

WAC 480-07-630 Telecommunications companies—Arbitration under the Telecommunications Act of 1996. (1) **Scope.** This rule implements the arbitration provisions of sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. Secs. 251 and 252.

(2) **Nature of the proceeding.** Arbitrations that the commission conducts pursuant to 47 U.S.C. Sec. 252 are subject to judicial review. Arbitration under this section, however, is not an adjudicative proceeding under the Washington Administrative Procedure Act, chapter 34.05 RCW. Arbitration decisions are binding only upon the parties to the arbitration. Arbitration under this section should be characterized by fairness, cooperation, and openness between or among the parties, and is designed to resolve disputes efficiently and economically.

(3) **Intervention; public counsel.** Arbitrations typically involve only the parties to the negotiation. Others may ask to participate but will be allowed to do so only upon a showing of compelling public interest. The public counsel unit of the office of the Washington state attorney general may elect to participate pursuant to RCW 80.04.510.

(4) **Filing and service of a petition for arbitration.**

(a) *When allowed.* During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under 47 U.S.C. Sec. 252 (b)(1), any party to the negotiation may petition the commission to arbitrate all issues that remain unresolved. Parties may continue to negotiate in good faith and may continue to participate in mediation to resolve the disputed issues after a party requests arbitration.

(b) *Filing.* Parties must file petitions for arbitration under 47 U.S.C. Sec. 252 (b)(2) as provided for other petitions under WAC 480-07-370(3), and must follow the format requirements for pleadings in WAC 480-07-395.

(c) *Service.* A party that files a petition for arbitration must deliver a complete copy of the petition and all accompanying documentation to the other party or parties to the negotiation on the same day that the petitioner files the petition with the commission.

(5) **Contents of petition and documentation.** A petition for arbitration under this section must:

(a) State the date on which the local exchange carrier received the original request for negotiation, and the dates one hundred thirty-five days and one hundred sixty days after that receipt;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the petitioner;

(d) State any conditions that the petitioner requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. Sec. 252 (b)(4)(B), including an explanation of why the information is necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the requirements of 47 U.S.C. Secs. 251 and

252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents on which the petitioner relies to support its positions or that it intends to introduce as exhibits at the hearing.

(6) Filing and service of a response to a petition for arbitration.

(a) *When allowed.* Any party to the negotiation may respond to a petition for arbitration and may file with the commission such additional information as the respondent wishes within twenty-five days after the petitioner files the petition.

(b) *Filing.* Responses to petitions for arbitration under 47 U.S.C. Sec. 252 (b) (2) must be filed with the commission in the manner provided for responses to other petitions under WAC 480-07-370(3) and must follow the format requirements for pleadings under WAC 480-07-395.

(c) *Service.* A party responding to a petition for arbitration must deliver to the petitioner and any other party or parties to the negotiation a complete copy of the response and all accompanying documentation on the same day that the respondent files the response with the commission.

(7) Contents of response and required documentation. A response to a petition for arbitration filed under this section must:

(a) State whether the respondent disputes the date the petitioner asserts was the date on which the incumbent local exchange carrier received the original request for negotiation, or disputes any subsequent dates stated in the petition in conformance with subsection (5) (a) of this section;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the respondent;

(d) State any conditions that the respondent requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. Sec. 252 (b) (4) (B), including an explanation of why the information is necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available and different from any draft agreement the petitioner submitted with the petition, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the requirements of 47 U.S.C. Secs. 251 and 252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents on which the respondent relies to support its positions or that it intends to introduce as exhibits at the hearing.

(8) Verification. The petition, response, and all documentation filed must be verified as provided by WAC 480-07-395, or submitted by affidavit or declaration.

(9) Confidentiality; protective order. Petitions, responses, and any documents a party provides to the commission pursuant to a request under 47 U.S.C. Sec. 252 (b) (4) (B) are subject to Washington's public

disclosure laws, including chapter 42.56 RCW and RCW 80.04.095. Confidential information submitted with a petition for arbitration or response is subject to the protections and procedures set out in WAC 480-07-160. A party may include in its petition or response a request that the commission enter a protective order.

(10) **Discovery.** Parties must cooperate in good faith in the voluntary, prompt, and informal exchange of all documents and other information relevant to the disputed issues, subject to claims of privilege or confidentiality. A party's failure to cooperate in discovery may be treated as a failure to negotiate in good faith. The arbitrator will schedule a discovery conference for a date ten days after the deadline for responses to the petition for arbitration, subject to rescheduling or cancellation if all parties agree. During the conference, the arbitrator will review the asserted need for any additional discovery, including requests for information by the arbitrator pursuant to 47 U.S.C. Sec. 252 (b) (4) (B). Parties may submit to the arbitrator any discovery requests to which a party has not responded by the time of the conference and request that the arbitrator order the discovery. The arbitrator or the commission may request information from the parties pursuant to 47 U.S.C. Sec. 252 (b) (4) (B) at any time.

(11) **Appointment and authority of arbitrator.**

(a) *Appointment.* The commission will appoint one or more commissioners, one or more commission employees, or one or more persons under contract with the commission to act as arbitrator(s) to resolve a petition for arbitration. The commission will not appoint an arbitrator who previously mediated a dispute between the same parties concerning the same interconnection agreement unless the parties consent in writing or no other arbitrator is available to the commission. The commission will advise the parties of the appointment by entry of an order on arbitration procedure. The commission, in its discretion, may permit parties to comment on the appointment of the arbitrator.

(b) *Authority.* Arbitrators will exercise all authority reasonable and necessary to conduct arbitration under the provisions of this rule, the commission's orders on arbitration procedure, and other provisions of law. Other members of the commission's staff may assist an arbitrator, but the arbitrator may not consult with a staff member who has acted as a mediator with respect to the same interconnection agreement between the same parties. The arbitrator will issue the arbitrator's report within one hundred ten days after the date on which the petitioner filed the petition for arbitration. The arbitrator's report satisfies the commission's responsibility to resolve the disputed issues under 47 U.S.C. Sec. 252 (b) (4) (C).

(12) **Consolidation.** The commission or an arbitrator may consolidate arbitration proceedings to reduce burdens on telecommunications carriers, parties to arbitration proceedings, and the commission.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-630, filed 8/29/18, effective 9/29/18; WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-630, filed 8/22/08, effective 9/22/08; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-630, filed 11/24/03, effective 1/1/04.]