



ADMINISTRATIVE RULES OF MONTANA

38.5.4054 APPROVAL OF NEGOTIATED AND ARBITRATED AGREEMENTS; PREEXISTING AGREEMENTS

- (1) An interconnection agreement shall be submitted to the commission for approval under section 252 (e) of the 1996 Act after the issuance of the final arbitration order by the commission. The time for submitting the agreement shall be determined by the arbitrator on a case-by-case basis. The nine month time line for arbitration under section 252(b) (4) (C) and ARM 38.5.4020 is not applicable to the approval process.
- (2) Petitions for approval of agreements and all relevant accompanying documents shall be filed with the commission in the manner provided for in ARM 38.5.4012. Along with the petition for approval of an arbitrated agreement, the parties shall file a proposed notice of the application and opportunity to comment for the commission to serve on its general telecommunications mailing list. Any party to the agreement may submit a petition for approval. Unless filed jointly by all parties, the petition for approval and any accompanying materials should be served on the other signatories by delivery on the day of filing. Any filing not containing the required materials will be rejected and must be refiled when complete. The statutory time lines shall be deemed not to begin until the petition for approval has been properly filed.
- (3) Documents which must accompany the petition to constitute proper filing include the following:
 - (a) In the case of negotiated agreements:
 - (i) a complete copy of the signed agreement, including any attachments or appendices;
 - (ii) a brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position on whether the agreement should be adopted or modified, including a statement on why the agreement does not discriminate against nonparty carriers, is consistent with the public interest, convenience, and necessity, and is consistent with applicable state law requirements; and
 - (iii) a proposed order containing findings and conclusions.
 - (b) In the case of arbitrated agreements:
 - (i) a complete copy of the signed agreement, including any attachments or appendices;
 - (ii) a brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position on whether the agreement should be adopted or modified; a separate explanation of the manner in which the agreement meets each of the applicable specific requirements of section 251 of the 1996 Act, including the FCC regulations there under, and applicable state requirements;
 - (iii) complete and specific information to enable the commission to make the determinations required by section 252 (d) of the 1996 Act regarding pricing

standards, including supporting information on the cost basis for rates on interconnection and network elements and the profit component of the proposed rate, transport and termination charges, and wholesale prices; and

- (iv) a proposed order containing findings and conclusions.
- (c) In the case of combined agreements containing both arbitrated and negotiated provisions, the request for approval shall include the foregoing materials as appropriate, depending on whether a provision is negotiated or arbitrated. The memorandum or brief should clearly identify which sections were negotiated and which arbitrated.
- (4) The commission interprets the 1996 Act to require approval of agreements as follows:
 - (a) arbitrated agreements must be approved within 30 days after filing the executed agreement;
 - (b) negotiated agreements must be approved within 90 days after filing the executed agreement; and
 - (c) agreements containing both arbitrated and negotiated terms must be approved within 30 days after filing the executed agreement.
- (5) Commission review of agreements:
 - (a) Upon the filing by one or more parties of an agreement adopted under the arbitration process, the parties involved in the arbitration may file written comments supporting or opposing the proposed agreement within 10 days. Responses to the comments may be filed within five days following the filing of the comments.
 - (i) The commission will review agreements adopted through arbitration and will approve or reject an agreement by issuing an order with written findings as to any deficiencies within 30 days after filing of the agreement.
 - (ii) The commission may only reject an arbitrated agreement if it finds that the agreement does not meet the requirements of section 251 of the 1996 Act, including FCC regulations under section 251 or the standards set forth in section 252 (d) of the 1996 Act.
 - (b) Upon the filing of an agreement resulting from voluntary negotiations, including mediation, interested persons may file written comments supporting or opposing the proposed interconnection agreement within 21 days following notice by the commission. Responses to the comments may be filed within 10 days following the filing of comments.
 - (i) The commission will review agreements resulting from voluntary negotiations and will approve or reject an agreement by issuing an order with written findings as to any deficiencies within 90 days after filing of the agreement. If the commission has not issued such order within 90 days, the agreement shall be deemed approved on the 91st day.
 - (ii) The commission may reject the agreement if it finds that the agreement or any portion of the agreement, discriminates against a telecommunications carrier not a party to the agreement; or if it finds the implementation of the agreement or portion is not consistent with the public interest, convenience, and necessity.
- (6) The commission may review requests for approval and comments submitted pursuant to those requests at a public meeting and may schedule oral arguments to be presented at a public

meeting. The commission does not interpret the approval process required by the 1996 Act as requiring a contested case type hearing. However, if reasonable or necessary, the commission may hold a hearing under the contested case procedures outlined in the Montana Administrative Procedure Act.

- (7) Within 30 days of the commission's rejection of an agreement resulting from negotiation or arbitration or both, the parties may:
 - (a) file an application for reconsideration for the commission's consideration; or
 - (b) resubmit the agreement for commission approval if the parties have remedied the deficiencies found by the commission in its order.
- (8) The commission may approve a negotiated interconnection agreement even if the terms of the agreement do not comply with the requirements of this subchapter as long as the agreement fully complies with section 252 (c) of the 1996 Act.
- (9) The commission may not approve a BOC statement of generally available terms and conditions unless such statement complies with sections 251 and 252(d) of the 1996 Act. In approving such statement, the commission shall consider applicable state law and commission rules, including requiring compliance with telecommunications service quality standards or requirements.
 - (a) Within 60 days after a BOC statement of generally available terms and conditions is filed with the commission, the commission shall:
 - (i) complete the review of the statement, including reconsideration of the statement (unless the BOC agrees to an extension of the period for the review) ; or
 - (ii) permit the statement to take effect.
 - (b) If the commission has permitted the statement of generally available terms and conditions to take effect pursuant to ARM 38.5.4054(9) (a) (ii) , the commission may continue its review of such statement and may approve or reject the statement upon completion of its review.
- (10) All interconnection agreements between an incumbent LEC and another telecommunications carrier, including those negotiated before February 8, 1996, shall be submitted by the parties to the commission for approval pursuant to section 252 (e) of the 1996 Act. Interconnection agreements negotiated before February 8, 1996, between class A carriers as defined in FCC regulations, shall be filed with the commission by June 30, 1997, unless the commission determines that earlier submission is necessary and reasonable in carrying out its functions under the 1996 Act.
 - (a) If the commission approves a preexisting agreement, it shall be made available to other parties upon request.
 - (b) The commission may reject a preexisting agreement on the grounds that it is inconsistent with the public interest or for other reasons set forth in section 252 (e) (2) of the 1996 Act.

Authorizing statute(s): Sec. 69-3-103, MCA

Implementing statute(s): Secs. 69-3-102 and 69-3-201, MCA

History: NEW, 1997 MAR p. 319, Eff. 2/11/97.