

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-1128
of the Nebraska Public Service) Progression Order #3
Commission on its own motion)
to set guidelines for mediation,) NOTICE OF INQUIRY
arbitration, and reviews of nego-)
tiated agreements under the Tele-)
communications Act of 1996.) Entered: April 8, 1997

BY THE COMMISSION:

The Telecommunications Act of 1996 (the Act) provides in Section 252, any party participating in negotiations may petition a state commission to mediate or arbitrate differences arising in the course of negotiation. On July 16, 1996, the Commission entered Progression Order #3 in Application C-1128, offering a proposed mediation/arbitration policy statement. The Commission entered a mediation and arbitration policy to carry out the mandates of Section 252 on August 20, 1996. The policy was subsequently modified on August 27, 1996 and March 4, 1997.

We commence this inquiry to determine the extent to which we must revise our policy in C-1128 to properly process negotiated agreements and agreements adopted pursuant to Section 252(i) of the Act. We also seek clarification of the policy we developed for arbitration proceedings. To that end, the Commission seeks input on the following issues:

1. Should voluntarily negotiated agreements be processed in a manner similar to the policy set forth for mediated agreements?

We tentatively find that voluntarily negotiated agreements should be treated like mediated agreements. We base such a conclusion on the fact that both arise from and are defined within the same section of the Act, Section 252(a). Further, the standards of review for voluntarily negotiated agreements are the same as those set forth for mediated agreements, (Section 252(e)(2)(A)). Therefore, as a practical matter, to process the agreements similarly seems appropriate. It also seems appropriate to provide for uniform review of mediated and voluntarily negotiated agreements as required in Section 252(e)(4). We seek comment on this tentative conclusion.

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2. How should the Commission process Section 252(i) requests?

The Commission is of the opinion that all requests to utilize Section 252(i) should be processed in the most efficient manner possible. We emphasize, however, that a uniform procedure to track such requests is necessary. Current Commission Rules provide that notice of the filing of all applications be given to interested persons by publishing a summary of the authority or relief sought in the Daily Record. If a hearing is required, all interested parties will be given notice of the time and place of the hearing by mail. We believe that an application would enable the Commission to track the interconnection agreements that are being used by parties. The Commission is seeking input as to whether an application is necessary to process Section 252(i) requests. If an application process is considered to be administratively burdensome, parties should explain what other process would be appropriate.

The Commission also seeks input as to the proper form for filing Section 252(i) agreements. Should the company seeking to use another company's agreement: a) file an agreement substituting in all places their name for the name of the original company or b) file a cover page to the interconnection agreement, indicating their intent to utilize the existing agreement pursuant to Section 252(i). We seek comment on these and other appropriate options.

3. Should more explicit duties be set forth for the arbitrator and parties?

The Commission believes it should clarify the requirements placed upon arbitrators and parties involved in arbitration proceedings. We believe decisions must be based upon evidence in the record and that no unrecorded ex parte communications shall take place. We seek comment on these conclusions and encourage parties to further identify other obligations that would ensure arbitrations are conducted in the fairest manner possible.

Since the Commission has already received a request to invoke Section 252(i), and since two voluntarily negotiated agreements have been filed with the Commission for approval, we believe an expedited time frame to submit comments is necessary. Therefore, the Commission will not accept reply comments in this proceeding.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that interested parties may provide comments on these issues on or before April 30, 1997.

MADE AND ENTERED at Lincoln, Nebraska this 8th day of April, 1997.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson

Chairman

R. Johnson

Frank E. Landis

ATTEST:

//s//Rod Johnson
//s//Frank E. Landis
//s//Daniel G. Urwiller

Robert B. Logsdon
Executive Director

