

199—38.7(476) Mediation and arbitration. This rule shall apply to all local utilities, except for rural telephone companies as defined in Section 3(47) of the Telecommunications Act of 1996. The commission may make all or part of this rule applicable to a rural telephone company or companies in proceedings relating to Section 251(f) of the Act.

38.7(1) Voluntary negotiations.

a. Initiation of negotiations. A telecommunications carrier initiates the negotiation process by requesting interconnection, services, or network elements as defined in the Act from an incumbent local utility pursuant to Section 252(a)(1) of the Act. The day the request is received by the local utility is day one of the schedule set for resolution of all issues. Within five days of receipt of the request, the local utility shall file with the commission using the commission's electronic filing system a copy of the request and a statement of the date the request was received.

b. Duty to negotiate. The requesting telecommunications carrier and the local utility have the obligation to negotiate in good faith the terms and conditions for the provision of the requested interconnection, services, or network elements. Good faith negotiations require that the parties meet and confer at reasonable times and places, remain open to the arguments and proposals, and work toward the goal of reaching agreement on terms and conditions for the requested interconnections and services. Refusal of any party to give information about its costs or other pertinent data upon request of another party may be considered by the commission as a failure to negotiate in good faith.

38.7(2) Mediation.

a. Initiation of mediation. At any time during the negotiations, any party to the negotiations may request mediation. The request shall be filed with the commission using the commission's electronic filing system and simultaneously served on the other parties. Alternatively, parties may file a joint request for mediation with the commission. A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone and fax numbers of the parties or their representatives.

b. Appointment of mediator. The commission may appoint any competent, impartial person of character and ability to act as mediator. The commission will immediately convene a meeting of the parties to discuss appointment of a mutually acceptable mediator.

c. Role and duties of the mediator. The role of the mediator is to encourage voluntary settlement by the parties. The mediator may not compel a settlement. The mediator shall schedule meetings of the parties, direct the parties to prepare for those meetings, hold private caucuses with each party in an attempt to bring disputants closer together, attempt to achieve a resolution, and assist the parties in preparing a written agreement.

The mediator does not provide legal advice to the parties, nor are any of the mediator's statements as to law and policy binding unless later adopted by the commission. The mediation process will be treated as confidential to the extent permitted by law. No stenographic record will be kept.

After completion of at least one mediation session, the mediator may terminate the mediation process if it appears that the likelihood of agreement is remote or if a party is not participating in good faith, or for other good cause.

d. Parties. Only parties to the negotiations will be permitted to participate as parties to the mediation.

e. Assessment of costs. The cost of mediation shall be shared equally by the parties and paid directly to the mediator.

38.7(3) Arbitration.

a. Initiation of arbitration. Any party to the negotiation may petition the commission to arbitrate all open issues. The petition requesting arbitration must be filed during the period from the 135th day through the 160th day after the date on which the request for negotiation was received by the local utility. Simultaneously with filing the petition with the commission, the petitioning party shall provide a copy of the petition and accompanying documentation to the other parties.

b. Supporting documentation. On the same day of the filing of the request for arbitration, the petitioning party shall provide to the commission the date upon which the request for negotiation for the interconnection, services, or network elements in dispute was made to the local utility, a list of unresolved issues, the position of each party on each of the unresolved issues, how the parties' positions meet or fail to meet the requirements of Section 251 of the Act or other regulations, any supporting documents for

positions taken by the parties on unresolved issues including all relevant cost studies where prices are in dispute, whether a hearing is requested, a list of issues discussed and resolved prior to the petition for arbitration, any requests for confidentiality, and any other documents relevant to the dispute.

c. Response to the request for arbitration. A nonpetitioning party to the negotiation may respond to the petitioning party's position and provide additional information within 25 days after the petition for arbitration was received by the commission.

d. Parties. Only parties to the negotiations will be permitted to participate as parties to the arbitration, unless the commission consolidates proceedings. However, the office of consumer advocate will also be considered a party to the arbitration proceeding.

e. Assessment of costs. Costs shall be directly and equally assessed to the parties involved in the arbitration to the extent provided for by Iowa Code section 476.10.

f. Docketing of the arbitration request. Upon receipt of a timely and complete petition for arbitration, the commission shall docket the request for consideration by the commission.

g. Arbitration schedule and procedures. Within 15 days of the receipt of the petition for arbitration, the commission will schedule a conference to be held within 40 days of receipt of the petition. The purpose of the conference is to plan an arbitration hearing date, clarify the issues to be resolved, identify additional information needed to reach a decision on the issues, schedule production of documents and other information, discuss or rule on any other procedural matters, and consider any other matters that will expedite the arbitration process.

h. Hearing. An arbitration hearing shall commence no later than 60 days following receipt of the petition for arbitration.

i. Consolidation. Nothing in these rules precludes consolidation of proceedings in order to reduce administrative burdens on local utilities, other parties to the proceedings, and the commission.

j. Decision. Following the hearing, the commission will issue its preliminary written decision on the unresolved issues. All exceptions to the decision must be filed by the parties within ten days of issuance of the preliminary decisions. All replies to exceptions shall be filed within five days of the filing of the exceptions. A final written decision regarding all issues offered in arbitration shall be issued by the commission within the nine-month deadline in the Act.

38.7(4) Commission review of agreements.

a. Filing of agreements. All interconnection agreements shall be filed with the commission for approval within 15 days after the issuance of a final decision on the arbitrated issues in the case of arbitrated agreements, or, in the case of negotiated agreements, after the execution of the agreement.

b. Comments on arbitrated agreements. Within ten days following the filing of the arbitrated agreement with the commission for review, the parties involved in the arbitration, and any other interested party, may submit written comments to the commission supporting either approval or rejection of the agreement. If the commission does not approve or reject the agreement within 30 days after submission by the parties of an agreement adopted by arbitration, the agreement shall be deemed approved.

c. Comments on negotiated agreements and amendments to agreements. Within 30 days of the filing date of the negotiated agreement or amendment, the parties involved in the negotiations and any other interested party may submit written comments with the commission supporting either acceptance or rejection of the agreement or amendment. If no comments are filed and no issues are generated by the internal commission review, the agreement or amendment shall be deemed approved 41 days after the filing date. If comments opposing approval are filed or the internal commission review recommends investigation, the agreement or amendment shall be docketed. The docketing order shall be issued within 40 days after the filing date. If the commission does not issue a decision on a docketed filing within 90 days after the filing date, the agreement or amendment shall be deemed approved.

d. Comments on adoption of agreements. No commission approval is necessary when there is an adoption of the terms, conditions, and rates from an approved interconnection agreement. The adoption is effective upon filing. If there are terms, conditions, or rates in the filing that are not from an adopted agreement, then the filing is subject to the provisions of paragraph 38.7(4) "c."

e. Indefinite terms, conditions, or rates. When the agreement or amendment contains terms, conditions, or rates that are not yet agreed to, the parties shall file an amendment to the agreement once they have reached agreement on the terms, conditions, or rates.

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