrator upon request of a party. The arbitrator will order a party to provide information if he/she determines the requesting party has a reasonable need for the requested information and that the request is not overly burdensome. An early conference will be held to discuss procedure, and to receive the initial proposal put forth by each party. The arbitrator will establish the schedule, and decide whether an oral hearing would be helpful. After the oral hearing or other procedures, each party will submit its "final offer" proposed agreement. Both parties shall act in good faith in presenting its final offer to the arbitrator. The arbitrator may choose between the two final offers or may create a final agreement based upon the terms provided by the parties in their final offers. If neither offer is consistent with the Federal Act and Commission policy, the arbitrator will adopt a final agreement that meets such requirements.

4. Only the two negotiating parties will have full party status. Interested parties may submit written comments to the arbitration and may offer oral statements at the arbitrator's discretion.

5. Because of the short time frame mandated by the Federal Act, the arbitrator shall have the flexibility to set out procedures that may vary from those set out here, however, all the arbitrator's procedures must be fair, treat the parties equitably, and substantially comply with procedures listed herein.

6. Each arbitrated agreement must: 1) ensure that the requirements of section 251 of the federal Act and any applicable FCC regulations under that section are met; 2) establish interconnection and network element



prices consistent with the Federal Act, and 3) establish a schedule for implementation of the agreement.

7. After the arbitrated agreement is final, it will be filed with the Commission, and notice will be provided in the Omaha Daily Record. The public will be given 15 days to file written comments on the agreement.

8. After written comments have been received, the Commission shall hold an oral hearing to address the following grounds for rejection of the agreement: 1) the agreement discriminates against a telecommunications carrier that was not a party to the agreement; 2) the implementation of the agreement would not be consistent with the public interest, convenience, and necessity; and 3) that the agreement does not meet the requirements of section 251 or the standard set forth in subsection 252 (d). The Commission may limit the testimony of any witness to the extent it is irrelevant or repetitive. If any part of the agreement does not meet such standards, the Commission may amend any such section to bring it into compliance.

9. The Commission does not interpret the 9 month time line for arbitration under Section 252 (b)(4)(C) to include the approval process. The Commission will have 30 days to reject or accept any arbitrated agreement or the agreement will be deemed approved.

10. Each party will pay for its own fees and costs. In addition, the outside arbitrator's expenses will be split equally by both negotiating parties. Separate arbitrations may be consolidated, if agreed upon by all negotiating parties.

