

APPENDIX A

FORMAL AND EXPEDITED DISPUTE RESOLUTION.

11/20/02

Section 1.1 Formal Dispute Resolution Proceeding.

- (a) **Initiation of formal proceeding.** A formal proceeding for dispute resolution under this subchapter will commence when a party (complainant) files a complaint with the Commission and, on the same day, delivers a copy of the complaint either by hand delivery, by facsimile or by email to the other party (respondent) to the interconnection agreement from which the dispute arises (where applicable).
- (1) **Complaint.** The complaint shall include:
 - (A) the name, address, telephone number, facsimile number and email address of each party to the interconnection agreement (where applicable) and the complainant's designated representative;
 - (B) a description of the parties' efforts to resolve their differences by negotiation;
 - (C) a detailed list of the discrete issues in dispute, with a cross-reference to the area or areas of the agreement applicable or pertaining to the issues in dispute;
 - (D) an identification of pertinent background facts and relevant law or rules applicable to each disputed issue; and
 - (E) the complainant's proposed solution to the dispute.
 - (2) **Expedited rulings.** To the extent applicable, the complainant may also include in the complaint a request for an expedited ruling under Section 1.2 (relating to Request for Expedited Ruling) or an interim ruling under Section 1.3 (relating to Request for Interim Ruling Pending Dispute Resolution).
 - (3) **Timelines.** The timelines set forth in Section 1.1 shall be followed, unless modified by the arbitrator upon a showing of good cause.
 - (4) **Service.** Where service is effected in a manner other than hand-delivery, and a filing or any other activity in response to such service is required by the served party in 5 business days or less, the serving party shall make a good faith effort to ensure that the served party has received actual notice of the served documents, either by calling the served party or by other appropriate means to demonstrate good faith efforts.
- (b) **Response to the complaint.** Unless this matter qualifies under Sections 1.2 or 1.3, the respondent shall file a response to the complaint within 10 business days after the filing of the complaint. On the response filing date, the respondent shall serve a copy of the response on the complainant. The response shall specifically affirm or deny each allegation in the complaint. The response shall include the respondent's position on each issue in dispute, a cross-reference to the area or areas of the contract applicable or pertaining to the issue in dispute, and the respondent's proposed solution on each issue in dispute. In addition, the response also shall:
- (1) stipulate to any undisputed facts; and
 - (2) identify relevant law or rules applicable to each disputed issue.
- (c) **Reply to response to complaint.** Unless this matter qualifies under Sections 1.2 or 1.3, the complainant may file a reply within five business days after the filing of the response to the complaint and serve a copy on respondent on the same day. The reply shall be limited solely to new issues raised in the response to the complaint.

- (d) **Provisions regarding arbitration process.** Except as specified otherwise in this subchapter, the following provisions apply:
- (1) **Selection of arbitrator.** Upon receipt of a complete request for arbitration, an arbitrator shall be selected to act for the Commission, unless two or more of the Commissioners choose to hear the arbitration en banc. The parties shall be notified of the Commission-designated arbitrator, or of the Commissioners' decision to act as arbitrator themselves. The arbitrator may be advised on legal and technical issues by members of the Commission staff designated by the arbitrator. The Commission staff members selected to advise the arbitrator shall be identified to the parties.
 - (2) **Oath required.** Before an arbitrator may hear any matter, he or she must swear to an oath of office affirming the arbitrator's competence to serve and willingness to judge all proceedings fairly and impartially. The oath shall be administered by a Commissioner or a person designated by the Commission to administer oaths.
 - (3) **Prehearing conference; challenges.** As soon as practical after his or her selection, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. At the prehearing conference, parties should be prepared to raise any challenges to the appointment of the arbitrator or the arbitrability of any issue. If such challenges are not raised at the first prehearing conference, they shall be deemed waived by the parties. The arbitrator shall serve on the parties orders ruling on challenges within 10 business days of the first prehearing conference.
 - (4) **Record of hearing.** The arbitration hearing shall be open to the public. If any party requests it, a stenographic record shall be made of the hearing by an official court reporter appointed by the Commission. It is the responsibility of the party desiring the stenographic record to arrange for the official reporter to be present. A party may purchase a copy of the transcript from the official reporter at rates set by the Commission. The court reporter shall provide the transcript and exhibits in a hearing to the arbitrator at the time the transcript is provided to the requesting party. If no court reporter is requested by a party, the arbitrator shall record the proceedings and maintain the official record and exhibits.
 - (5) **Hearing procedures.** The parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing. The arbitrator may temporarily close the arbitration hearing to the public to hear evidence containing information filed as confidential. The arbitrator shall close the hearing only if there is no other practical means of protecting the confidentiality of the information.
 - (6) **Rules applicable.** The rules of privilege and exemption recognized by California law shall apply to arbitration proceedings under this subchapter. The California Rules of Civil Procedure and California Rules of Evidence are not applicable to proceedings under this subchapter unless specifically referenced in this subchapter.
 - (7) **Time for hearing.** The arbitration hearing shall be conducted expeditiously and in an informal manner. Unless additional time is allowed by the Commission or additional information is requested by the arbitrator, the hearing may not exceed five business days.
 - (8) **Cross-examination.** Each witness presenting written direct testimony shall be available for cross-examination by the other parties to the arbitration. The arbitrator shall judge the credibility of each witness and the weight to be given his or her testimony based upon his or her response to cross-examination. If the arbitrator determines that a witness' responses are evasive or non-responsive to the questions asked, the arbitrator may disregard the witness' testimony on the basis of a lack of credibility.
 - (9) **Clarifying questions.** The arbitrator or a staff member identified as an advisor to the arbitrator may ask clarifying questions at any point during the proceeding and may direct a party or a witness to provide additional information as needed to fully develop the record of the proceeding. If a party fails to present information requested by the arbitrator, the arbitrator shall render a decision on the basis of the best information available from whatever source derived.

- (10) **Briefs.** The arbitrator may require the parties to submit post-hearing briefs or written summaries of their positions. The arbitrator shall determine the filing deadline and any limitations on the length of such submissions.
 - (11) **Parties to bear own costs.** Each party to the arbitration hearing shall be responsible for its own costs of participation in the arbitration process.
 - (12) **Scope of issues.** The scope of this arbitration process, in terms of arbitrable issues, is intended to be broad. Parties may arbitrate issues arising out of or related to the services provided by SBC Pacific Bell under the parties' interconnection agreement or under state local wholesale tariffs. The arbitration process is not limited to violations of law or Commission decisions, but also includes alleged breaches of or disputes regarding interpretation of contract rights and obligations. In addition, at the Commission's discretion, parties may submit operational issues that affect the parties' rights and obligations related to local wholesale service, as defined broadly under Sections 251 and 252 of the Telecommunications Act of 1996 and the FCC regulations and decisions implementing and interpreting such rights and obligations.
- (e) **Number of copies to be filed.** Unless otherwise ordered by the arbitrator, parties shall file 12 copies of pleadings.
 - (f) **Participation.** Only the parties to the interconnection agreement (or complainant and respondent, where no interconnection agreement is involved), and third parties with approval from the arbitrator on a Motion to Intervene pursuant to Commission's Rules of Practice and Procedure 53, may participate as parties in the dispute resolution proceeding subject to this subchapter. However, the arbitrator may consolidate matters brought by separate parties where the matters present the same or substantially the same issues.
 - (g) **Notice and hearing.** Unless this matter qualifies under Section 1.2 or 1.3, the arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than 50 days after filing of the complaint. The arbitrator shall notify the parties, not less than 15 days before the hearing, of the date, time, and location of the hearing. The hearing shall be transcribed by a court reporter designated by the arbitrator.
 - (h) **Authority of arbitrator.** The arbitrator has broad discretion in conducting the dispute resolution proceeding and has the authority given to a presiding officer pursuant to subsections (1)-(6) set forth immediately below. The arbitrator shall also have the authority to award remedies or relief deemed necessary by the arbitrator to resolve a dispute subject to the procedures established in this subchapter. The authority to award remedies or relief includes, but is not limited to, the award of prejudgment interest, specific performance of any obligation created in or found by the arbitrator to be intended under the interconnection agreement subject to the dispute, issuance of an injunction, or imposition of sanctions for abuse or frustration of the dispute resolution process subject to this subchapter, except that the arbitrator does not have authority to award punitive or consequential damages.
 - (1) **Arbitrator to conduct hearings.** Hearings shall be conducted by one or more arbitrators. The arbitrator has the decision making authority set out in the Commission's Rules, Government Code, and APA.
 - (2) **Commission may preside over any hearing.** The Commission has the authority to conduct any prehearing conference and hearing on any proceeding, as set forth in Section 1.1(d)(1). The Commission may conduct the entire hearing, or it may preside over a hearing in progress, in which case the Commissioners shall read the record established to that date.

- (3) **Authority of arbitrator.** The arbitrator has broad discretion in conducting the course, conduct, and scope of the hearing. The arbitrator's authority includes, but is not limited to, the power to administer oaths and affirmations; call and examine witnesses; receive evidence and testimony; rule upon the admissibility of evidence and amendments to pleadings; issue subpoenas; issue discovery, procedural, and scheduling orders; impose sanctions; compel the attendance of witnesses and the production of documents; authorize the taking of depositions; re-open the record, prior to the issuance of a proposal for decision, for additional evidence where it is necessary to make the record correct, accurate, and complete; make proposed findings of fact and conclusions of law; make proposed orders; issue interim orders; recess any hearing from time-to-time; abate a proceeding, and take any other action not prohibited by law or by Commission rule which is necessary for an efficient and fair hearing.
 - (4) **Conduct of hearing.** The arbitrator shall rule expeditiously on all motions and objections made at the hearing. The arbitrator shall conduct the hearing in such a manner to secure fairness in administration, eliminate unjustifiable delay, and promote the development of the record consistent with the applicable laws. The arbitrator shall endeavor to limit the presentation of evidence that creates an unfair prejudice, confuses the issues, or causes undue delay or needless presentation of cumulative evidence, and may:
 - (A) set reasonable times for a party to present evidence, including oral testimony of its own witnesses and cross-examination of other party's witnesses;
 - (B) establish the order in which parties will present evidence and conduct cross-examination;
 - (C) limit the number of witnesses to avoid cumulative or repetitious testimony;
 - (D) limit the time allowed for cross-examination; and
 - (E) order the presentation of cumulative evidence discontinued.
 - (5) **Replacement.** If at any time an arbitrator is unable to continue presiding over a case, the Commission may appoint a substitute arbitrator who shall perform any function remaining to be performed without the necessity of repeating any previous proceedings. The substitute arbitrator shall read the record of the proceedings that occurred prior to his or her appointment before issuing a Proposal for Decision or recommended findings of fact and conclusions of law.
 - (6) **Different from mediator.** The arbitrator shall not have participated in any mediation or informal attempts to resolve the issues raised by the parties.
- (i) **Discovery.** Parties may obtain discovery by submitting requests for information (RFIs), which include requests for inspection and production of documents, requests for admissions, and depositions by oral examination. The arbitrator has discretion to resolve discovery issues, including scope and timing of discovery.
 - (j) **Prefiled evidence/witness list.** The arbitrator shall require the parties to file a direct case and a joint decision point list (DPL) on or before the commencement of the hearing. The arbitrator shall require the parties to file their direct cases under the same deadline. The prepared direct case shall include all of the party's direct evidence, including written direct testimony of all of its witnesses and all exhibits that the party intends to offer. The DPL shall identify all issues to be addressed, the witnesses who will be addressing each issue, and a short synopsis of each witness's position on each issue. Except as otherwise provided herein or as otherwise allowable by the Commission, including the Commissions Rules of Practice and Procedure, all materials filed with the Commission or provided to the arbitrator shall be considered public information.
 - (k) **Decision.**
 - (1) The written decision of the arbitrator shall be filed with the Commission within 15 days after the filing of post-hearing briefs and shall be mailed by first-class mail to all parties of record in the dispute resolution proceeding. On the same day that the decision is issued, the arbitrator shall notify the parties by facsimile or by email that the decision has been issued. Parties will have 3 business days to file and serve comments on the arbitrator's decision.

- (2) The decision of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties. The arbitrator may provide for later implementation of specific provisions as addressed in the arbitrator's decision. To the extent deemed necessary by the arbitrator to explain or support the decision, the decision may also contain:
 - (A) the rates for interconnection, services, and/or network elements established according to the Federal Telecommunications Act of 1996, §47 U.S.C. 252(d);
 - (B) a schedule for implementation of the terms and conditions by the parties to the agreement; and
 - (C) a narrative report explaining the arbitrator's rationale for each of the rulings included in the final decision.
- (3) Within 5 business days from the date the arbitrator's decision is issued, any Commissioner may place the arbitrator's decision on the agenda for the next available open meeting. If the decision is scheduled for open meeting, then the decision shall be stayed until the Commission affirms or modifies the decision.
- (4) If no Commissioner places the arbitrator's decision on the open meeting agenda within 5 business days, the arbitrator's decision is final and effective on the expiration of that fifth business day. The arbitrator shall notify the parties when the arbitrator's decision is deemed final under this paragraph.
- (5) Final decisions shall be reviewable under the regular procedures applicable to Commission decisions.

Section 1.2 Request for Expedited Ruling.

- (a) **Purpose.** This section establishes procedures pursuant to which a party who files a complaint to initiate a dispute resolution under this subchapter may request an expedited ruling when the dispute directly affects the ability of a party to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality, or network element. The arbitrator has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant. Except as specifically provided in this section, the provisions and procedures of Section 1.1 (relating to Formal Dispute Resolution Proceeding) apply.
- (b) **Filing a request.** Any request for expedited ruling shall be filed at the same time and in the same document as the complaint filed pursuant to Section 1.1. The complaint shall be entitled "Complaint and Request for Expedited Ruling." In addition to the requirements listed in Section 1.2(a), the complaint shall also state the specific circumstances that make the dispute eligible for an expedited ruling.
- (c) **Response to complaint.** The respondent shall file a response to the complaint within five business days after the filing of the complaint. In addition to the requirements listed in Section 1.2(b), the respondent shall state its position on the request for an expedited ruling. The respondent shall serve a copy of the response on the complainant by hand-delivery, facsimile or by email on the same day as it is filed with the Commission.
- (d) **Hearing.** After reviewing the complaint and the response, the arbitrator will determine whether the complaint warrants an expedited ruling. If so, the arbitrator shall make arrangements for the hearing, which shall commence no later than 20 days after the filing of the complaint. The arbitrator shall notify the parties, not less than three business days before the hearing of the date, time, and location of the hearing. If the arbitrator determines that the complaint is not eligible for an expedited ruling, the arbitrator shall so notify the parties within five days of the filing of the response.
- (e) **Decision point list (DPL) and witness list.** The arbitrator may require the parties to file a DPL on or before the commencement of the hearing. The arbitrator shall require the parties to file their DPL under the same deadline. The DPL shall identify all issues to be addressed, the witness, if any, who will be addressing each issue, and a short synopsis of each witness's position on each issue. Except as otherwise provided herein or as otherwise allowable by the Commission, including the Commissions Rules of Practice and Procedure, all materials filed with the Commission or provided to the arbitrator shall be considered public information.
- (f) **Decision.** The arbitrator shall issue a written decision on the complaint within 10 days after the close of the hearing. On the day of the issuance, the arbitrator shall notify the parties by facsimile or by email that the decision has been issued. A decision issued pursuant to this section is subject to the Commission review provisions under Section 1.1(k) and will become final under the terms therein.

Section 1.3 Request for Interim Ruling Pending Dispute Resolution.

- (a) **Purpose.** This section establishes procedures pursuant to which a party who files a complaint to initiate a dispute resolution under either Section 1.1 (relating to Formal Dispute Resolution Proceeding) or Section 1.2 (relating to Request for Expedited Ruling) may also request an interim ruling on whether the party is entitled to relief pending the resolution of the merits of the dispute. This section is intended to provide an interim remedy when the dispute compromises the ability of a party to provide uninterrupted service or precludes the provisioning of scheduled service. Interim relief shall be granted only under extraordinary circumstances. The moving party shall have the burden of proving a substantial likelihood of success on the merits and irreparable harm.
- (b) **Filing a request.** Any request for an interim ruling shall be filed at the same time and in the same document as the complaint filed pursuant to Section 1.1 or Section 1.2 of this title. The heading of the complaint shall include the phrase "Request for Interim Ruling." The complaint shall set forth the specific grounds supporting the request for interim relief pending the resolution of the dispute, as well as a statement of the potential harm that may result if interim relief is not provided. A complaint that includes a request for interim ruling shall be verified by affidavit. Such complaint must list the contact person, address, telephone number, facsimilenumber and email address for both the complainant and respondent.
- (c) **Service.** The complainant shall serve a copy of the complaint and request for an interim ruling on the respondent by hand-delivery, facsimile or email on the same day as the pleading is filed with the Commission. The complainant shall certify on the pleading filed with the Commission that service has been accomplished in compliance with this rule.
- (d) **Hearing.** Within five business days of the filing of a complaint and request for interim ruling, the arbitrator selected under this subchapter shall conduct a hearing to determine whether interim relief should be granted during the pendency of the dispute resolution process. The arbitrator will notify the parties of the date and time of the hearing by facsimile or by email within 24 hours of the filing of a complaint and request for interim ruling. The parties should be prepared to present their positions and evidence on factors including but not limited to: the type of service requested; the economic and technical feasibilities of providing that service; and the potential harm in providing the service. The arbitrator will issue an interim ruling on the request based on the evidence provided at the hearing.
- (e) **Ruling.** The arbitrator shall issue a written ruling on the request within 24 hours of the close of the hearing and will notify the parties by facsimile or by email of the ruling. The interim ruling will be effective throughout the dispute resolution proceeding until a final decision is issued pursuant to this subchapter.