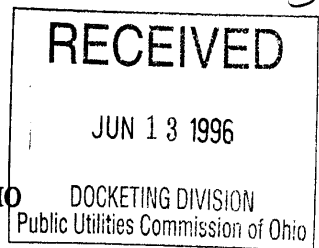


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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Implementation of the )  
 Mediation and Arbitration Provisions of the ) Case No. 96-463-TP-UNC  
 Federal Telecommunications Act of 1996. )

COMMENTS OF TCG CLEVELAND

TCG Cleveland hereby submits comments to the Public Utilities Commission of Ohio ("Commission" or "PUCO") on the implementation of the Mediation and Arbitration Provisions of the Federal Telecommunications Act of 1996 ("Act").<sup>1</sup> The Commission seeks comments to be filed no later than June 13, 1996.

This response is being provided on behalf of TCG Cleveland ("TCG"). TCG Cleveland is an applicant before the Commission for certification to provide local telephone service. Furthermore, on February 8, 1996, TCG Cleveland's affiliate, Teleport Communications Group, Inc. served on Ameritech a request for interconnection in all states in which Ameritech operates pursuant to Sections 251 and 252 of the Act. As a result, TCG Cleveland may request binding arbitration before the Commission as early as June 22, 1996. (See, Section 252(b)(1) of the Act). Hence, TCG has an important interest in any mediation and arbitration rules adopted by the Commission.

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

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I. THE COMMISSION'S PROPOSED ARBITRATION RULES ARE CONSISTENT WITH THE ACT.

TCG commends the Commission for its excellent draft mediation and arbitration rules. These carefully drafted rules are clearly the kinds of mediation and arbitration rules envisioned by the Act. Besides some comments supporting the draft rules, TCG therefore only proposes a few minor changes.

The rules clearly envision compulsory arbitration proceedings that are NOT typical litigation cases. The Commission's draft rules are consistent with how industry experts view the proper role for arbitration versus litigation. According to a leading text on negotiations, arbitration differs in many ways from litigation:

Compared to litigation, arbitration through the American Arbitration Association, for instance, has been shown to result in earlier disposition ... for the parties. Proponents of arbitration highlight its capacity to supply a decision maker with expertise in the area of dispute, to provide more privacy than the courts, and to avoid the creation of legal precedent.

\* \* \*

It has been said that there are four basic reasons why arbitration proceeds faster than litigation. First, discovery is far more limited in arbitration than litigation. Second, the rules of evidence are relaxed, so that virtually anything comes in. Third, there are few procedural rules. Fourth, the parties can limit the rules by which an arbitration can proceed in a manner that will allow them to effectuate the quickest, most expeditious resolution.

Donner and Crowe, Attorney's Practice Guide to Negotiations §21:03 (Clark Boardman Callaghan, 1995).

II. COMMISSIONERS SHOULD NOT SERVE ON THE ARBITRATION PANEL.

Section VIII of the draft rules allows commissioners to serve on the arbitration panel.

TCG recommends that this provision be deleted. Since commissioners will be voting upon the recommendation of the arbitrator, it is easier for the commission to make an impartial decision if one of its members has not already voted on the issues at hand. If the intent of this portion of the rules is that commissioners should have ready access to the information in the cases, TCG recommends that the rules expressly allow for commissioners to be present at the arbitration hearings.

### III. THE COMMISSION SHOULD ALLOW FOR APPOINTMENT OF PROFESSIONAL ARBITRATORS.

Section VIII.A. of the rules suggests that the Commission "shall appoint an internal arbitration panel" to arbitrate interconnection agreements. While the Commission's staff possesses excellent expertise in the area of telecommunications, they already have a heavy case load. Thus, appointment of staff to arbitration proceedings may not be the optimal way to utilize the Commission's scarce resources. A major concern for TCG is that if arbitration dockets are presided over by Commission staff, such as attorney examiners, the many important pending cases before them will be delayed. Clearly, there should not be any delay in the cases now in front of the Commission because of the added responsibility for arbitration proceedings. TCG therefore recommends that the Commission's rules allow parties, in consultation with the Commission and its staff, to use commercial arbitrators. The recommendations of these commercial arbitrators can then be subject to final Commission order. The use of commercial arbitrators will allow parties to seek the assistance of trained arbitrators, and would allow the Commission to conserve its resources for the many other pending cases before it. Commercial arbitrators would also give the

parties an excellent opportunity to obtain individually negotiated arrangements, since they will not inappropriately be forced to join multi-party arbitrations.

#### IV. ARBITRATORS SHOULD CHOOSE ONE OF THE PROPOSALS SUBMITTED BY THE PARTIES.

In its request for comments, the Commission asks whether arbitration should be conducted on an issue-by-issue basis. TCG submits that arbitration rules should specify that arbitrators must choose one of the two alternative proposed interconnection agreements offered by the parties to the arbitration. In other words, the arbitrator must choose the alternative of one of the parties that covers all of the remaining issues addressed in arbitration. Such a mandate will encourage each party to offer the arbitrator a more reasonable interconnection recommendation. If a party insists on maintaining an extreme position, that party runs the risk that the arbitrator will choose the opposing party's recommendation, in full.

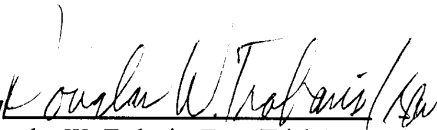
Therefore, an "either or" structure places pressure on the parties to compromise their positions to one that may be satisfactory to both sides. This will encourage parties to work with each other, rather than against each other, and may ultimately obviate the need for arbitration altogether. On the other hand, if an arbitrator is able to design an arrangement that incorporates aspects of each proposal, the parties' recommendations to the arbitrator are likely to be more extreme in anticipation that the arbitrator will "split the difference," or enable one party to acquire multiple wins on various issues. A compromise imposed by the arbitrator may be unsatisfactory to both parties or even unworkable.

V. CONCLUSION

With the modifications proposed herein, TCG Cleveland urges the Commission to adopt the draft arbitration rules as its final rules.

Respectfully submitted,

**TCG CLEVELAND**

By 

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