

Clearinghouse Rule 98-170

CERTIFICATE

STATE OF WISCONSIN)
)
PUBLIC SERVICE COMMISSION) SS
OF WISCONSIN)

I, Lynda L. Dorr, Secretary to the Commission, certify that the annexed order adopting rules relating to telecommunications dispute resolution and whether an alleged failure to comply with an interconnection agreement has a significant adverse effect on another party to the agreement, was duly approved and adopted by this Commission on January 16, 2001.

I further certify that this copy has been compared by me with the original on file in this Commission and that it is a true copy of the original, and of the whole of the original.

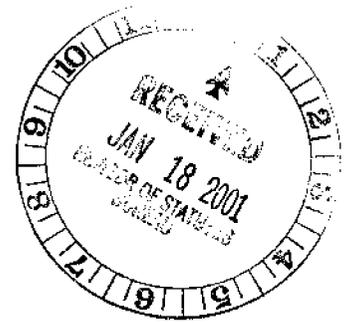
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Public Service Commission of Wisconsin at Madison, WI, this 16th day of January 2001.



Lynda L. Dorr
Secretary to the Commission

JSM:tmg:t:\rules\179-adr\Step3\certificate.doc





BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Administrative Rules Regarding Various Dispute Resolution
Procedures Under Federal and State Law

1-AC-181
Phase 1

FINAL ORDER ADOPTING RULES

The Public Service Commission of Wisconsin adopts an order to create ch. PSC 179, relating to telecommunications dispute resolution and whether an alleged failure to comply with an interconnection agreement has a significant adverse effect on another party to the agreement.

**ANALYSIS PREPARED BY THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Statutory authority: ss. 196.02(1) and (3), 196.199(2)(c), and 227.11(2), Stats.
Statutes interpreted: ss. 196.199(3) and 196.26(1)(a)3., Stats.

The federal Telecommunications Act of 1996 (Act) and 1993 Wisconsin Act 496 established the requirement that telecommunications service providers negotiate agreements with competitors that allow the competitors to interconnect with or use the provider's facilities and services in order for the competitors to provide telecommunications services to their customers. The Act also established procedures for negotiation, arbitration, and approval of agreements. Among other duties and responsibilities, state commissions were mandated to mediate, arbitrate, and approve interconnection agreements under the Act.

Courts have held, and s. 196.199(2)(a), Stats., provides, that the state also has the right to enforce existing agreements. As part of its enforcement power, the Commission may investigate whether a party to an interconnection agreement has failed to comply with the agreement. The statute establishes a procedure for the expedited investigation of complaints about a party's failure to comply with an interconnection agreement when the alleged failure has a significant adverse effect on the other party's ability to provide telecommunications service to its customers.

Section 196.199(2)(c), Stats., requires that the Commission promulgate rules specifying the requirements for determining whether a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the complaining party's ability to provide telecommunications services to its customers. This rule specifies the minimum factors that the Commission must consider when determining whether there is a significant adverse effect that justifies an expedited investigation. These factors include:

- The ability of customers or potential customers to obtain or continue to receive uninterrupted telecommunications service from the provider of his/her choice;
- Whether and to what degree any loss or damage due to an alleged failure to comply with the agreement can be remedied without an expedited proceeding under s. 196.199, Stats. This factor recognizes that there may be times when, for example, no amount of money can remedy the damage and times when, even if money can remedy the damage, only an expedited process can result in the remedy's being available soon enough;
- Whether either party is put in a better or worse business or financial position as a result of the failure to comply with the agreement; and
- The effect on competition.

Other statutory provisions require or allow the Commission to develop administrative rules concerning alternate dispute resolution and other issues involved in the enforcement of interconnection agreements. These remaining, broader areas of disputes between providers and alternate dispute resolution will be dealt with in rules proposed at a later date.

TEXT OF RULE

SECTION 1. Chapter PSC 179 is created to read:

Chapter PSC 179

TELECOMMUNICATIONS DISPUTE RESOLUTION

| | |
|------------|----------------------------|
| PSC 179.01 | Purpose. |
| PSC 179.02 | Definitions. |
| PSC 179.03 | Significant adverse effect |

PSC 179.01 Purpose. Chapter PSC 179 implements s. 196.199(2)(c), Stats., which requires the commission to specify by rule the requirements for determining in certain cases whether a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the ability of another party to provide telecommunications service to its customers or potential customers.

PSC 179.02 Definitions. In this chapter:

(1) "Commission" means the public service commission.

(2) "Customer" means any person, firm, partnership, corporation, municipality, cooperative organization, telecommunications provider, governmental agency, or other entity which is provided with retail or wholesale telecommunications service, or both, by a party to an interconnection agreement. "Customer" does not include a party.

(3) "Essential telecommunications services" has the meaning given in s. PSC 160.03.

25 (4) "Interconnection agreement" means an agreement that is subject to approval by the
26 commission under 47 USC 252(e), except that it does not include an agreement to which a
27 commercial mobile radio service provider, as defined in s. 196.01(2g), Stats., is a party.

28 (5) "Party" means a signatory to a particular interconnection agreement.

29 (6) "Telecommunications provider" has the meaning given in s. 196.01(8p), Stats.

30 (7) "Telecommunications service" has the meaning given in s. 196.01(9m), Stats.

31
32 **PSC 179.03 Significant adverse effect.** In determining if a party's alleged failure to
33 comply with an interconnection agreement has a significant adverse effect on the ability of
34 another party to provide telecommunications service to its customers or potential customers
35 under s. 196.199(3)(a)1m.a., and in determining whether a complaint does or does not allege
36 such a significant adverse effect under ss. 196.199(3)(a) and 196.26(1)(a)3., Stats., the
37 commission shall consider at least all of the following factors:

38 (1) The ability of a customer or potential customer to obtain or continue to receive
39 uninterrupted telecommunications service, especially essential telecommunications services,
40 from the telecommunications provider of that customer's choice.

41 (2) Whether and to what degree any loss or damage to an allegedly aggrieved party or its
42 customer or potential customer resulting from the alleged failure to comply with an
43 interconnection agreement can be remedied without an expedited proceeding under s. 196.199,
44 Stats.

45 (3) Whether and to what degree the alleged failure to comply with an interconnection
46 agreement does any of the following:

47 (a) Frustrates or enhances the planning or execution of a party's business plan, marketing
48 effort, or service or product introduction, or any combination thereof.

49 (b) Causes or threatens to cause a delay in or barrier to a party's market entry or a delay
50 in the growth of its market share, or both.

51 (c) Damages or threatens to damage the reputation of a party.

52 (d) Damages or threatens to damage the ability of a party to effectively compete.

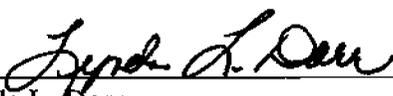
53 (e) Harms or threatens to harm the financial health of a party.

54 (f) Favors a party's obtaining or retaining of customers, or both.

55
56 These rules shall take effect on the first day of the month following publication in the
57 Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, January 16, 2001

By the Commission:



Lynda L. Dorr
Secretary to the Commission



Public Service Commission of Wisconsin

Ave M. Bie, Chairperson
Joseph P. Mettner, Commissioner
John H. Farrow, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

Mr. Gary Poulson, Deputy Revisor
Revisor of Statutes Bureau
131 West Wilson Street, Suite 800
Madison, WI 53703-3233

RE: Administrative Rules Regarding Various Dispute Resolution
Procedures Under Federal and State Law

1-AC-181
Phase 1

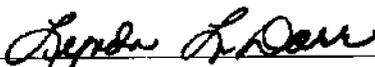
Dear Mr. Poulson:

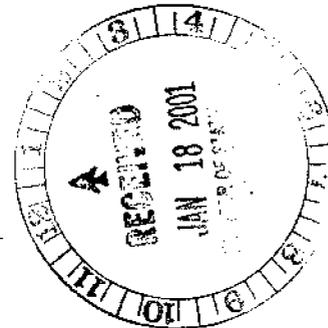
Enclosed please find two copies (one certified) of the Final Order of the Public Service Commission Adopting Rules in the above-entitled matter. The rules have also been sent to you in Word format via e-mail.

The rules have been seen by legislative committees.

Dated at Madison, Wisconsin, January 16, 2001

By the Commission:


Lynda L. Dorr
Secretary to the Commission



JSM:t:\rules\179-adr\Step3\ltrRevisor.doc

Enclosures

cc: Records Management, PSCW