Proposed Modifications to the Regulation and Review of Interconnection Agreements

I. Introduction

On June 3, 1996, the Commission entered an Order (Implementation Order) at Docket No. M-00960799, implementing the federal Telecommunications Act of 1996 (Act) in Pennsylvania. Included in the Implementation Order were specific procedures and requirements regarding the Commission's consideration and approval of interconnection agreements. The specific section of the Implementation Order pertaining to interconnection agreements is attached to this report as "Appendix A".

During the time that has elapsed since the entry of the Implementation Order, a number of issues and problems have arisen in the context of processing interconnection agreements. This report will review the requirements and procedures contained in the Implementation Order and, where these issues and problems have been identified, make recommendations to address them.

Finally, throughout this report, reference will be made to specific page and line numbers in the attached "Appendix A". These references are unique to the Appendix and do not necessarily coincide with the actual page and line numbers of the Implementation Order.

II. Implementation Order Overview

In the Implementation Order, the Commission stated as follows:

> The development of an interconnection agreement commences on the day a carrier receives a request for interconnection from another carrier (day 1). **It is absolutely essential** , **and through this order we will require** that each carrier requesting an interconnection agreement from another carrier shall file a copy of the request with the Commission at the requesting carrier's A-docket.

(Emphasis added; Appendix A, p. 1, lines 11-15).

The Act established a 160-day period, beginning with Day 1 as defined in the Implementation Order (*i.e.*, the day a carrier receives a request for interconnection from another carrier) within which the parties may negotiate the terms of interconnection. During that time period, either party may request that the Commission mediate the interconnection request. If mediation is requested, the Commission appoints a mediator who proceeds in accordance with the procedures outlined in the Implementation Order. The Act also provides for other specific time constraints with respect to interconnection agreements, as will be outlined below, including the "deemed approval" requirement that the Commission act on any interconnection agreement filed as a result of negotiation and/or mediation within 90 days of an executed agreement being filed with the Commission. (47 USC §252(e)(4)).

Included in the 160-day negotiation period is a 25-day period from Day 135 through Day 160 within which either party may request the arbitration of any or all unresolved issues whenever negotiation and/or mediation fails. (47 USC §252(b)(1)). The Act specifies that the Commission must resolve all outstanding issues within nine months of the date that interconnection was first requested (Day 1). (47 USC §252(b)(4)(C)). The Act further specifies that the

Commission must then act within 30 days of the date that an executed agreement resulting from the arbitration proceedings is filed. (47 USC §252(e)(4)).

In the Implementation Order, the Commission recognized that the Act does not place any time constraints on the parties after Day 160 with respect to negotiated and/or mediated interconnection agreements. As a result, the Implementation Order establishes a 30-day period after the close of the negotiation period (Day 160), or by Day 190, within which the parties to a negotiated and/or mediated agreement must file an executed agreement with the Commission. (Appendix A, p. 9, lines 12-16). Once filed, the Commission, as required by the Act, must then complete review within 90 days of the date the executed agreement is filed with the Commission. (47 USC §252(e)(4)).

Likewise, in the case of arbitrated agreements, the Act does not specify when an executed agreement that results from arbitration proceedings must be filed with the Commission. In the Implementation Order, the Commission specified that an executed agreement resulting from arbitration must be filed with the Commission within 30 days of the date of entry of the Order resolving the arbitration proceedings. (Appendix A, p. 9, lines 16-19). The Commission, in accordance with the Act, then has 30 days within which it must complete its review of the filed agreement or the agreement will be deemed approved. (47 USC §252(e)(4)).

In summary, the time period established by the Act and our Implementation Order for an interconnection agreement arrived at through negotiations and/or mediation is as follows: 160 days for negotiation and/or mediation; 30 days for the parties to file an executed agreement with the Commission; and 90 days for the Commission to act on the filing. This results in a maximum time period of 280 days from the date a party first requests

interconnection until entry of a Commission order finally acting on the agreement arrived at through negotiations.

With respect to arbitrated agreements, the time period established by the Act and our Implementation Order is as follows: 160 days for negotiation and/or mediation (including a 25-day period of time from Day 135 to Day 160 within which a party may request arbitration); a 25-day time period for comments, if any, to be filed to the arbitration request; a minimum of 85 days (until Day 270) within which the Commission must arbitrate the request and enter an order finally acting on the arbitrated agreement; 30 days within which the parties must file an executed agreement in compliance with the order; and 30 days for the Commission to act on the filing. This results in a maximum of 330 days from the date a party first requests interconnection until entry of a Commission order finally acting on the agreement arrived at through arbitration.

In both cases, as stated previously, if the Commission fails to meet its responsibility under the Act to act within the prescribed 90 days (in the case of negotiated and/or mediated agreements), and 30 days (in the case of arbitrated agreements), the interconnection agreements are deemed approved. (47 USC §252(e)(4)). Furthermore, should the Commission fail to act in a timely fashion, the Federal Communications Commission (FCC) may assume jurisdiction. (47 USC §252(e)(5)).

III. Issues Relative to the Act and the Implementation Order

In the time since entry of the Implementation Order on June 3, 1996, that the Commission has been reviewing interconnection agreements, several issues have arisen with respect to the foregoing time-related requirements. These

issues will be briefly reviewed in the following pages and proposed solutions set forth for consideration.

A. Failure to Notify the Commission about the Initial Interconnection Request Date (Day 1)

This has been occurring since the entry of the Implementation Order. Routinely, the requesting interconnection carrier[1] has not been advising the Commission of the date that it initially requests interconnection with an Incumbent Local Exchange Carrier (ILEC) as required by the Implementation Order. (Appendix A, p. 1, lines 11-15). The result of this failure is that the Commission does not currently know when any of the time periods prescribed either by the Act or by the Implementation Order actually begin.

Recommended Solution

The recommended solution is to require, either by Order or regulation, that ILECs formally notify the Commission of the date (Day 1) on which a carrier first requests such interconnection. The notification should be in writing and submitted to the Secretary within 20 days after a carrier requests interconnection. The notification should also state whether the Day 1 date pertains to a new interconnection agreement (*i.e.*, the first time the ILEC is interconnecting with the requesting carrier), an amended or revised interconnection agreement, a replacement interconnection agreement, or an "opt-in" interconnection agreement. In all instances, except when the Commission has not established an A-docket for the requesting carrier, the ILEC should include the A-docket assigned by the Commission in the notice. Where the requesting carrier has no A-docket assigned,

[1] The requesting interconnection carrier may or may not be subject to this Commission's jurisdiction. However, ILECs providing interconnection to the requesting interconnection carriers are currently subject to our jurisdiction.

the ILEC should note that an A-docket has not been assigned, at which point, the Secretary of the Commission should assign an A-docket pursuant to the Implementation Order. (Appendix A, p. 1, lines 15-17).

This recommendation is a departure from what is required by the Implementation Order. The Implementation Order states that it is the obligation of the requesting carrier to notify the Commission of the date when interconnection is requested. However, since we do not have jurisdiction over all requesting carriers, enforcement of this requirement is problematic. Hence, the reason for placing the notice requirement on the ILEC.

B. Failure to File an Executed Interconnection Agreement With the Commission Within 30 Days After the Agreement is Signed

This issue is probably the most significant. Routinely, with respect to negotiated and/or mediated agreements, parties have been ignoring the directive in the Implementation Order to file the executed agreement with the Commission within 30 days of the date that the agreement is signed. The parties have been taking several months, and even up to a year, after a negotiated agreement has been executed before filing the agreement with the Commission for approval. In the interim, the parties, in most cases, begin operating under the agreement as soon as it has been executed regardless of the fact that the agreement has not been either filed with, or approved by, the Commission. In many instances, a late-filed interconnection agreement may actually expire either prior to, or during, the 90-day review period while it is pending before this Commission for approval. The concern here is that the parties to the agreement are operating under an agreement that has not been filed with the Commission, has not been published for public comment, has not been approved by the Commission, and is not available to any other carrier to "opt" into under 47 USC §252(i) should the carrier so desire.

Recommended Solution

Any recommended solution to this problem must impose the requirement for compliance on both the requesting carrier and the ILEC providing interconnection, and must also take into consideration the fact that the Commission does not have jurisdiction over all requesting carriers, e.g., wireless carriers. In many instances where this problem has occurred, the ILEC in question has indicated that the requesting carrier delays signing the petition for approval of the agreement that is to be filed with the Commission. The precise reasons for the delay are not known, but it is significant to note that there is no incentive for the requesting carrier to sign the petition since, in most cases, operation under the agreement commences upon the agreement being executed. The recommended solution, therefore, is to permit and/or require the ILEC in question to not operate under the agreement until such time as the requesting carrier signs the petition requesting approval of the executed agreement.

It is also recommended that the Commission enforce the civil penalty provisions under Section 3301 of the Public Utility Code, 66 Pa. C.S. §3301, against all jurisdictional carriers. A fine could be imposed on the ILEC and any jurisdictional interconnecting carrier for each day filing is delayed beyond the initial 30-day grace period provided for filing an executed interconnection agreement.

In addition, it is noted that neither the Act nor the Implementation Order addresses the issue of enforcement should a party fail to adhere to the requirements of the Act or the Implementation Order, or even what remedies may be available. Therefore, the Commission should decide whether or not it desires to enforce either the Implementation Order or any order that may be forthcoming

as a result of this recommendation and, if so, what manner of enforcement will be pursued.

By adopting these recommendations, the burden will fall both on the ILEC and the requesting carrier, both jurisdictional and non-jurisdictional, to ensure that the effective date of the executed interconnection agreement will not be surpassed by more than 30 days at the time and date it is filed with the Commission. These recommendations will also assist in developing an awareness in the requesting carrier and the ILEC that the Commission will not tolerate late filings, and thus, hopefully, reduce the number of late filings that we currently process.

C. Approval of an Interconnection Agreement Prior to a CLEC's Certification

Neither the Act nor the Implementation Order requires that a requesting carrier have Commission or federal authority to operate prior to requesting interconnection. The Implementation Order, in fact, recognizes that some carriers may not have the requisite authority as follows:

> If the requesting carrier does not have an A-docket, the Commission's Secretary shall assign an A-docket at the time of filing of the interconnection agreement.

(Appendix A, p. 1, lines 15-17).

The above language pertains to carriers that fall under this Commission's jurisdiction but have not yet been certificated (*e.g.* CLECs), as well as carriers that, under Pennsylvania law, are not subject to regulation by this Commission (*e.g.*, wireless carriers such as radio common carriers, cellular, PCS, etc.), and/or may not have received a federal license to operate. The problem with

dealing with non-certificated jurisdictional and non-jurisdictional carriers is that the Commission has no knowledge whatsoever of the entity or requesting carrier until that entity files an interconnection agreement with the Commission. The lack of authority also exacerbates the problem described earlier whereby parties to an interconnection agreement may have been operating under the agreement for months before filing the agreement with the Commission for review.[2]

Recommended Solution

It is noted here that any order or regulation requiring certification of a carrier prior to seeking interconnection would only address those companies subject to our jurisdiction and not those legally outside of our jurisdiction. Any such order or regulation would thus only address our current concerns about non-certificated jurisdictional carriers operating under approved executed interconnection agreements. Since we have no jurisdiction over carriers such as wireless companies, we cannot require them to obtain Pennsylvania certification. However, we may be able to require any non-jurisdictional carrier desiring to operate under an interconnection agreement in Pennsylvania to fill out a brief,

[2] The Commission has been drafting all orders approving the initial interconnection agreements between ILECs and CLECs by including the following language to ensure that CLECs obtain certification before attempting to operate under the agreement. This language is not included in Orders where the requesting carrier is not subject to Commission jurisdiction:

> It is noted that, regardless of the types of services covered by this Interconnection Agreement, it would be a violation of the Public Utility Code if the Applicant began offering services or assessing surcharges, to end users, for which it has not been authorized to provide and for which tariffs have not been authorized.

non-utility application or registration form (similar to what is done for COCOTs).[3] This form would be given to the ILEC at the time of an interconnection request and would then be filed, along with the Day 1 notification, to the Commission by the ILEC. It would be important for Commission record-keeping purposes that the requesting carrier include on this form the type of carrier it is, any trade name it uses, and whether there have been any previous interconnection agreements approved by this Commission at a time when it has operated under a different name. The non-regulated carrier should also notify the Commission whenever it has undergone a name change during the tenure of any approved interconnection agreement.

IV. Other Issues Relative to Commission Interconnection Agreement Orders

During the time since the Implementation Order was entered, one other issue has arisen that is not related to the Act or the Implementation Order but that is related to Commission orders approving executed agreements that are filed with the Commission.

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[3] COCOTs are **C**ustomer-**O**wned **C**oin **O**perated **T**elephones. Prior to the deregulation of customer premises equipment (CPE) in the early 1980's, pay telephones were only provided by local or long distance telephone companies certificated to provide utility service. After CPE was deregulated and detariffed, private individuals and non-telephone companies were permitted to own and operate pay telephones (COCOTS) for use by the public. These private owners did not require Chapter 11 certification and were subject only to minimal rate, quality of service and equipment requirements. (The FCC subsequently preempted this Commission's ability to regulate availability through entry or exit requirements as well as the price of local coin service). This Commission did not require certification of COCOTs but required that they adhere to certain requirements which were codified in Chapter 63. As such, this Commission termed COCOTs as "non-public utilities" and required them to file a form with the Commission containing information relating to, *inter alia*, the owner's name and telephone number, the telephone number and location of the COCOT, and who to contact to receive refunds or resolve problems associated with the COCOT.

A. Filing of "True and Correct" Copies of Interconnection Agreements

There is currently an ordering paragraph in each order approving an interconnection agreement requiring that a "true and correct" copy of the final agreement be filed as part of compliance obligations of the parties. Routinely, the "true and correct" copy is not filed with the Commission primarily because the agreement has not changed since it was originally submitted for approval. As a result, parties have been filing a letter indicating that the original executed copy filed at the beginning of the review process is a "true and correct" copy and requesting that this copy meet its compliance responsibility. The problem arises in that the parties do not automatically file a letter making this request. The parties are sent a Secretarial letter, sometimes several letters, reminding them of their responsibility under the Order, but frequently a response is not forthcoming.

Recommended Solution

The recommended solution on this issue is to eliminate the ordering paragraph requiring that a "true and correct" copy be filed with the exception of those instances where either the Commission and/or a party makes a change to the original agreement, where the agreements are arrived at through the arbitration process, or where a copy was not filed at the beginning of the review process.

It is also recommended that ILECs be required to include a section on their respective web sites that contains currently effective interconnection agreements that were either approved by this Commission or became effective by operation of law. This will: 1) more readily provide the public with access to interconnection agreements, 2) reduce the cost to the public in obtaining copies of agreements, 3) assist in reducing the number of inquiries as to which companies

have approved agreements and how an official copy of an agreement can be obtained, and 4) assist in reducing the burden on the Secretary's Bureau in duplicating the voluminous copies.

APPENDIX

A

2. Interconnection

One of our areas of increased responsibility under the Federal Act involves review of interconnection agreements between carriers. As discussed in detail in the Tentative Decision, Commission development and Commission review of interconnection agreements is divided into three phases: 1) the negotiations phase, 2) the arbitration phase and 3) the adjudication phase.[13]

a. The Negotiations Phase

The development of an interconnection agreement commences on the day a carrier receives a request for interconnection from another carrier (Day 1). It is absolutely essential, and through this order we will require that each carrier requesting an interconnection agreement from another carrier shall file a copy of the request with the Commission at the requesting carrier's A-docket. If the requesting carrier does not have an A-docket, an A-docket shall be assigned by the Commission's Secretary at the time of filing of the interconnection agreement.

The negotiations phase, as established by the Act, is the first 135 days of development of the interconnection agreement. From our perspective, the negotiations phase must be restricted to the contracting parties. Under Section 242(a)(2), at any point during the negotiations, either of the parties may request the Commission "to participate in the negotiations and to mediate any differences arising in the course of the negotiations." The Act gives no further guidance as to how the role of mediator should be accomplished.

[13] Under Section 251(f) of the Act, separate procedures are established for carriers seeking to interconnect with a rural telephone company.

The formal role of mediator is a new role for the Commission for which we have little prior experience although the Commission does engage in similar type activity through its alternative dispute resolution process. GTE and TRA suggest that the Commission adopt provisions of existing mediation and arbitration rules to structure the dispute resolution process. Both parties have suggested reference to the American Arbitration Association (AAA) Commercial Mediation and Commercial Arbitration Rules.

Upon review of AAA Commercial Mediation Rules, we are satisfied that adoption of many of its provisions will serve us well. Consistent with the AAA rules, we will adopt the following procedures applicable to Commission mediation of interconnection disputes:

1. Under Section 252 (a)(2), either of the contracting parties may file a formal request for mediation with the Commission. The request shall be filed at the A-docket of the carrier seeking an interconnection agreement.

2. (AAA Commercial Mediation Rule #3). A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses and phone numbers of all parties to the dispute and those who will represent them, if any, in the mediation. The initiating party shall file an original and two copies of the request with the Commission and shall serve a copy of the request on the other party to the dispute.

3. The Commission will designate a member of the Commission staff or an outside party to fulfill the role of mediator on its behalf.

4. The mediator will schedule mediation sessions.

5. (AAA Commercial Mediation Rule #9). At least ten days prior to the first scheduled mediation session, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, such memoranda may be mutually exchanged by the

parties. At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented. The mediator may require any party to supplement such information.

6. (AAA Commercial Mediation Rule #10). The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meeting with the parties and to make oral and written recommendations for settlement. The mediator is authorized to end the mediation whenever, in the judgement of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties. If the mediator determines that the mediation should be terminated, the mediator shall prepare and submit a report to the Commission providing a summary of the mediation and explaining the reasons why the mediation was not completely successful. The report should also be provided to the parties.

7. (AAA Commercial Mediation Rule #7). Mediation sessions are private. The contracting parties and their representatives and members of Commission advisory staff may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

8. (AAA Commercial Mediation Rule #12). Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by a mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversarial proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding:

   (a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
   (b) admissions made by another party in the course of the mediation process;
   (c) proposals made or views expressed by the mediator; or

(d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

9. (AAA Commercial Mediation Rule #13). There will be no stenographic record of the mediation process.

10. (AAA Commercial Mediation Rule #14). The mediation shall be terminated:

(a) by the execution of an agreement by the parties which is subsequently approved by the Commission;
(b) by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or
(c) by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

11. If a settlement agreement is reached and executed, the mediator shall prepare and submit a report to the Commission summarizing the mediation and explaining and making recommendations regarding the terms of the settlement. The report shall be made public and shall be provided to the parties to the mediation. The parties shall jointly file an interconnection agreement which reflects the terms of the settlement agreement, the settlement agreement, the mediator's report and a petition requesting Commission approval of the settlement agreement and the interconnection agreement with the Commission within 30 days of execution of the settlement agreement.

12. Notice of the filing of the above-referenced documents will be published in the Pennsylvania Bulletin. Interested parties may file comments to the interconnection agreement within 20 days of publication. The Commission will adjudicate the petition for adoption of the settlement agreement and will either approve or reject the interconnection agreement within 90 days of the filing pursuant to Section 252(e)(4).[14]

These procedures appear to be efficient and effective in carrying out the Commission's mediation role and commencing and adjudicating negotiated

[14] We will also follow these procedures for interconnection agreements which are negotiated without the use of Commission mediation.

interconnection contracts. Accordingly, we are satisfied that these rules will suffice in fulfilling our mediation responsibilities as envisioned in the Federal Act.

b. The Arbitration Phase

Pursuant to Section 252(b), if the parties are unsuccessful in negotiating an interconnection agreement, with or without mediation, either party may file a petition with the Commission from Day 135 to Day 160 to arbitrate the contractual dispute. The arbitration process is intended only to address those issues which have not been negotiated by the parties. Pursuant to Section 252(b)(2), the petitioner must submit with its petition "all relevant documentation concerning – (I) the unresolved issues; (ii) the position of the parties with respect to those issues; and any other issue discussed and resolved by the parties." The petition must be served on the other negotiating party on the filing date. Pursuant to Section 252(b)(3), responses to the petition must be filed with the Commission within 25 days of the filing date. The Commission may require the parties to provide any information relevant to resolving the disputed issues. Pursuant to Section 252(b)(4)(c), the Commission must arbitrate and resolve all disputed issues within 270 days of the date of the interconnection request.[15]

In the Tentative Decision, the Commission requested comment from interested parties regarding the appropriate procedural details of the arbitration process which will be required to carry out the express statutory provision. Much of the discussion in the comments pertained to the openness of the arbitration process and who should be permitted to participate. Generally speaking, the OCA

[15] The amount of time the Commission actually has to arbitrate an interconnection agreement is dependent upon when in the 25-day window between Day 135 and Day 160 the arbitration petition is filed. In the worst case scenario, if the petition is filed on Day 160, the Commission will only have 110 days to complete its arbitration.

and the competitive industry recommended an open process in which all interested parties could participate actively in any given arbitration. In contrast, the ILEC industry supported a more closed process in which only the contracting parties could participate. Upon review, we will establish a process which attempts to accommodate the views of all parties and also satisfies our very serious concerns regarding the short timeframes established by Congress for state commission arbitration.

After careful consideration, we will establish the following procedures to govern all arbitrations:

1. Each contracting party shall file a report with the Commission at the A-docket number of the party seeking interconnection, no later than day 125 from the date of the interconnection request, which provides the status of the negotiations and provides an assessment of whether each party believes it will be necessary to petition for arbitration.

2. Either contracting party may file an original and two copies of a petition with the Commission requesting arbitration of disputed issues in the 25-day window from day 135 to day 160 from the date of the interconnection request. Petitions must comply with Section 252(b)(2)(A) of the Act. Petitioning parties should err on the side of providing too much documentation rather than not enough documentation. Petitions which do not include adequate documentation may be dismissed by the Commission. The petition shall be filed at the A-docket number of the party requesting an interconnection.

3. The arbitration petition shall be served on the other contracting party, the OCA, the OTS and the OSBA on the day of the filing. We recognize the statutory right of the OCA, OTS and OSBA to participate throughout the arbitration process. No other party may participate in the arbitration process until late in the process as described hereafter. However, at the same time, all arbitration proceedings will be public in nature. The contracting parties, the OCA, the OTS and the OSBA may file answers with the

Commission within 25 days of the filing date consistent with Section 252(b)(3).

4. The Commission will designate a member of Commission staff or an outside party to fulfill the role of arbitrator on its behalf.

5. The arbitrator will schedule a preliminary conference to identify and discuss the issues to be resolved, to stipulate to uncontested facts and to consider any other matters designed to expedite the arbitration proceedings. If no party raises disputed facts or if the arbitrator determines that the disputed facts raised are not material, the remainder of the arbitration will be conducted on the documents consistent with a schedule established at the preliminary conference by the arbitrator.

6. If disputed, material facts are present, the arbitrator will schedule oral arbitration proceedings required to resolve the dispute material facts. Oral arbitration proceedings shall be strictly confined to the material facts disputed by the parties. Other advocacy or evidence will not be permitted. Any oral arbitration proceedings shall be transcribed.

7. Regarding oral arbitration proceedings, the arbitrator is delegated authority to determine the format for conduct of the proceedings. The format and conduct of the proceedings shall be designed with the primary objective of decreasing the time and resources associated with the proceedings. The authority delegated to the arbitrator shall include but not be limited to determinations as to whether evidence must be submitted under oath, whether evidence should be prefiled, whether preliminary documentary statements should be required and whether memoranda or briefs are necessary.

8. Parties to the arbitration proceeding shall submit evidence in support of their position regarding material, disputed facts consistent with the procedural format adopted by the arbitrator.

9. The arbitrator shall be the sole judge of the relevance and materiality of the evidence pertaining to resolution of material, disputed facts. Conformity to legal rules of evidence shall not be necessary.

10. Following the proceedings as directed by the arbitrator, the arbitrator shall prepare a recommended decision which, as required by Section 252(b)(4)(c) of the Act, “resolves each issue set forth in the petition

and the response[s], if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues . . .."[16] The recommended decision shall be concise and is not required to provide unnecessary discussion of the background of the proceedings or the positions of the parties. The recommended decision shall specifically identify and discuss each dispute, material fact and the arbitrator's recommended resolution of the factual dispute as well as the effect of the resolution on the terms and conditions of the interconnection agreement. The recommended decision will be issued no later than day 220 from the date of the request for interconnection.

11. The recommended decision shall be served on the parties to the proceeding. A notice of the issuance of the recommended decision shall also be served on each party on the service list at this docket (M-00960799). Interested parties desiring to receive notice of interconnection agreement recommended decisions shall enter their appearance at this docket.

12. Any interested party, including parties which have not participated in the arbitration proceeding previously, may file exceptions to the recommended decision within 15 days of the date of issuance of the recommended decision. No reply exceptions will be permitted.

13. The Commission will issue an arbitration order which finally resolves all material disputed facts and finally arbitrates all disputed terms and conditions of the interconnection agreement by no later than day 270 from the date of the interconnection request.

Again, we are satisfied with these procedures in that they balance the concerns of all interested parties. While fulfilling our new responsibilities pertaining to arbitration of interconnection agreements will undoubtedly be difficult, we are convinced that adoption of these arbitration procedures will further our ability to address these important issues in a timely fashion.

[16] The standards for arbitration to be applied by the arbitrator are extensive and are set forth at Section 252(c).

c. Adjudication Phase

Although not specifically addressed in Section 252, it is clear that the Act envisions that upon resolution of all terms and conditions of interconnection, whether through negotiation and mediation or arbitration, the contracting parties must reduce the agreement to writing and execute the agreement.[17] Pursuant to Section 252(e), the executed agreement must then be filed with the state commission to conduct the adjudication phase of the proceeding.

The Act does not give any express guidance as to when agreements must be filed with the state commission. However, since the period for negotiations concludes on day 160, we conclude that an executed, negotiated interconnection agreement accompanied by a joint petition for adoption of the agreement shall be filed by no later than 30 days following the close of the negotiations phase or by day 190 following the request for interconnection. As to arbitrated agreements, the executed agreement accompanied by a joint petition for adoption shall be filed with the Commission no later than 30 days following the entry of the Commission order finally arbitrating the agreement. In either case, although an original and two copies of the papers shall be filed with the Commission at the A-docket of the party requesting interconnection, the papers shall also be served on all parties on the service list at this docket.

Pursuant to Section 252(c)(4) of the Act, the Commission must approve or reject the agreement, consistent with the standard set forth in Section 252(e) by no later than 90 days from filing for negotiated agreements and 30 days

[17] Since state commission arbitration is expressly compulsory and binding by law, the contracting parties must reduce arbitrated agreements to

from filing for arbitrated agreements. To accommodate these time deadlines, we will establish a 20-day response period for the filing of comments by interested parties to negotiated agreements and a 7-day response period for the filing of comments by interested parties to arbitrated agreements. The Commission will issue an order approving or rejecting each agreement within the required timeframe established by the Act. Pursuant to Section 252(h), the Commission will make each approved agreement available for public inspection and copying within ten days of the entry date of the Commission's order finally approving the agreement. Although we will not establish a fee schedule or fee requirement for interconnection agreement proceedings at this time, our normal copying charges will be applied to requests for a copy of any interconnection agreement.

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writing and execute each agreement even if one or both of the parties is not satisfied with the arbitration.