

7811.1600 MEDIATION OF INTERCARRIER NEGOTIATIONS.

Subpart 1. **Request for mediation.** A party may request mediation by the commission at any point during the negotiation. The parties to the negotiation may also file a joint request for mediation. The request must be in writing and must include the following information:

A. the identity of the parties to the negotiation, including the name, address, and telephone numbers and FAX numbers of the parties or their representatives;

B. the date on which the bona fide request for negotiation was made pursuant to part 7811.2000, subpart 1, or the date on which the local exchange carrier's rural exemption was terminated pursuant to part 7811.2000, whichever is later;

C. a brief summary of the parties negotiation history, including meeting dates and issues discussed;

D. a brief statement of the nature of the dispute, including a list of the issues in the negotiation that identifies which issues have already been resolved, which have not been resolved and which unresolved issues should be mediated;

E. a statement of the parameters, if any, within which the requesting party expects the mediator to help resolve the disputed issues;

F. a proposed calendar for the mediation, including a date by which the mediation should be terminated if an agreement is not reached;

G. any recommendations regarding the choice of mediator, including preferences related to qualifications or individuals;

H. any agreements between the parties as to how the mediation should be conducted; and

I. when and how to respond to the request pursuant to subpart 3 if any negotiating party did not join the mediation request.

Subp. 2. **Notice of request.** The party requesting mediation shall serve the request on the other party or parties to the negotiation, the department and the Office of Attorney General-Residential Utilities Division (OAG-RUD).

Subp. 3. **Response to request.** The negotiating party that did not file a mediation request shall file with the commission a written response to the request within ten days after being served under subpart 2. The response must be served as provided in subpart 2. The response must indicate whether the party is willing to participate in a mediation and identify any disagreements with the text of the petition for mediation.

Subp. 4. **Decision to initiate mediation.** The commission shall initiate a mediation upon request under subpart 2 unless another party to the negotiation indicates in writing

that it will not participate in a mediation. The mediation shall be initiated by appointing a mediator under subpart 5.

Subp. 5. **Appointment of mediator.** Within 15 days after receiving the mediation request, the commission or the commission's executive secretary shall appoint a person or persons to serve as mediator unless a party to the negotiation has submitted written notice that it will not participate in the mediation. Upon appointment, the mediator shall contact the parties promptly and establish a time to begin mediation. This subpart does not preclude the parties, by mutual agreement, from seeking private mediation from some other source in lieu of mediation under this part.

Subp. 6. **Mediator qualifications.** The person appointed to mediate must be an administrative law judge assigned by the Office of Administrative Hearings, a member of the commission's staff, or a person retained by the commission on contract for the purpose of mediating under this part. The mediator assigned must have training or experience in mediation or expertise in the subject matter of the negotiations.

Subp. 7. **Mediator neutrality and participation in subsequent proceedings.** The mediator must have no personal or financial interest in the outcome of the negotiations. The mediator shall not conduct or participate in any arbitration or approval proceedings regarding the matters submitted for mediation except as provided in subpart 15.

Subp. 8. **Mediator role.** The mediator has no authority to compel a settlement, but shall attempt to encourage voluntary settlement by the parties. The mediator may make suggestions or, subject to the consent of the parties, take actions the mediator considers helpful in facilitating a settlement. The mediator's actions may include:

- A. scheduling meetings;
- B. directing the parties to provide and exchange information;
- C. holding private caucuses with each party;
- D. consulting other sources such as the department or commission staff; and
- E. making oral or written recommendations for settlement.

Subp. 9. **Representation of parties.** A party may be represented by counsel or others of the party's choice.

Subp. 10. **Privacy.** Persons other than the parties' representatives may attend mediation sessions or otherwise participate in the mediation only upon agreement of the parties and the mediator.

Subp. 11. **Confidentiality.** Records, reports, or other documents received by the mediator while serving in that capacity must not be divulged by the mediator in any

subsequent proceeding. In any subsequent proceeding, the parties shall not rely on or introduce as evidence any of the following:

- A. views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- B. admissions made by another party in the course of the mediation;
- C. proposals made or views expressed by the mediator; or
- D. the fact that another party did or did not indicate a willingness to accept a proposal for settlement made by the mediator.

Subp. 12. **Discovery.** Subpart 11 does not require the exclusion of evidence in subsequent proceedings that is otherwise discoverable.

Subp. 13. **Record.** No stenographic record or electronic recording of the mediation process is permitted.

Subp. 14. **Termination of mediation.** The mediator shall end the mediation under any of the following circumstances:

- A. the parties execute an agreement on all the issues in dispute in the mediation;
- B. at least one party submits to the mediator and serves on the parties a written declaration of the party's unwillingness to continue the mediation; or
- C. the mediator determines that the mediation is unlikely to lead to a settlement, in which case the mediator shall serve on the commission and the parties a written statement terminating the mediation.

Subp. 15. **Mediator serving as arbitrator.** The mediator shall not conduct or participate in the arbitration proceedings under part 7811.1700 unless all the parties to the negotiation agree in writing. If the parties and mediator agree to have the mediator conduct the arbitration proceedings under part 7811.1700, they shall notify the commission in writing of this agreement. Unless the commission designates someone else to conduct the arbitration, the mediator shall be deemed to have been designated to conduct the arbitration effective upon commission receipt of the written notice.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

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