

2. 47 U.S.C. § 252(b)(4)(C) requires state commissions to “conclude resolution of unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.” Level 3 explains that the parties have agreed to several extensions of time during the negotiations. Level 3 references a letter from SBC to Level 3 dated April 23, 2004, indicating the parties agreement that the “arbitration window shall close in the following states on the following dates:....” Appendix A to Petition. For Kansas the window closed on May 25, 2004, the date Level 3 filed its Petition. 47 U.S.C. § 252(b)(1) establishes the arbitration window from the 135th through the 160th day. Level 3 calculates the arbitration must be concluded with an order by the Commission by September 12, 2004, to comply with the statutory time lines.

Jurisdiction

3. 47 U.S.C. § 252 (b) permits any party negotiating pursuant to 47 U.S.C. § 252 to request arbitration from a state commission on any open issue between the 135th and 160th day after the request for interconnection. It requires the petitioning party to include all relevant documentation with its petition and set out the position of each of the parties. Level 3 has filed in compliance with this statute, except it has only provided its position on the issues in the Disputed Points List (“DPL”) which is Attachment B to its filing. Level 3 explains it and SBC had planned on providing a joint DPL but were unable to do so. Level 3 states it will provide SBC an electronic copy of the DPL so that SBC may set out its position. The Commission finds this is substantial compliance with the statutory requirements and finds that it has jurisdiction pursuant to 47 U.S.C. § 252 to entertain this arbitration. The Commission observes the failure to set out the positions of both parties on the issues may create difficulty for the arbitrator to comply with the statutory time requirements.

Appointment of arbitrator

4. Level 3 offered to participate in Commission-led mediation. The Commission encourages mediation of issues, but believes it is not workable in this docket because of the very short time period in which to make a decision, since any issues not resolved through mediation would still have to be arbitrated. The Commission finds its resources must be focused on completing the arbitration.

5. The Federal Telecommunications Act does not provide guidelines for selection of arbitrators. In past arbitrations, the Commission has appointed members of its staff as arbitrators. Due to Staff's current workload, the Commission finds no staff members have the requisite time to devote to an arbitration which must be completed in a very short time period. The Commission therefore finds it must appoint an outside arbitrator. The Commission appoints Cynthia Claus to serve as arbitrator for this matter. In selecting the arbitrator the Commission has considered the need to appoint an arbitrator with knowledge of telecommunications issues. Ms. Claus is a former commissioner and has also received training as an arbitrator.

6. The Commission has established minimal guidelines for arbitrations. Docket No. 94-GIMT-478-GIT, Order dated September 30, 1996. In pertinent part, that Order provides that the arbitrator will hold a prehearing conference at which a procedural schedule will be established and discovery issues and other necessary issues addressed. It makes clear participation is limited to the negotiating parties. It establishes a presumption of openness and places the burden on any party that wants to designate information as confidential to demonstrate the need for a protective order. The arbitration will be conducted on a modified "final offer" issue by issue basis. The arbitrator may only add or delete terms to assure compliance with the Federal Act and ensure it meets the review criteria of 47 U.S.C. § 252(e). The arbitrator must

issue her decision 30 days before the final order date. This date may only be extended by a petition to the Commission showing exceptional circumstances. The parties may comment on the arbitrator's decision no later than 15 days before September 12, 2004. Agreements shall be filed no later than the 270th day and will be public on filing.

7. In accordance with the September 30, 1996 Order, the arbitrator shall schedule a prehearing conference, that shall take place before the end of June, 2004.

Requirements

8. 47 U.S.C. § 252(b)(3) allows the party to the negotiation that does not request arbitration to respond to the petition within 25 days from the date the state commission receives the petition. For its response SBC shall, at a minimum, complete the DPL using the electronic format furnished by Level 3 so that the arbitrator can ascertain the position of the parties by reviewing one document. Further, the Commission requires SWBT to add a column to the DPL to state what decision, if any, this Commission has previously made on any issue. A reference to the particular arbitration or other docket in which the decision was made should also be provided.

Assessment of Cost

9. The Commission finds that expenses reasonably attributable to this investigation will exceed \$100, and assesses these expenses against SBC and Level 3 pursuant to K.S.A. 66-1502. This assessment shall begin three days after notice of the assessment is given by service of this Order by United States mail. SBC and Level 3 are hereby notified that they may request a hearing on this assessment in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

- A. Cynthia Claus is appointed as arbitrator for this docket.
- B. SBC shall file its response in conformance with the requirement set out above.
- C. Costs of this arbitration are assessed as set out above.
- D. Any party may file a petition for reconsideration of this Order within fifteen days of the date this order is served. If service is by mail, service is complete upon mailing and three days may be added to the above time frame.
- E. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary and proper.

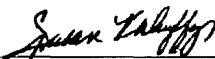
BY THE COMMISSION IT IS SO ORDERED.

Moline, Chair; Wine, Com.; Krehbiel, Com.

Dated: JUN 1 0 2004

ORDER MAILED

JUN 1 0 2004

 Executive Director
Susan K. Duffy
Executive Director

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