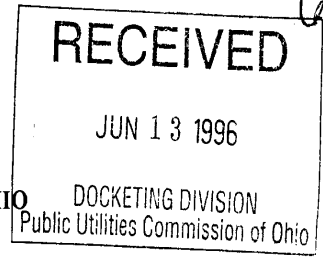


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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

DOCKETING DIVISION
Public Utilities Commission of Ohio

In the matter of the Implementation of the)
Mediation and Arbitration Provisions of the)
Federal Telecommunications Act of 1996)

Case No. 96-463-TP-UNC

COMMENTS OF ALLTEL OHIO, INC.
AND THE WESTERN RESERVE TELEPHONE COMPANY

ALLTEL Ohio, Inc. and The Western Reserve Telephone Company (collectively, the "Companies" or "ALLTEL") submit these comments in response to the Commission's Entry dated May 30, 1996 (the "Entry"). ALLTEL welcomes the opportunity to comment on the establishment of guidelines intended to provide for the implementation of the mediation and arbitration provisions of the Telecommunications Act of 1996 (the "96 Act"). These comments will address the four areas specifically requested by the Commission as well as additional concerns the Companies have with specific provisions of the Proposed Guidelines for Mediation and Arbitration. As these comments are not an attempt to be all inclusive, issues which are not addressed should not necessarily be interpreted as agreed to by ALLTEL.

Single Arbitrator v. Panel of Arbitrators

In an effort to capitalize on the procedural, legal, and technical knowledge necessary to reach successful arbitration, the Companies support the Commission's proposal that a panel of arbitrators is preferred to a single arbitrator.

Separate Staff Utilized for Mediation and Arbitration Proceedings

ALLTEL disagrees with the Commission's proposal that the same staff conduct both the mediation and arbitration process. While the Commission relies upon the notion of efficiency to support this proposal, the Companies are concerned with potential inequities. The role of a mediator is to assist parties in reaching a resolution of a dispute whereas the arbitrator's role is to reach a just resolution of a dispute.

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Should negotiation or mediation be unsuccessful, the 96 Act envisions arbitration as the answer to the interconnection dispute. The arbitrator must have an open mind or a clean slate to reach a truly just and reasonable resolution. ALLTEL does not believe that the same individual that suggested the unsuccessful mediation resolution can separate between the two processes and issue a just resolution without being influenced by the previous process.

Additionally, rules of evidence are not applicable during the mediation process, thus the mediator, acting as the future arbitrator, could be influenced by inadmissible information, i.e. hearsay, thus leading to an unjust resolution in arbitration. The concerns of ALLTEL are no more evident than in Section IV. F. of the Proposed Guidelines for Mediation and Arbitration as it provides, “[d]iscussions during the mediation process shall be private and confidential between the parties” and “[e]vidence of conduct or statements made in compromise negotiation is also not admissible in a future proceeding.”

Arbitration of Open Issues Only

ALLTEL supports the Commission’s proposal that only arbitration of open issues must be completed within the nine month time period. ALLTEL finds this proposal consistent with Sections 252(b)(4)(A) and (C) of the 96 Act as the Commission is to limit the arbitration process to those issues provided by the petitioning and responding parties. It is those issues which must be resolved by arbitration during the federal time restraints.

Confidential and Proprietary Information

As the Commission places parties on notice that it expects full cooperation between the parties to arbitration regarding the exchange of necessary information, the Commission seeks comment on how it should enforce such provision. ALLTEL believes that both current Commission regulations and the 96 Act adequately address and resolve the Commission’s concerns.

The Companies remind the Commission that the Commission currently has a process for dealing with the classification of confidential and proprietary information. As competition develops in the local markets, telecommunications carriers will have information that they deem confidential and proprietary with the disclosure of such information causing irreparable injury. The Commission's role is to balance the appropriate interests between the arbitrating parties when responding to a request that information be protected from disclosure.

Additionally, Section 252(b)(4)(B) of the 96 Act authorizes the Commission to proceed in the arbitration process "on the basis of the best information available to it from whatever source derived" in the case that a party refuses to provide information necessary "to reach a decision on the unresolved issues."

Section III - Commission Notification

As proposed, this guideline places the burden of Commission notification upon the local exchange carrier that receives a request for interconnection under Sections 251 and 252 of the 96 Act. The Companies find this section inconsistent with the 96 Act. Section 251(f)(B) of the 96 Act requires that the party making the bona fide request for interconnection submit notice to the Commission rather than the party receiving the request.

Section IV. D. - Mediation

The Companies suggest that the Commission's proposal be revised to read as follows in an effort to more appropriately define the role of the mediator:

The mediator's function is to impartially encourage voluntary settlement by the parties. The mediator may not compel a settlement. The mediator may assist to schedule meetings of the parties, assist the parties to prepare for those meetings, hold private caucuses with each party, request that the parties share information, attempt to achieve a mediated resolution, and, if successful, assist the parties in preparing a written agreement.

Section IV. G. 1. - Commission Review

ALLTEL believes that the proposed guideline should be revised. First, the Companies are concerned with the provision that allows “interested persons” to file written comments to support or oppose the mediated interconnection agreement. Not only does this contradict the point of “negotiated” interconnection agreements between the interconnecting parties as envisioned by the 96 Act, but this provision is also simply too broad. The Companies assert that only parties that are directly affected by the interconnection agreement should be allowed to participate as this is the intent of the 96 Act’s negotiation process.

Second, ALLTEL believes that the last sentence of this section should be deleted. It should not be the responsibility of the local exchange carrier to serve a copy of the interconnection agreement upon all other parties who have made a request for interconnection with the local exchange carrier and upon all parties to the local exchange carrier’s alternative regulation case. This provision is inconsistent with Section 252(h) of the 96 Act which expressly requires the Commission to make the interconnection agreement available for public inspection.

Section VIII. A. - Commission Responsibility

The Companies disagree with the Commission’s suggestion that Commissioners be allowed to serve on the arbitration panel. Section 252(e) of the 96 Act mandates that an interconnection agreement reached by arbitration be approved by the Commission in order to ensure that it complies with the pricing and cost guidelines outlined in the 96 Act. Therefore, it seems appropriate to distinguish between the process of arbitration and approval of the arbitrated interconnection agreement in an effort to avoid any appearance or assertion of impropriety.

Section VIII. B. - Commission Responsibility

In an effort to be consistent with Section 252(b)(4) of the 96 Act, the last sentence of this section should read as follows:

The arbitration panel is authorized to order any party to provide information that it deems necessary to reach a decision on the unresolved issues and to establish the time period for providing the information.

Section VIII. D. 7. - Commission Responsibility

If the arbitration panel is allowed to prohibit cross examination on policy or legal issues, then the corresponding testimony should be prohibited as well. If the issue is a legal conclusion, then the parties should present briefs as the appropriate mechanism rather than testimony. The Companies are uncertain what is meant by policy issues; however, the conclusion is the same. The Commission cannot allow testimony into the record that it will not allow an opposing party the opportunity to cross examine; therefore, the Commission must limit the presentation of testimony if it elects to limit cross examination on those same issues.

Section VIII. K. 1. - Commission Review

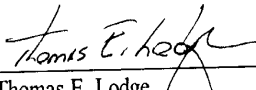
For the reasons previously discussed herein (See Section IV. G.), ALLTEL asserts that "interested persons" must be replaced with "directly affected parties".

Conclusion

ALLTEL commends the Commission for its work in constructing these Proposed Guidelines for Mediation and Arbitration. For the benefit of all parties, ALLTEL recommends that the Commission incorporate the revisions contained in these comments.

Respectfully submitted,

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