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October 16, 2007
Data Center
Missouri Public
Service Commission

Missouri Public Service Commission
Adjudication Division - Data Center
P.O. Box 360
Jefferson City, Missouri 65102-0360

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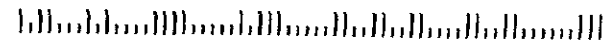
Robert Eurdette Corp
Rita Hood
401 W. 89th St.
Kansas City, MO 64114

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Robert Burdette Corporation,)	
)	
Complainant,)	
)	
v.)	<u>Case No. EC-2008-0039</u>
)	
Aquila, Inc.)	
)	
Respondent.)	

**ORDER FOR MEDIATION, APPOINTING MEDIATOR, STAYING
PROCEEDINGS, DIRECTING SUBMISSIONS TO MEDIATOR AND
DIRECTING FILING OF STATUS REPORT WITH THE COMMISSION**

Issue Date: October 10, 2007

Effective Date: October 10, 2007

On August 9, 2007,¹ the Robert Burdette Corporation filed a complaint with the Commission against Aquila, Inc. ("Aquila"). On August 13, the Commission issued a Notice of Deficiency because the Complainant, as a corporation, had failed to obtain representation by legal counsel. On September 11, Complainant refiled its complaint with proper legal representation. Consequently, the Commission issued notice of the complaint on September 12 and directed Aquila to answer.

On October 1, Aquila filed a request for mediation, indicating its willingness to enter into third-party mediation. Consequently, on October 2, the Commission ordered Complainant to respond to Aquila's request. On October 5, Aquila filed a response to the

¹ All dates throughout this order refer to the year 2007 unless otherwise noted.

Commission's October 2 order. Aquila asserts that Complainant has consented to Aquila's request to mediate, in fact, Complainant demanded mediation in its complaint. Therefore, as permitted by Commission Rule 4 CSR 240-2.125, the Commission will stay all other proceedings in this matter while the parties mediate.

Pursuant to Commission Rule 4 CSR 240-36.030(3), the Commission hereby appoints Cherlyn Voss, Regulatory Law Judge, as Mediator. As required by Commission Rule 4 CSR 240-36.030(4), within thirteen days of this order, each party shall submit a written statement to the Mediator summarizing the dispute and shall furnish such other material and information it deems appropriate to familiarize the Mediator with the dispute. All documentation submitted to the mediator shall be submitted to:

Cherlyn Voss, RLJ
Missouri Public Service Commission
Governor Office Building
200 Madison Street, Suite 900
Jefferson City, Missouri 65102

The assigned mediator shall convene an initial conference to discuss a procedural schedule, and each party should be prepared to present its position informally to the Mediator at the initial conference. **No materials utilized for mediation shall be filed under this case number to ensure the impartiality of the Presiding Officer to this matter should mediation fail to resolve the dispute.**

The parties shall inform the Commission in writing of the progress of the mediation on or before November 15, 2007. This separate filing should be made with the Commission in Case Number EC-2008-0039.

IT IS ORDERED THAT:

1. The parties shall mediate their dispute pursuant to Commission Rule 4 CSR 240-36.030. A copy of this Rule is attached to this order.

2. No later than October 23, 2007, the parties shall contact Cherlyn Voss, Regulatory Law Judge, the appointed Mediator, at the Missouri Public Service Commission, 573-751-3966, to initiate the mediation process.

3. No later than October 23, 2007, each party shall submit to the Mediator a written statement summarizing the dispute and shall furnish such other material and information it deems appropriate to familiarize the Mediator with the dispute.

4. All submissions to Mediator Cherlyn Voss shall be sent to:

Cherlyn Voss, RLJ
Missouri Public Service Commission
Governor Office Building
200 Madison Street, Suite 900
Jefferson City, Missouri 65102

5. All other proceedings in this matter are stayed pending the outcome of the mediation, except as otherwise indicated in this order.

6. The parties shall jointly report the status of the mediation in writing with the Commission on or before November 15, 2007. This status report shall be filed under Case Number EC-2008-0039.

7. This order shall become effective on October 10, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Harold Stearley, Regulatory Law Judge
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 10th day of October, 2007.



Rules of
Department of Economic Development
Division 240—Public Service Commission
Chapter 36—Alternative Dispute Resolution Procedural
Rules Governing Filings Made Pursuant to the
Telecommunications Act of 1996

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**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT**
Division 240—Public Service Commission
**Chapter 36—Alternative Dispute
Resolution Procedural Rules Governing
Filings Made Pursuant to the
Telecommunications Act of 1996**

4 CSR 240-36.010 Definitions

PURPOSE: This rule defines terms used in the rules comprising Chapter 36. The terms defined in the Telecommunications Act of 1996 are generally applicable to these rules.

(1) Commission means the Missouri Public Service Commission.

(2) FCC means the Federal Communications Commission.

(3) Act means the Telecommunications Act of 1996; unless noted otherwise, all references to sections and subsections are to the Communications Act of 1934 as amended by the 1996 Act.

(4) Mediation means a process in which the commission assists negotiating parties to reach their own solution.

(5) Arbitration means the submission of a dispute to the commission for resolution by a process that will employ a neutral arbitrator who will facilitate resolution of the disputed issues through markup conferences and limited evidentiary hearings, and who will prepare a final report for acceptance, modification or rejection by the commission.

(6) Petition means an application to the commission for relief under section 252 of the Act.

(7) Request for negotiation means the first date on which an incumbent local exchange carrier receives a written request to negotiate pursuant to the Act.

(8) Arbitrated agreement means the entire agreement filed by the parties in conformity with the commission's order approving, rejecting or modifying the arbitrator's final report, in whole or in part.

(9) Unresolved issues means those issues submitted to be decided by the arbitrator in compliance with subsection 252(b)(4)(C) of the Act.

AUTHORITY: section 386.410, RSMo 2000.*
Original rule filed Dec. 30, 2003, effective Aug. 30, 2004.

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-36.020 Filing Procedures

PURPOSE: This rule generally provides for the practice and procedure used in filings made under this chapter.

(1) Except where superceded by rules in this chapter, all petitions filed under this chapter shall also comply with the commission's rules of practice and procedure codified in Chapter 2 of 4 CSR 240.

(2) Only telecommunications carriers, as defined in the Act, providing or in the process of enabling their provision of telecommunications service, as defined in the Act, in the state of Missouri may file petitions under this chapter.

AUTHORITY: section 386.410, RSMo 2000.*
Original rule filed Dec. 30, 2003, effective Aug. 30, 2004.

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-36.030 Mediation

PURPOSE: This rule provides the procedures for requesting and conducting mediations.

(1) Who May Request Mediation—A party engaged in a negotiation for interconnection, services, or unbundling of network elements under section 252 of the Act may request that the commission mediate unresolved issues. The request shall identify all parties to the negotiation and any time constraints on resolution of the issues.

(2) Response to Request for Mediation—Within five (5) days of a request to the commission for mediation, each party to a negotiation that has not requested mediation shall advise the commission of its willingness to mediate the differences between the negotiating parties.

(3) Appointment of Mediator—When all parties to a negotiation agree to mediation, the commission shall appoint a mediator within ten (10) days of the request for mediation. The mediator shall be an employee of the commission unless the parties consent to the appointment of an outside mediator. The costs of an outside mediator shall be borne equally by the parties. The mediator shall be disqualified from participating as an arbitra-

tor or presiding officer in subsequent proceedings regarding the same negotiation. Presiding officer is defined in 4 CSR 240-2.120.

(4) Parties' Statements—Within thirteen (13) days after the filing of a request for mediation, each party to the negotiation shall submit a written statement to the mediator summarizing the dispute, and shall furnish such other material and information it deems appropriate to familiarize the mediator with the dispute. The mediator may request any party to provide supplemental material or information.

(5) Initial Mediation Conference—Unless the mediator advises the parties otherwise, the mediator shall convene an initial conference within two (2) days after the filing of the parties' statements or the date that they are due, whichever is earlier. At the initial conference, the parties and mediator shall discuss a procedural schedule, and attempt to identify, simplify and limit the issues to be resolved. Each party should be prepared to informally present its position and arguments to the mediator at the initial mediation conference and to engage in mediated negotiations on substantive issues.

(6) Conduct of the Mediation—The mediator, subject to the rules contained herein, shall control the procedural aspects of the mediation.

(7) Mediations Closed to the Public—To provide for effective mediation, participation in a mediation is strictly limited to the parties involved in the negotiation of the agreement contemplated by sections 251 and 252 of the Act that is the subject of the mediation. All mediation proceedings shall remain closed to the public.

(8) Caucusing—The mediator is free to meet and communicate separately with each party. The mediator shall decide when to hold such separate meetings. The mediator may request that there be no direct communication between the parties or between their representatives regarding the dispute without the concurrence of the mediator.

(9) Joint Meetings—The mediator shall decide when to hold joint meetings with the parties and shall fix the time and place of each meeting and the agenda thereof. Formal rules of evidence shall not apply to these meetings or any portion of the mediation proceeding.



(10) **No Stenographic Record**—No record, stenographic or otherwise, shall be taken of any portion of the mediation proceeding.

(11) **Exchange of Additional Information**—If any party has a substantial need for documents or other material in the possession of another party, the parties shall attempt to agree on the exchange of requested documents or other material. Further, if any party has substantial need for other information in the possession of another party, or if any party wishes to disclose to its employees information that it obtained from another party, the parties shall attempt to reach agreement on disclosure of the information and who may see it. Should they fail to agree, either party may request a joint meeting with the mediator who shall assist them in their effort to reach an agreement. The parties may enter into nondisclosure agreements. At the conclusion of the mediation process, upon the request of the party that provided the documents or other material to one or more of the mediating parties the recipients shall return such documents or material to the originating party without retaining copies thereof.

(12) **Request for Further Information by the Mediator**—The mediator may request any mediating party to provide clarification and additional information necessary to assist in the resolution of the dispute.

(13) **Responsibility of the Parties to Negotiate and Participate**—Parties are expected to initiate proposals for resolution of the dispute, including proposals for partial resolution. Each party is expected to be able to provide to the mediator that party's justification for the terms of any resolution that it proposes.

(14) **Authority of the Mediator**—The mediator does not have authority to resolve the dispute, but the mediator shall help the parties attempt to reach a mutually satisfactory resolution. At any time during the mediation, the mediator may recommend to the parties only, oral or written proposals for resolution of the dispute, in whole or in part.

(15) **Reliance by Mediator Upon Experts**—The mediator may use the services of and rely on experts retained by, or employed by, the commission for purposes of the mediation. Other than subsequent mediations, if any, such experts shall not participate, directly or indirectly, in any subsequent proceedings regarding the same negotiation. The mediator shall disclose to the parties the identities of all experts that provide any services

to the mediator for purposes of the mediation.

(16) **Impasse and Recommended Resolution of Mediator**—In the event that the parties fail to resolve their dispute, the mediator, before terminating the mediation, shall submit to all of the parties a final proposed resolution that addresses all or part of the disputed issues. Each party shall advise the mediator within seven (7) days of the date the mediator issues the proposed resolution as to whether the party accepts the mediator's proposed resolution.

(17) **Termination of the Mediation**—Any of the following events shall terminate the mediation:

(A) The mediating parties execution of an agreement that resolves all disputed issues;

(B) Written service by a party on the mediator and other parties of a declaration that the mediation proceedings are terminated; or

(C) The mediator's submission to the parties and the commission of a written declaration that further mediation would be futile. Such a declaration shall be conclusory and neutrally worded to avoid any negative inference respecting any party to the mediation.

(18) **Confidentiality**—

(A) The entire mediation process shall be kept confidential, except for the terms of any final agreements reached during the mediation. The parties, the mediator and any experts used by the mediator, unless all parties agree otherwise, shall not disclose information obtained during the mediation process to anyone that did not participate in the mediation, including, but not limited to, commissioners, commission staff and third parties; provided, however, that the commissioners may be informed in writing, with a copy provided to each party to the mediation, of the identity of the participants and, in the most general manner, the progress of the mediation. Section 386.480, RSMo 2000 is applicable to mediations.

(B) Except as the parties otherwise agree, the mediator, and any experts used by the mediator, shall keep confidential all information contained in any written materials, the materials themselves and any other information submitted to the mediator. All records, reports, or other documents received by the mediator while serving in that capacity shall remain confidential. The mediating parties and their representatives are not entitled to receive or review any such materials or information submitted to the mediator by another party or representative, without the concurrence of the submitting party. At the

conclusion of the mediation, the mediator shall return to the submitting party all written materials and other documents which that party provided the mediator.

(C) The mediator shall not divulge records, documents and other information submitted to him or her during the mediation proceeding, nor shall the mediator testify in regard to the mediation, in any subsequent 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 arbitration, judicial or other proceeding, any of the following:

1. Views expressed or suggestions made by another party with respect to a possible resolution of the dispute;

2. Statements made by another party in the course of the mediation;

3. Proposals made or views expressed by the mediator; or

4. The fact that another party had or had not indicated willingness to accept a resolution proposed by the mediator.

(19) **Post-Agreement Procedure**—The parties shall present to the commission for approval any final agreements reached during mediation. Such proposed agreements, on the face of the agreement, shall:

(A) Not discriminate against a telecommunications carrier not a party to the mediated agreement;

(B) Be consistent with the public interest, convenience and necessity; and

(C) Comply with the commission's service quality standards for telecommunications services as well as the requirements of all other rules, regulations, and orders of the commission.

AUTHORITY: section 386.410, RSMo 2000.* Original rule filed Dec. 30, 2003, effective Aug. 30, 2004.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

4 CSR 240-36.040 Arbitration

PURPOSE: This rule provides the procedure for requesting and conducting arbitrations.

(1) **Who May Petition for Arbitration**—A party to a negotiation entered into pursuant to sections 251 and 252 of the Act may file a petition for arbitration.

(2) **Time to File**—A petition for arbitration may be filed not earlier than the one hundred thirty-fifth day nor later than the one hundred sixtieth day following the date on which an



incumbent local exchange carrier receives the request for negotiation. The arbitration shall be deemed to begin on the date that the petition for arbitration is filed with the commission. Regardless of proceedings in the arbitration, the parties may continue to negotiate unresolved issues. The party petitioning for arbitration shall provide a copy of the petition to the other party or parties not later than the day the commission receives the petition. If the incumbent local exchange carrier is a "rural carrier" subject to the rural exemption contained in 47 U.S.C. section 251(f), then a commission order terminating the rural exemption must precede any petition for arbitration.

(3) Content—A petition for arbitration must contain:

(A) A statement of each unresolved issue;

(B) A description of each party's position on each unresolved issue;

(C) A statement of all resolved issues and the terms of resolution;

(D) A proposed agreement addressing all issues, including those upon which the parties have reached an agreement and those that are unresolved. In preparing the proposed agreement, the petitioner should rely on the fundamental organization of clauses and subjects contained in an agreement previously arbitrated and approved by this commission;

(E) All relevant documentation that supports the petitioner's position on each unresolved issue; and

(F) Documentation that the petition complies with the time requirements of 4 CSR 240-36.040(2).

(4) Appointment of Arbitrator—Upon receipt of a petition for arbitration, the commission, or its designee, shall appoint an arbitrator to facilitate resolution of the disputed issues raised by the petition and shall immediately notify the parties of the identity of the arbitrator. The commission, or its designee, may appoint an arbitrator from outside the commission's employ only with the consent of all parties. The costs of an outside arbitrator shall be borne equally by the parties. The arbitrator shall attend all meetings, conferences and hearings as described in 4 CSR 240-36.040(9) and (10). The arbitrator shall not have participated as a mediator in a negotiation of any of the issues contained in the petition for arbitration.

(5) Style of Arbitration—An arbitrator, acting pursuant to the commission's authority under section 252(e)(5) of the Act, shall use final offer arbitration, except as otherwise provided in this section:

(A) Final offer arbitration shall take the form of issue-by-issue final offer arbitration, unless all of the parties agree to the use of entire package final offer arbitration. The arbitrator in the initial arbitration meeting shall set time limits for submission of final offers and time limits for subsequent final offers, which shall precede the date of a limited evidentiary hearing.

(B) Negotiations among the parties may continue, with or without the assistance of the arbitrator, after final arbitration offers are submitted. Parties may submit to the arbitrator or commission, as appropriate, any settlements reached following such negotiations.

(C) To provide an opportunity for final post-offer negotiations, the arbitrator will not issue a decision for a set time after submission to the arbitrator of the final offers by the parties.

(D) Each final offer submitted by the parties to the arbitrator shall:

1. Meet the requirements of section 251 of the Act, including the rules prescribed by the commission and the Federal Communications Commission pursuant to that section;

2. Establish interconnection, services, or access to unbundled network elements according to section 252(d) of the Act, including the rules prescribed by the commission and the Federal Communications Commission pursuant to that section; and

3. Provide a schedule for implementation of the agreement.

(E) If a final offer submitted by one (1) or more parties fails to comply with the requirements of this section or if the arbitrator determines in unique circumstances that another result would better implement the Act, the arbitrator has discretion to take steps designed to result in an arbitrated agreement that satisfies the requirements of section 252(c) of the Act, including requiring parties to submit new final offers within a time frame specified by the arbitrator, or adopting a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act, and the rules prescribed by the commission and the Federal Communications Commission pursuant to that section.

(6) Discovery—Discovery may begin after the filing of a petition for arbitration and may continue up until hearings begin, unless the arbitrator sets a later date. The parties may enter into nondisclosure agreements or request the commission issue a protective order. Unless otherwise provided, the commission's rules for discovery, 4 CSR 240-2.090, apply to discovery in the arbitration and the arbitrator may permit further discovery procedures at the initial arbitration meet-

ing, section 4 CSR 240-36.040(9). For good cause, the arbitrator may compel responses to data requests; in such cases, the response normally will be required in five (5) working days or less. Advisory staff, as provided in section (12) of this rule, may assist the arbitrator in resolving discovery disputes.

(7) Opportunity to Respond—Pursuant to subsection 252(b)(3) of the Act, any party to a negotiation, which did not file a petition for arbitration ("respondent"), shall file with the commission, within twenty-five (25) days of the date the petition for arbitration is filed with the commission, a response to the petition for arbitration. For each issue listed in the petition, the respondent shall restate the issue followed by the respondent's position on that issue. The respondent shall also identify and present any additional issues for which the respondent seeks resolution and provide such additional information and evidence necessary for the commission's review. The respondent shall include, in the response, a document containing the language upon which the parties agree and, show where the parties disagree, and provide both the petitioner's proposed language (bolded) and the respondent's proposed language (underlined). Finally, the response must contain all relevant documentation that supports the respondent's position on each issue identified in the response that remains unresolved. On the same day that the respondent files a response with the commission, the respondent must serve a copy of the response, and all supporting documentation, on each other party to the negotiation.

(8) Revised Statement of Unresolved Issues—Within seven (7) days after a response is filed, the petitioner and respondent(s) shall jointly file a revised statement of unresolved issues. This statement shall reflect deletions from the list presented by the petitioner in the initial petition and add only issues that appear to be unresolved based on the response(s) to the initial petition.

(9) Initial Arbitration Meeting—The arbitrator may call a mandatory initial meeting for purposes such as setting a procedural schedule, establishing a time limit for submission of final offers, allowing the filing of testimony, setting times by which testimony may be filed, simplifying issues, or resolving the scope and timing of discovery.

(10) Arbitration Conferences and Hearings—The arbitration shall consist of markup conferences and limited evidentiary hearings. At the markup conferences, the arbitrator shall hear the concerns of the parties, determine



whether the parties can further resolve their differences, and, with the parties, identify factual issues that may require limited evidentiary hearings. The arbitrator shall also announce rulings at the conferences as the issues are resolved. The conduct of the conferences and hearings shall be noticed on the commission's hearings calendar and notice shall be provided to all parties on the service list. Parties are expected to respond to questions from the arbitrator, and the arbitrator's advisory staff. The parties shall be given the opportunity to present witnesses at an on-the-record evidentiary hearing, and to cross-examine the witnesses of the other party(ies) to the arbitration. These conferences and hearings shall commence as soon as possible after all responses to the petition for arbitration are filed with the commission.

(11) **Limitation of Issues**—Pursuant to subsection 252(b)(4)(A) of the Act, the arbitrator shall limit the arbitration to the resolution of the unresolved issues raised in the petition, the response and the revised statement of unresolved issues (where applicable). However, in resolving these issues, the arbitrator shall ensure that such resolution meets the requirements of the Act.

(12) **Arbitrator's Reliance on Experts**—The arbitrator may rely upon:

(A) An arbitrator advisory staff to assist the arbitrator in the decision-making process. The arbitrator shall appoint the members of the arbitrator advisory staff from either or both commission staff and retained outside experts. The arbitrator shall inform the parties of the names of the members of the arbitrator advisory staff. Arbitrator advisory staff shall not have *ex parte* contacts with any of the parties individually regarding the issues in the negotiation. The arbitrator advisory staff's role is limited to providing legal advice and other analysis to the arbitrator, not to provide evidence. Persons that advised a mediator regarding the same negotiation are ineligible to serve as members of the arbitrator advisory staff.

(B) Responses to questions posed by the arbitrator that are made by commission staff members or outside individuals who are not members of advisory staff. Upon the arbitrator's request, and after notice to the parties to the arbitration, the arbitrator may pose questions to commission staff members or outside individuals who are not advisory staff. These questions shall be answered either in written form or at an arbitration session attended by the parties. The parties may submit written responses to answers to technical questions in a timely manner as deter-

mined by the arbitrator and shall be entitled to cross-examine any commission staff member or outside individual regarding the answer he, or she, provides in response to a question posed by the arbitrator. These questions and responses shall be included in the record before the arbitrator and commission.

(13) **Close of Arbitration**—The conference and hearing process is to conclude within ten (10) days of the commencement of the first hearing, unless the arbitrator determines otherwise.

(14) **Expedited Stenographic Record**—An expedited stenographic record of each evidentiary hearing shall be made. The parties shall equally bear the costs of preparing the expedited transcript.

(15) **Authority of the Arbitrator**—In addition to authority granted elsewhere in this rule, the arbitrator shall have the same authority in conducting the arbitration as a presiding officer, as defined in 4 CSR 240-2.120, has in conducting hearings under the commission's rules of practice and procedure. Because of the short time frame mandated by the Act, the arbitrator shall have flexibility to set out procedures that may vary from those set out in this rule; however, the arbitrator's procedures must substantially comply with the procedures listed herein. The arbitrator may vary from the schedule in this rule as long as the arbitrator complies with the deadlines contained in the Act.

(16) **Participation in the Arbitration Conferences and Hearings**—Participation in the arbitration conferences and hearings is strictly limited to the parties in a negotiation pursuant to sections 251 and 252 of the Act, the arbitrator, the arbitrator's advisory staff and, only to the extent needed to provide the answer(s) to a question(s) posed by the arbitrator under the procedure of section (12), commission staff and outside experts. Only those parties involved in the negotiation shall be parties in the arbitration. Others that formally request to be kept apprised of the arbitration proceeding will be placed on the "Information Only" portion of the service list.

(17) **Arbitration Open to the Public**—Though participation in arbitration conferences and hearings is strictly limited to the parties listed in the preceding subsection, arbitration hearings shall be held in a public forum, unless circumstances dictate that a hearing, or portion thereof, be conducted in closed session due to presentation or discussion of a party's confidential or proprietary informa-

tion. Any party to an arbitration that seeks to close any part of an arbitration hearing from the public must make a written request to the arbitrator describing the circumstances that support that party's request for a closed session. The arbitrator shall consult with the commission and rule on such requests.

(18) **Filing of Post-Hearing Briefs**—Each party to the arbitration may file a post-hearing brief within seven (7) days of the end of the markup conferences and hearings, unless the arbitrator extends the due date. Post-hearing briefs shall present, for each disputed issue, the party's argument in support of adopting its recommended position; with all supporting evidence and legal authorities cited therein. The arbitrator may limit the length of post-hearing briefs. The arbitrator shall also establish a time for the filing of reply briefs. The arbitrator may also permit or require the parties to file proposed arbitrator's reports or decisions.

(19) **Filing of Arbitrator's Draft Report**—Within fifteen (15) days following the hearings, the arbitrator shall file a draft report with the commission. The draft report shall include a) a concise summary of each issue resolved by the arbitrator and b) a reasoned articulation of the basis for the decision on each issue, including how the decision meets the standards set in sections 251 and 252 of the Act. The arbitrator shall issue a decision on the merits of the parties' positions on each issue raised by the petition for arbitration and response(s). Unless the result would be clearly unreasonable or contrary to the public interest, for each issue, the arbitrator shall select the position of one of the parties as the arbitrator's decision on that issue.

(20) **Filing of Comments on the Arbitrator's Draft Report**—Each party and any member of the public may file comments on the arbitrator's draft report within ten (10) days after it is filed with the commission. Such comments shall not exceed twenty (20) pages, unless otherwise authorized by the arbitrator, and shall be directed to perceived factual, legal or technical errors made in the draft report. Commenters shall make specific references to the record to support each claim of error. Comments that merely reargue positions taken in briefs will be accorded no weight. Reply comments, if permitted by the arbitrator, shall be limited to identifying misrepresentations of law, fact or condition of the record contained in comments.

(21) **Filing of the Final Arbitrator's Report**—The arbitrator shall file a final report with the commission no later than fifteen (15) days



after the filing date for comments and not later than two hundred twenty (220) days after the request for negotiation. The final report shall include a statement of findings and conclusions and the reasons or basis therefore, on all the material issues of fact, law or discretion presented on the record. Upon filing, the secretary of the commission shall serve the final report on all parties to the arbitration.

(22) *Ex Parte* Rules Applicable to Arbitration Proceedings—the restrictions on *ex parte* communications contained in 386.210, RSMo apply to arbitration proceedings held under this rule.

(23) Submission Date—Arbitration proceedings shall be deemed to be submitted for decision with the filing of post-hearing briefs.

(24) Commission's Decision—The commission may conduct oral argument concerning comments on the arbitrator's final report and may conduct evidentiary hearings at its discretion. The commission shall make its decision resolving all of the unresolved issues no later than the two hundred seventieth day following the request for negotiation. The commission may adopt, modify or reject the arbitrator's final report, in whole or in part.

AUTHORITY: section 386.410, RSMo 2000.*
Original rule filed Dec. 30, 2003, effective Aug. 30, 2004.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

4 CSR 240-36.050 Commission Approval of Agreements Reached by Arbitration

PURPOSE: This rule provides the procedure for commission approval of agreements reached by arbitration.

(1) Filing of Conformed Agreement—Unless the commission orders otherwise, within seven (7) days of the filing of a commission order approving, rejecting or modifying the arbitrator's final report, the parties shall file with the commission the entire agreement that was the subject of the negotiation. The agreement shall conform in all respects to the commission's order. Concurrently with the filing of the conformed agreement, the parties shall each file statements that indicate whether the agreement complies with the requirements of sections 251 and 252 of the Act, Missouri statutes, and the commission's rules.

(2) Within ten (10) days of the filing of the agreement, anyone may file comments concerning the agreement; however, such comments shall be limited to the standards for review referenced in section 4 CSR 240-36.050(4) of this chapter. The commission, upon its own motion, may hold additional informal hearings and may hear oral argument from the parties to the arbitration.

(3) Commission Review of Arbitrated Agreement—Within thirty (30) days following the filing of the arbitrated agreement, the commission shall issue a decision approving or rejecting the arbitrated agreement (including those parts arrived at through negotiations) pursuant to subsection 252(e) of the Act and all its subparts. In the event the commission fails to act on the arbitrated agreement within thirty (30) days of when the agreement is filed, the agreement shall be deemed approved.

(4) Standards for Review—Pursuant to subsection 252(e)(2)(B) of the Act, the commission may reject arbitrated agreements or portions thereof that do not meet the requirements of section 251 of the Act, the Federal Communications Commission's (FCC's) regulations prescribed under section 251 of the Act, or the pricing standards set forth in subsection 252(d) of the Act. Pursuant to subsection 252(e)(3) of the Act, the commission may also reject agreements or portions thereof that violate other requirements of the commission, including, but not limited to, quality of service standards.

(5) Written Findings—The commission's decision approving or rejecting an arbitration agreement shall contain written findings. In the event of rejection, the commission shall address the deficiencies of the arbitrated agreement in writing and may state what modifications of such agreement would make the agreement acceptable.

(6) Review of Commission Decision—Any party aggrieved by a commission decision made under this rule may seek relief in an appropriate federal district court pursuant to section 252(e)(6) of the Act.

(7) Copies of Agreements Reached by Arbitration—Paper copies of arbitrated agreements that have been approved by the commission may be obtained from the commission by request. The commission may charge a reasonable amount for photocopying an agreement, as permitted by applicable law.

AUTHORITY: section 386.410, RSMo 2000.*
Original rule filed Dec. 30, 2003, effective Aug. 30, 2004.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

**I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 10th of October, 2007.**



**Colleen M. Dale
Secretary**

MISSOURI PUBLIC SERVICE COMMISSION

October 10, 2007

Case No. EC-2008-0039

General Counsel's Office
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, MO 65102

Lewis R. Mills, Jr.
P.O. Box 2230
200 Madison Street, Suite 650
Jefferson City, MO 65102

Aquila, Inc.
Renee Parsons
20 West 9th Street
Kansas City, MO 64105

Robert Burdette Corp
Rita Hoop
401 W. 89th St.
Kansas City, MO 64114

Enclosed find a certified copy of an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in dark ink, appearing to read 'Colleen M. Dale', is positioned above the printed name and title.

**Colleen M. Dale
Secretary**