

CHAPTER 69-02-11 MEDIATION

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69-02-11-01. Definitions.

As used in this chapter:

1. "Act" means the federal Telecommunications Act of 1996 [Pub. L.No. 104-104].
2. "Commission" means the North Dakota public service commission.
3. "Mediation" means an informal, confidential, and nonadversarial process by which a neutral third party assists the parties in reaching their own settlement by enhancing communication, promoting understanding, focusing the parties on the issues, and seeking creative problem solving.
4. "Mediator" means a qualified, neutral, or impartial third party, who assists the parties in reaching a voluntary agreement.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-11-02. Mediation request.

Under section 252(a)(2) of the Act, any party negotiating an agreement for interconnection, services, or network elements pursuant to section 251 of the Act, may at any point in the negotiation request the commission to participate in the negotiation and to mediate any difference between the parties arising in the course of the negotiation.

1. Parties are not required to seek mediation by the commission and may employ the services of a private mediator at their own expense.
2. A copy of the request for negotiation must be filed with the commission at the time the request is sent to the incumbent local exchange carrier.
3. The party that files a request for mediation with the commission shall deliver a copy of the request with proof of service on all parties to the negotiation on the day the request is filed with the commission.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-11-03. Appointment of a mediator.

The commission shall appoint a mediator within ten days after a request is filed.

1. The parties may select a mutually agreeable mediator and inform the commission in writing of the name and qualifications of the mediator. The commission shall appoint the mediator

selected by the parties unless the commission determines for good cause that the mediator should be disqualified.

2. In the event the mediator selected by the parties is disqualified or the parties fail to select a mutually agreeable mediator, the commission may appoint a member of its own staff or may contract with a third party to provide mediation services.
3. If the parties select a mediator or demand that mediation services be provided by a third party, the parties shall contract for the mediation services and shall be responsible for payment of the services. The commission may designate one or more staff personnel to provide technical assistance to the mediator.
4. Costs associated with the mediation process which are incurred by the commission shall be paid by the telecommunications companies involved in the proceeding under subsection 6 of North Dakota Century Code section 49-21-01.7. Costs incurred by the parties in contracting for third-party mediation are not costs incurred by the commission and must be paid by the parties.
5. The mediator must remain impartial and must withdraw from the mediation process if the mediator's impartiality is compromised. A commission employee who serves as the mediator will not be permitted to participate in the arbitration or approval process for the same agreement, unless the parties consent.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07, 49-21-07

69-02-11-04. Mediation procedure.

The mediation process is an informal, confidential, and nonadversarial process in which an impartial person, the mediator, assists the parties in efforts to resolve differences between them. The mediator has no authority to compel a resolution.

1. To the extent there is a conflict between these guidelines and the commission's rules of practice and procedure, the commission suspends its rules of practice and procedure under the authority of section 69-02-01-11.
2. Section 251(c)(1) of the Act imposes a duty on the parties to negotiate in good faith. For purposes of these rules, the duty to negotiate in good faith means a willingness to meet at reasonable times and at reasonable places with the intent and purpose of providing and sharing of information necessary to accomplish meaningful negotiation, cooperating in the negotiation process, and to negotiate with an attitude of openness and willingness to achieve a negotiated agreement. The duty to negotiate in good faith does not mean that the parties must reach agreement on any or all items being negotiated.
3. Parties to the mediation process may be represented by counsel or representatives of each party's choice. All parties shall provide to each other and to the mediator, in advance of the initial mediation session, the name, address, occupation, and telephone number of their counsel or representative.
4. Within fifteen days of the filing of the request for mediation, each party shall submit to the mediator a written statement summarizing the dispute and the issues or points in conflict, and the party's position on each point in conflict. The mediator may request such additional information the mediator determines is necessary to familiarize the mediator with the dispute.
5. Within ten days of the filing of the summary statements, the mediator shall convene the initial mediation conference. The purpose of the initial conference is to establish a procedural

schedule for the process, and to attempt to identify, simplify, and limit issues to be resolved. In addition, each party will be expected to informally present its position to the mediator.

6. The mediator will conduct the mediation sessions and will control all procedural aspects of the mediation. The mediator will schedule mediation sessions in consultation with the parties. The parties are expected to cooperate fully with the mediator.
7. Participation in mediation proceedings is restricted to the parties to the mediation, unless otherwise mutually agreed to by the parties and the mediator. Mediation proceedings are closed to the public.
8. The mediator may meet and communicate individually with the parties or their attorneys in an attempt to bring the disputing parties closer to agreement and may request that the parties not communicate directly with each other without the mediator's concurrence.
9. The mediation process is confidential to the extent permitted by law. No stenographic record of the proceedings or any part thereof may be taken.
10. The mediator shall not provide legal advice to the parties. The mediator's statements as to law or policy are not binding on the commission.
11. The parties shall cooperate in the exchange of information needed or useful in the negotiation. The mediator may call a joint meeting to assist the parties in an agreement for the exchange of information. All documents must be returned to the originating party at the conclusion of the mediation process.
12. At any time during the mediation process, the mediator may request either party to provide additional information for clarification purposes and to assist in the resolution of the dispute.
13. The parties are expected to initiate and present proposals for resolution of disputed issues and to provide justification for their position. The mediator may also present recommendations for the resolution of disputed issues at any point in the mediation process.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 28-32-08, 49-01-07

69-02-11-05. Termination of mediation.

Mediation must terminate upon execution of a mediated agreement by the parties, filing of a notice with the commission by a party that mediation is terminated, failure of a party or parties to negotiate in good faith, or notification to the commission by the mediator that further mediation is futile.

1. Any party that terminates the mediation proceeding shall provide a detailed explanation of its decision in a written declaration to the commission. If the mediator terminated the mediation procedure, the mediator must provide a detailed explanation why the mediation failed.
2. At any time subsequent to the termination of mediation, the parties and the mediator, by agreement, may resume mediation to attempt to resolve their differences. If appointment of a new mediator is necessary, the mediation must be initiated in the same manner as a new mediation.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-11-06. Applicable laws and rules.

The mediation procedure must be governed by the provisions of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56 (1996); the North Dakota Administrative Practices Act, North Dakota Century Code chapter 28-32; the commission's rules of practice and procedure; North Dakota Administrative Code article 69-02; and the commission issued guidelines and procedural orders.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07