State of Rhode Island and Providence Plantations
A. Ralph Mollis
Secretary of State

Rules and Regulations Filing Form

1. Agency Name and Address
Public Utilities Commission
89 Jefferson Blvd., Warwick

2. Title of Rule
Regulations Governing Arbitration, Mediation, Review and Approval of Interconnection Agreements

3. Statutory Source of Authority
R.I.G.L. Chapter 39 and Federal Telecommuications Act of 1996, 47 U.S.C. Section 252

4. Concise Explanatory Statement – §42–35–2.3
Regulations are intended to govern the arbitration, mediation, review and approval of interconnection agreement between telecommunication providers in order to facilitate orderly decision–making.

5. Type of Filing

Emergency Rules

A1. Emergency 120–day initial – §42–35–3(b)
☐ Adoption
☐ Amendment of ERLID:
☐ Repeal of ERLID:

A2. Emergency 90–day renewal – §42–35–3(b)
☐ Adoption
☐ Amendment
Indicate ERLID of 120–day initial:

Brief Statement of Reason for Finding Imminent Peril §42–35–3(b)(2):

Final Rules

☐ B1. Amendment ☐ B2. Adoption ☐ B3. Repeal ☑ C. Technical Revision

Supersedes ERLID: 977 Repeals ERLID: Expires ERLID:

If B1 or C, please indicate new, amended, deleted, or revised sections:
Change the name of the incumbent local exchange carrier from NYNEX to Verizon New England, Inc. throughout the rules, and remove signature of former Chairman on page 12

6. Notice and Hearing Information
Date of Public Notice – §42–35–3(a)(1):Notice Not Required
Date of Public Hearing – §42–35–3(a)(2):Hearing Not Required
End of Comment Period:00/00/0000

7. Agency Additional Information – Web Page
http:// .

8. Certification
I hereby certify that the attached rules and regulations were adopted in accordance with the Administrative Procedures Act (42–35) and that they are true copies of this Department, attest,

Luly E. Massaro
Name

Commission Clerk
Title

John Spirito Jr.
Notary Public

Subscribed and sworn before me
this 30th day of December, 2010

COMMISSION EXPIRES AUG. 14, 2013

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

REGULATIONS GOVERNING ARBITRATION, MEDIATION, REVIEW AND APPROVAL OF INTERCONNECTION AGREEMENTS

Date of Public Notice: February 14, 1997

Date of Public Hearing: February 26, 1997

Effective Date: May 12, 1997

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1. INTRODUCTION

The Telecommunications Act of 1996 provides for the submission to state commissions for their approval of interconnection agreements between telecommunications carriers and incumbent local exchange carriers. In the event negotiations between these parties fail, in whole or in part, parties may request mediation and/or arbitration from the state commission. The state commission may, to the extent practicable, consolidate proceedings in order to reduce administrative burdens.

The Act imposes expedited schedules for commencement of arbitration and for state commission approval of negotiated or arbitrated agreements. In particular, the Act imposes a time limit of nine months from the date a telecommunications carrier requests an interconnection agreement until state resolution by arbitration of any unresolved issues. Once an agreement is submitted for approval, the state commission must act to approve or reject it within ninety days of submission by the parties of an agreement reached through negotiation, and within thirty days of submission of an agreement adopted by arbitration. If the state commission allows these deadlines to lapse, the agreement is to be deemed approved.

In light of the necessity for expeditious action under the Act, parties are urged to pursue negotiated resolutions of the issues involved in interconnection agreements. The advantages to solutions crafted by the parties themselves, the success of recent collaborative processes, the efficacy of the mediation process for resolution of the complex issues involved, the ongoing litigation on regulated issues, and the time constraints of the Act all suggest the benefits of a negotiated resolution.

These following regulations are intended to implement 47 U.S.C. Section 252, and govern the arbitration, mediation, review and approval of interconnection agreements between telecommunications providers, in order to facilitate orderly decision-making.

2. DEFINITIONS

The meaning of terms used in these regulations shall be consistent with their general usage in the telecommunications industry unless specifically defined by Rhode Island law or Commission regulation. As used in these rules, except as otherwise required by the context:

a. "Act" means the Communications Act of 1934, 47 U.S.C. Secs.151, et seq., as amended by the Telecommunications Act of 1996 (Pub.L. No. 104-104, 2/8/96).

b. "Arbitration" is an alternative dispute resolution process in which parties present evidence and legal arguments to a neutral third party (arbitrator), who renders a decision. The parties are required to accept the arbitration decision, subject to Commission approval pursuant to Section 252 of the Act.

c. Arbitrator" means an employee of the Commission, a Commissioner, or a neutral third party designated by the Commission to conduct arbitration proceedings pursuant to Section 252 of the Act.

d. "Clerk" means the Commission clerk, appointed by the Commission pursuant to R.I.G.L. Sec.39-1-9.

e. "Commission" means the Public Utilities Commission.

f. "Commission Rules" means the Commission's Rules of Practice and Procedure, as amended.

g. "CLEC" means a local exchange carrier other than an incumbent local exchange carrier.

h. "FCC" means the Federal Communications Commission.

i. "ILEC" means the incumbent local exchange carrier, which in this jurisdiction is Verizon New England, Inc., d/b/a Verizon Rhode Island. Verizon New England, Inc. is a Bell operating company.

j. "Interested Parties" shall initially refer to the service list attached to the docket in this case. Any other person or entity who wishes to be included on this service list as an interested party under these regulations may file such a request in writing with the Clerk. The master list shall be kept by the Clerk and updated as necessary. Any reference to service upon interested parties shall subsequently mean service on all parties included on the master list as updated by the Clerk.

k. "LEC" means a Local Exchange Carrier, any person or entity that is engaged in the provision of telephone exchange service or exchange

access.

l. "Mediation" is an alternative dispute resolution process in which a neutral third party (mediator) assists the parties in reaching their own settlement. The mediator does not have the authority to impose a resolution; the goal of the process is to help the parties achieve their own resolution.

m. "Negotiation" is a process in which representatives of the parties in dispute communicate their differences to one another and, with this knowledge, try to resolve them. Successful negotiations produce voluntary agreement over terms and conditions regarding those items in dispute, which may even include methods for resolving disputes over the interpretation and application of terms and conditions under an existing agreement.

n. "Party" means those persons who submit to the Commission for approval an arbitrated or negotiated agreement pursuant to Section 252(e) of the Act; or a person allowed by the Commission or arbitrator to intervene in a proceeding.

o. "Telecommunications carrier" means any entity providing or intending to provide telecommunications services, except that such term does not include aggregators of telecommunications services. A telecommunications carrier shall be treated as a common carrier only to the extent that it is engaged in providing telecommunications services.

3. PRELIMINARY MATTERS

a. The following requirements are prerequisites for opening negotiations for interconnection agreements between an ILEC and other carriers.

(1) Any telecommunications carrier may open negotiations with an incumbent LEC for an interconnection agreement at any time. However, the carrier may not request mediation or arbitration, or submit a negotiated agreement for review, unless it agrees to bear a pro rata share of the costs of the proceeding.

(2) The carrier seeking interconnection shall notify the ILEC in writing, and all statutory deadlines and deadlines in these rules shall be counted from the date of the ILEC's receipt of the

notification. The ILEC shall inform the Commission, periodically or on request, of all pending requests for interconnection and the dates on which they were received.

(3) The notification of intent to negotiate shall describe in general terms the services and forms of interconnection requested, but need not include detailed lists or technical detail.

b. The negotiations may cover any or all of the obligations of either party under Section 251(a), (b), or (c) of the Act, or any other matter which the parties may mutually agree to include.

c. An ILEC may not impose any preconditions for negotiations other than those specifically authorized by the Commission.

d. The Commission may deviate from the provisions of these regulations for good cause, as it deems necessary to fulfill its obligations under the Act. However, no waiver will be initiated without affording the parties a hearing.

e. The filing of an arbitration request shall not preclude the parties from continuing negotiations on unresolved issues. Those issues that are resolved after an arbitration request has been filed with the Commission shall be considered negotiated provisions, subject to appropriate notice and comment deadlines under the proposed arbitration procedures.

f. An ILEC shall have a duty to negotiate in good faith with all carriers requesting interconnection, and any carrier requesting interconnection shall have a duty to negotiate in good faith with an ILEC.

(1) The parties may request Commission mediation or arbitration of any actions they perceive as failure to negotiate in good faith.

(2) At any stage in a mediation or arbitration, any party may identify to the mediator or arbitrator a perceived failure to negotiate in good faith, even if this failure was not identified in the initial petition for mediation or arbitration.

(3) At any point in a mediation or arbitration, the mediator or arbitrator may refer to the Commission a failure of any party to negotiate in good faith.

(4) If the Commission finds that any party has failed to negotiate in good faith it may take such actions as it deems appropriate in the circumstances.

(5) If the Commission finds that an ILEC has committed a serious breach of its obligation to negotiate in good faith, it may also interpose an objection under Section 271(d)(2)(B) to the granting of extended operating authority. If such authority is already granted, the Commission may file a complaint with the FCC under Sections 208(a) and 271(d)(6)(B).

g. To the extent there is a conflict between these regulations and the Commission Rules, these regulations shall control.

h. When an agreement is filed with the Commission for review, it will be docketed and open to public inspection and copying. The arbitrator's report will also be filed in the docket.

(1) No part of the agreement itself, including the rates, terms, and other information, may be confidential or proprietary. All terms of the agreement must be shown in the contract document itself, or by reference to another publicly available document, such as a tariff.

(2) A LEC shall make available any interconnection, service, or network element provided under an approved agreement to which it is a party, to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

4. MEDIATION

Mediation may be requested by either party at any time during the negotiation.

a. Mediation may be offered by a member of the staff, or an outside mediator acceptable to both parties and the Commission. The mediator shall decide the form that mediation will take, considering the desires of the parties and the nature of the disagreement.

b. The request for mediation shall be in writing, briefly stating the issue or issues to be mediated, and with a synopsis of the position of each

party. It will be served on the other party or parties to the negotiation in accordance with the Commission Rules no later than the day it is delivered to the Commission.

c. The mediator may act formally or informally, without regard to procedural provisions elsewhere in our rules. The mediator may accept ex parte presentations from the parties. The mediator may use any methods of dispute resolution that he or she finds appropriate to the circumstances. The mediator may request information in writing or interview the technical and legal experts of the parties separately, or may have them engage in a panel discussion to reach agreement.

d. Mediations will normally be conducted in private, though observers may be present if both parties and the mediator consent.

e. All parties shall respond to reasonable requests for information in a timely manner, delivering the information requested in the form requested. If a party fails to provide the requested information in a timely manner, the mediator and the Commission may use the best information they can obtain from any source, without regard to rules of evidence. The mediator may also refer the matter to the Commission for consideration as a failure to negotiate in good faith.

f. Information and positions adopted or provided during a mediation should be kept confidential, and are not binding on any party if the dispute is ultimately arbitrated.

g. Mediators may not participate in or decide arbitrations which follow unsuccessful attempts to resolve a matter through mediation.

5. NEGOTIATED AGREEMENTS

The following procedure shall be followed when parties who have negotiated and entered into a binding agreement for interconnection, services, or network elements under Section 252(a)(1) of the Act submit their voluntarily negotiated agreement for review by the Commission under Section 252(e) of the Act:

a. One or both of the parties shall file the agreement, along with a brief letter or petition requesting Commission approval, with the Clerk. The letter or petition shall be served on the list of interested parties maintained by the Clerk.

b. Within twenty-one days of the filing of the negotiated agreement, any interested party may submit comments to the Commission regarding the agreement. The comments shall be limited to the criteria for review under Section 252(e)(2)(A) of the Act. Any request for hearing must be filed with the comments. Absent a showing of good cause for a hearing, the Commission may review the negotiated agreement without a hearing. Any interested party filing comments and/or requests for hearing shall, on or before the date of filing of such comments or request, serve a copy on the parties to the negotiation. Upon the request of any other interested party, an interested party shall promptly serve a copy of its comments and/or request for hearing on the interested party making the request.

c. Within thirty-five days of the filing of the negotiated agreement, the parties to the negotiated agreement may file a response to any comments filed. Such a response shall include all supporting documentation, and shall be served on or before the filing date in accordance with the Commission Rules.

d. The Commission will review the agreement (and the comments) to determine:

   (1) whether the agreement (or any portion thereof) discriminates against any telecommunications carrier that is not a party to the agreement, and

   (2) whether the implementation of the agreement will be in the public interest, convenience, and necessity.

e. The Commission will issue its final decision accepting or rejecting the agreement within ninety calendar days of the date it was submitted for review.

6. ARBITRATION

Any party may request arbitration at any time during the period from the 135th to the 160th days, inclusive, after the date on which the ILEC receives a request for negotiation. The following procedure shall be followed when a party petitions the Commission to arbitrate any unresolved issues under Section 252(b) of the Act:

a. Arbitration may be performed by the Commission acting *en banc*; by delegating the task to a commissioner or a member of the staff; or by

delegating the task to an outside arbitrator acceptable to both parties and the Commission. The Commission shall decide the form that arbitration will take, considering the desires of the parties and the nature of the disagreement.

b. The request for arbitration shall be in writing, stating the issue or issues to be arbitrated, with a synopsis of the position(s) of each party, and providing all relevant documentation on each issue. The request shall also state the other items in the negotiation, those upon which agreement has been reached, in full detail, with all relevant documentation. The request shall be served on other parties to the negotiation in accordance with the Commission rules no later than the day it is delivered to the Commission. The other parties shall have twenty-five calendar days to file a response with the Commission.

c. In performing an arbitration, the arbitrator shall be limited to resolving only those issues upon which arbitration has been requested.

d. Arbitrations will normally be conducted in private, though the parties may, with the concurrence of the arbitrator, invite observers.

e. The arbitrator may act formally or informally, without regard to procedural provisions elsewhere in our rules. With the consent of both parties, but not otherwise, the arbitrator may accept *ex parte* presentations from the parties, subject to the requirement that the existence and subject matter of the *ex parte* communication be made known to the opposing parties. The arbitrator may use any methods of dispute resolution that he or she finds appropriate to the circumstances.

f. Disputes over whether an issue is properly subject to the arbitration process shall be decided by the arbitrator before hearing evidence on the merits of the dispute. The arbitrator should presume arbitrability unless a clear and convincing case is made to the contrary by the non-petitioning party challenging procedural arbitrability. A non-petitioning party will be deemed to have waived the right to challenge procedural arbitrability if it fails to do so when responding to the petition pursuant to Section 252(b)(3).

g. All parties shall respond to requests for information in a timely manner, as determined by the arbitrator, who need not be bound by our rules of procedure, delivering the information requested in the form requested. If a party fails to provide the requested information in a timely manner, the arbitrator and the Commission may use the best

information they can obtain from any source, without regard to rules of evidence. The arbitrator may also refer the matter to the Commission for consideration as a failure to negotiate in good faith.

h. The arbitrator shall make all findings and selected solutions in writing, in the form of a recommendation to the Commission. Notice of the arbitrator's recommended decision shall be served by the Clerk on the list of interested parties maintained by the Clerk.

i. The arbitrator's recommended order will be presented to the Commission so that review and approval can be completed no later than nine months from the date on which the LEC received the request for interconnection. Unless an extension of time is granted by the Commission, the recommended order shall be filed not later than eight months from the date on which the LEC received the request for interconnection.

j. Within fourteen days of the filing of the arbitrator's recommended decision, any interested party may submit comments to the Commission regarding the agreement or decision. The comments shall be limited to the criteria under Section 252(c) of the Act. Any interested party filing comments shall, on or before the date of filing of such comments, serve a copy on the parties to the arbitration.

k. Within twenty-one days of the filing of the arbitrator's recommended decision, the parties to the arbitrated agreement may file a response to any comments filed. Such a response shall be served on or before the filing date in accordance with the Commission Rules.

7. REVIEW OF ARBITRATED AGREEMENTS

The following procedure shall be followed when parties to an interconnection agreement adopted in whole or in part by arbitration submit their agreement to the Commission for approval under Section 252(e) of the Act:

a. One or both of the parties shall file the agreement, along with a brief letter or petition requesting Commission approval, with the Clerk.

b. An interconnection agreement which has issues resolved through negotiations as well as arbitration will be reviewed by the Commission as follows: the negotiated portions of the agreement shall be reviewed under Section 252(e)(2)(A) of the Act, and arbitrated portions of the

agreement shall be reviewed under Section 252(e)(2)(B) of the Act.

c. The Commission will issue its decision within thirty calendar days of the filing of the interconnection agreement.

8. STATEMENT OF GENERALLY AVAILABLE TERMS

The following procedure shall be followed whenever Verizon New England, Inc. files a statement of generally available terms and conditions ("SGAT"):

a. Verizon New England, Inc. shall, on or before the day the SGAT is filed with the Clerk, serve a notice of filing which generally describes the terms and conditions or the SGAT, or a copy of the SGAT itself, on all interested parties in accordance with the Commission Rules. If an interested party specifically requests a copy of the SGAT, Verizon New England, Inc. shall serve a copy of the SGAT on the party making the request. Verizon New England, Inc. shall, on or before the date of filing, serve a copy of the SGAT on the Department of Attorney General in accordance with the Commission Rules. The filing shall include a detailed explanation of how the SGAT complies with Section 251 and its implementing regulations, and Section 252 of the Act.

b. Comments may be filed within twenty-one days of the filing of the SGAT. Comments shall be limited to whether the SGAT complies with Section 251 and its implementing regulations, and Section 252 of the Act, and shall include all supporting documentation. Any request for hearing shall be filed with the comments. The Commission will grant the hearing request unless it specifically finds that none of the issues raised by the comments of any party is substantial enough to warrant a hearing. Comments and/or requests for hearing shall, on or before the date of filing, be served upon Verizon New England, Inc. and the Department of Attorney General in accordance with Commission Rules. Upon the request of any other interested party, an interested party shall serve a copy of its comments and/or request for hearing on the interested party making the request.

c. Within thirty-five days of the filing of the SGAT, Verizon New England, Inc. may file a response to any comments filed. Such a response shall be served on or before the filing date in accordance with the Commission Rules.

d. The Commission shall complete its review of an SGAT within sixty (60) days, unless the submitting carrier agrees to an extension of the period for such review.

9. FEES

a. Costs for arbitration, mediation, and final review of interconnection agreements will be assessed pro rata to the parties.

b. The Commission may set filing or other fees, as permitted by statute.

The foregoing rules and regulations, after due notice and an opportunity for hearing, are hereby adopted and filed with the Secretary of State this 22nd day of April, 1997, to become effective twenty (20) days after filing, in accordance with the provisions of R.I.G.L. 1956 (1988 Reenactment) Sec.42-35-2(a)(2), Sec.42-35-3, and R.I.G.L. 1956 (1984 Reenactment) Sec.39-1-26(c).

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