

54-8b-17 Procedures for enforcement of interconnection service quality -- Penalties for violation -- Funds collected.

- (1) Proceedings under Subsection 54-8b-2.2(1)(e) shall be conducted in accordance with the following procedure:
 - (a) The complaint shall be served upon the defendant telecommunications corporation and filed with the commission. A copy of the complaint shall also be served upon the Division of Public Utilities.
 - (b) An answer or other responsive pleading to the complaint shall be filed with the commission not more than 10 days after receipt of service of the complaint. Copies of the answer or responsive pleading shall be served on the complainant and the Division of Public Utilities.
 - (c) A prehearing conference shall be held not later than 10 days after the complaint is filed.
 - (d)
 - (i) The commission shall commence a hearing on the complaint not later than 25 days after the complaint is filed, unless the commission finds that extraordinary conditions exist that warrant postponing the hearing date, in which case the commission shall commence the hearing as soon as practicable.
 - (ii) Parties shall be entitled to present evidence as provided by the commission's rules.
 - (e) The commission shall take final action on a complaint not more than 45 days after the complaint is filed unless:
 - (i) the commission finds that extraordinary conditions exist that warrant extending final action, in which case the commission shall take final action as soon as practicable; or
 - (ii) the parties agree to an extension of final action by the commission.
- (2) The commission shall have the enforcement powers listed in Subsection (3) if, in the proceeding, the commission finds that:
 - (a) the telecommunications corporation has violated the terms of the commission's interconnection service quality rules;
 - (b) the telecommunications corporation has breached its obligations under the provisions of the Federal Telecommunications Act;
 - (c) either party to an approved interconnection agreement has violated the terms of the agreement; or
 - (d) either party has violated the terms of a statement of generally available terms.
- (3) If the commission makes any of the findings described in Subsection (2), the commission shall:
 - (a) order the telecommunications corporation to:
 - (i) remedy the violation; and
 - (ii) comply, as applicable, with the terms of the commission's interconnection service quality rules, the interconnection agreement, or statement of generally available terms;
 - (b) if considered appropriate by the commission, prescribe the specific actions that the telecommunications corporation must take to remedy its violation, including a time frame for compliance and the submission of a plan to prevent future violations;
 - (c) if considered appropriate by the commission, impose a penalty on the defendant telecommunications corporation subject to the following:
 - (i) if the violation is of the duties imposed under Section 54-8b-2.2 or 54-8b-16, the commission may impose a penalty for such violation as provided in Section 54-7-25; or
 - (ii) if the violating telecommunications corporation is other than an incumbent telephone corporation with fewer than 50,000 access lines in this state, and the violation is of a duty imposed under an interconnection agreement, a statement of generally available terms, or the obligations of Section 251 of the Federal Telecommunications Act, the commission may impose a penalty subject to the following:

- (A) if the commission finds that the violation was willful or intentional, the penalty may be in an amount of up to \$5,000 per day and the period for which the penalty is levied shall commence on the date the commission finds the violation to have first occurred through and including the date the violation is corrected; or
 - (B) if the commission finds that the violation was not willful or intentional, the penalty may be in an amount prescribed by Section 54-7-25 and the period for which the penalty is levied shall commence on the day after the deadline for compliance in the commission's order.
- (4)
- (a) The commission shall have the authority, on its own or at the request of the injured telecommunications corporation, to investigate a party's compliance with the commission's order under Subsection (3)(c)(ii).
 - (b) If corrective or remedial action acceptable to the commission is not completed:
 - (i) 45 days after the deadline set by the commission, the commission may increase the penalty up to \$10,000 per violation per day for a willful or intentional violation; or
 - (ii) 90 days after the deadline set by the commission, the commission may increase the penalty up to \$4,000 per violation per day for a violation that is not willful or intentional.
- (5)
- (a) The penalty under Subsection (3)(c) shall be in addition to, and not in lieu of, civil damages or other remedies that may be available to the injured party.
 - (b) In determining the amount of the penalty or the amount agreed to in compromise, the commission shall consider:
 - (i) the appropriateness of the penalty to the size of the violating party;
 - (ii) the gravity of the violation;
 - (iii) the good faith of the defendant telecommunications corporation in attempting to achieve compliance after notification of the violation;
 - (iv) the impact of the violation to the establishment of competition; and
 - (v) the actual economic harm incurred by the plaintiff telecommunications corporation.
 - (c) Each day of a continuing violation or a failure to comply is a separate offense for purposes of levying a penalty under this section.
- (6) All funds collected under this section shall go into the Universal Public Telecommunications Service Support Fund established under Section 54-8b-15, and shall be in addition to any contributions required of a telecommunications corporation under that section.

Enacted by Chapter 96, 1998 General Session