DATES: Any comments on this proposal must arrive by June 20, 2001.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You may inspect copies of the submitted rule and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1135.

SUPPLEMENTARY INFORMATION: This proposal addresses the recisions of defunct SIP rules from Coconino County, Mohave County, and Yuma County. In the Rules and Regulations section of this **Federal Register**, we are approving the recision of these rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 13, 2000.

Keith A. Takata,

Acting Regional Administrator, Region IX.

[**Editorial note:** This document was received at the Office of the Federal Register on May 15, 2001.]

[FR Doc. 01–12573 Filed 5–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA157–4112b; FRL–6981–6]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Approval of Revisions to Stage II Vapor Recovery Regulations for Southwest Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Pennsylvania Department of Environmental Protection (PADEP). This action proposes to approve PADEP's revised rules for the implementation of the control of volatile organic compounds (VOCs) from gasoline dispensing facilities (Stage II) in the Pittsburgh-Beaver Valley ozone nonattainment area. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 20, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, at the EPA Region III address above, or by e-mail at *wentworth.ellen@epa.gov*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 1, 2001.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 01–12575 Filed 5–18–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 01–05]

Alternative Dispute Resolution

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to issue new regulations implementing the Administrative Dispute Resolution Act. The new regulations would expand the Commission's Alternative Dispute Resolution (''ADR'') services, addressing guidelines and procedures for arbitration and providing for mediation and other ADR services. This proposed rule would replace current subpart U, Conciliation Service, with a new subpart U, Alternative Dispute Resolution, that would contain a new Commission ADR policy and provisions for various means of ADR. The proposal also would revise certain other regulations to conform to the Commission's new ADR policy.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications, no later than June 20, 2001.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001, E-mail: *secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Ronald D. Murphy, Commission Dispute Resolution Specialist, Federal Maritime Commission 800 North Capitol Street, NW., Room 970, Washington, DC 20573–0001, 202–523–5787, E-mail: *adr@fmc.gov.*

SUPPLEMENTARY INFORMATION: Alternative Dispute Resolution (''ADR'') refers to a variety of means to resolve conflicts or disputes, generally using a neutral third party to help the parties communicate and resolve their dispute. Generally, ADR is voluntary, and is designed to enable and empower the parties to a dispute to seek solutions which they decide meet their needs. ADR does not take the place of traditional processes; rather, it provides alternatives to traditional processes.

The Administrative Dispute Resolution Act (''ADRA'') was first promulgated in 1990 (Public Law No. 101–552), and subsequently amended in 1996 (Public Law No. 104–320). It defines ADR to mean any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombuds, or any combination thereof, 5 U.S.C. 571(3).

It is difficult to precisely define the various procedures used under the umbrella of ADR. There are a variety of definitions and the various procedures often overlap each other. The definitions of the various procedures are not as important, however, as is their focus on resolving disputes. Nevertheless, the following general descriptions may help explain the broad range of ADR procedures provided for by ADRA.

Mediation is the most frequently used ADR procedure. It is a process in which a mediator facilitates communication and negotiation between or among parties to a controversy and assists them in reaching a mutually acceptable resolution of the controversy. Mediation is a voluntary procedure, the key aspect of which is that the parties control the terms of any agreement to resolve the dispute. Conciliation is similar, but is relatively informal and unstructured in comparison to mediation. It is often used as a ''cooling off'' device. Facilitation, on the other hand, is a group process that is usually goal-oriented. These procedures can be considered forms of assisted negotiation.

Fact-finding, as used in the ADR context, involves the use of a neutral third party to investigate and determine a disputed fact. It is usually used for technical issues or significant factual issues which are part of a larger dispute. Sometimes, fact-finding is used in conjunction with mediation to resolve a fact which may be important to resolution of the controversy. The term mini-trials may be used to describe a procedure whereby the parties present a summary case before a panel of the parties' decision-makers. The panel then may negotiate and seek a consensus.

Arbitration in the form provided for under the ADRA is perhaps familiar to most by the term ''binding arbitration.'' It is an adjudicatory process, the scope of which in a particular controversy is defined in an arbitration agreement. Awards in such proceedings are enforceable in federal District Court pursuant to title 9 of the U.S. Code.

The use of ombuds was added to ADRA's definition of ADR in the 1996 amendments. It involves the use of an employee or organization component to whom complaints or problems can be brought with the hopes of quick, informal resolution.

Section 2 of ADRA spells out a number of congressional findings that led to passage of the statute. Among them are the increasingly formal, costly and lengthy administrative proceedings that were intended to offer a prompt, expert and inexpensive means of resolving disputes as an alternative to Federal court litigation. Also, ADR has been used in the private sector for many years, yielding quicker, less expensive and less contentious decisions.

Section 3 of ADRA requires each agency to adopt a policy that addresses the use of ADR and case management. In developing the policy, agencies are required to examine ADR in connection with formal and informal adjudications, rulemakings, enforcement actions, issuing and revoking licenses or permits, contract administration, and litigation by or against the agency.

On July 13, 1993, the Commission issued an Alternative Dispute Resolution Policy Statement. In it, the Commission stated its policy to encourage the use of ADR to the fullest extent compatible with the law and the agency's mission and resources. It noted that Commission employees and other persons involved in disputes before the Commission are required to consider at an early stage whether the use of ADR techniques would be appropriate and useful in a particular matter.

The policy statement noted that several rules of the Commission's Rules of Practice and Procedure address the issue of ADR. Rule 1 refers to the mandatory consideration of the use of ADR in all proceedings. Rule 56 deals with negotiated rulemakings. Rule 61 requires orders instituting a formal investigation or noticing the filing of a complaint to contain language requiring that, prior to the commencement of oral hearing, consideration be given by the parties and presiding officer to the use of alternative means of dispute resolution. Rule 94 authorizes presiding officers to direct parties to attend one or more prehearing conferences and requires that the use of alternative means of dispute resolution be considered at such conferences. Rule 147 provides authority to the presiding officer to encourage the use of ADR and require consideration of ADR at an early stage in the proceeding. Rule 91(d) specifically authorizes the Chief Administrative Law Judge to appoint a mediator or settlement judge acceptable to all parties. In addition, nonattorneys may be admitted to practice before the Commission and persons may appear on their own behalf or on behalf of their employer without having been admitted to practice, 46 CFR 502.27.

The policy statement also identifies other means of implementing ADR at the Commission. The informal procedure for adjudication of claims of $10,000 or less in Subpart S, in effect, involves a form of arbitration. The shortened procedure in Subpart K provides a means to have the complaint resolved by an administrative law judge upon a written record without oral hearing. A conciliation service is provided for under Subpart U, and the policy statement also refers generally to services provided by the then Office of Informal Inquiries, Complaints and Informal Dockets within the Office of the Secretary. Those services are now provided by the Office of Consumer Complaints within the Bureau of Consumer Complaints and Licensing.

The Commission's rules provide for nonadjudicatory investigations under Subpart R and compromise procedures under Subpart W. Moreover, the services of a Settlement Judge are available and will continue to be available pursuant to section 502.91.

In addition to requiring an agency policy statement, ADRA requires each agency to designate a Dispute Resolution Specialist of the agency, and to provide for training on a regular basis for the Dispute Resolution Specialist and other employees involved in implementing the agency's policy. The Commission has designated the Deputy Director, Bureau of Consumer Complaints and Licensing as its Dispute Resolution Specialist, 46 CFR 501.5(h)(1).

Other key provisions of ADRA authorize agencies to use a dispute resolution proceeding for the resolution of an issue in controversy if the parties

agree to such proceeding, 5 U.S.C. 572; provide that a neutral may be an officer or employee of the Federal Government or any other individual acceptable to the parties, 5 U.S.C. 573; provide for confidentiality of communications, 5 U.S.C. 574; and provide for arbitration in lieu of formal administrative proceedings, 5 U.S.C. 575–580.

When reorganizing the Commission in February 2000, one of the primary reforms was a plan to develop a refined ADR program for the Commission. The intent was to involve the agency more deeply in ADR and other mediation activities so as to find ways to settle disputes without having them processed via costly and time-consuming formal adjudications. Since then, Commission staff has been developing the ADR process and pursuing training and developmental activities.

The Commission's Dispute Resolution Specialist is a certified mediator and has made his services available to parties in formal complaint proceedings. Recently, those mediation services were instrumental in the parties to such a proceeding reaching an agreement that resolved not only the formal proceeding pending at the Commission, but also a pending suit before a state court.

Also within the scope of the Commission's Dispute Resolution Services are the ombuds services provided by the Office of Consumer Complaints (''OCC'') within the Bureau of Consumer Complaints and Licensing. During the past year, a number of events have caused many to avail themselves more of those services. The failure of a number of non-vessel-operating common carriers (''NVOCCs'') generated numerous complaints from shippers and freight forwarders. Some of the problems affected commercial shippers, while others concerned individual shippers of household goods and automobiles. Also, a number of problems were experienced with unlicensed and unbonded NVOCCs that failed to fulfill their transportation commitments. A number of these matters were resolved to the satisfaction of shippers and forwarders. In addition, recent failures of cruise lines have generated a substantial number of complaints. For the most recent fiscal year, the Commission's ombuds services responded to more than 2900 inquiries and complaints, and the efforts of OCC yielded over $193,000 in recoveries for those making complaints.

At this time, the Commission intends to further expand ADR services available from the Commission and issue the following proposed new rules. The proposed rules would implement an enhanced, comprehensive ADR program. These rules would emphasize requiring ADR consideration at early stages of proceedings and would provide for arbitration of matters at the Commission. The Commission will endeavor to provide mediation and other assisted negotiation procedures, and the rules provide for such services. Section 502.61 would be modified to make it mandatory for parties to consider ADR at an early stage of every proceeding in such a manner as the presiding Administrative Law Judge shall direct. Section 502.62 would be modified to require complainants to address the use of ADR when filing a complaint. Section 502.91 is revised to expand the means of ADR available in proceedings before Administrative Law Judges and to require the parties to consider ADR in all proceedings. Section 502.94 is modified to require consideration of ADR at prehearing conferences. Also, the current $10,000 limitation for informal docket proceedings in 502.301 has not been raised in a number of years, and would be raised to $50,000.

Finally, the conciliation service provided for in Subpart U of the Commission's Rules of Practice and Procedure has rarely been utilized, and would now be revised to provide a framework by which the Commission will provide a number of ADR services. Although many provisions of the proposed rule may seem focused on the use of ADR in formal proceedings, the Commission encourages use of the Commission's dispute resolution services at any stage. To do so, parties should contact the Commission's Dispute Resolution Specialist.

The provisions in the new proposed Subpart U regarding arbitration and confidentiality for the most part would be identical to provisions in the ADRA. Section 502.411, however, provides for mediation and other services, and makes clear that mediators and other neutrals involved in various means of dispute resolution are not bound by the Commission's *ex parte* rules. Mediators would be expressly authorized to conduct private sessions (or caucuses) with parties. While many mediators attempt to resolve disputes with little use of such caucuses, their use can be very effective in resolving many disputes.

The proposed rule contains no additional information collection or record keeping requirements and need not be submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Chairman certifies, pursuant to 5 U.S.C. 605, that the proposed rule would not have a significant impact on a substantial number of small entities. The final rule would expedite the complaint process, thereby reducing costs to small entities, while at the same time providing them with more assistance.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Maritime Commission proposes to amend 46 CFR part 502 as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority section is revised to read:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 5 U.S.C. 571–584; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 817d, 817e, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR, 1964–1965 Comp. p. 306; 21 U.S.C. 853a; Pub. L. 105–258, 112 Stat. 1902.

2. Section 502.61 is amended by revising paragraph (d) to read as follows:

§ 502.61 Proceedings.

* * * * *

(d) All orders instituting a proceeding or noticing the filing of a complaint will contain language requiring that at an early stage of the proceeding and when practicable the parties shall consider the use of alternative dispute resolution in such manner as the presiding officer shall direct and further requiring that hearings shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. [Rule 61.]

2a. Section 502.62 is amended by redesignating paragraphs (e) through (h) as paragraphs (f) through (i) and adding a new paragraph (e) to read as follows:

§ 502.62 Complaints and fee.

* * * * *

(e) Complainant(s) must state whether informal dispute resolution procedures were used prior to filing the complaint and whether complainant(s) consulted with the Commission Dispute

Resolution Specialist about utilizing alternative dispute resolution (ADR) under the Commission's ADR program.

* * * * *

3. Section 502.91 is amended by revising current paragraph (d) and adding new paragraphs (e) and (f) to read as follows:

§ 502.91 Opportunity for informal settlement.

* * * * *

(d) As soon as practicable after the commencement of any proceeding, the presiding judge shall direct the parties or their representatives to consider the use of alternative dispute resolution, including but not limited to mediation, and may direct the parties or their representatives to consult with the Federal Maritime Commission Alternative Dispute Resolution Specialist about the feasibility of alternative dispute resolution.

(e) Any party may request that a mediator or other neutral be appointed to assist the parties in reaching a settlement. If such a request or suggestion is made and is not opposed, the presiding judge will appoint a mediator or other neutral who is acceptable to all parties, coordinating with the Federal Maritime Commission Alternative Dispute Resolution Specialist. The mediator or other neutral shall convene and conduct one or more mediation or other sessions with the parties and shall inform the presiding judge, within the time prescribed by the presiding judge, whether the dispute resolution proceeding resulted in a resolution or not, and may make recommendations as to future proceedings. If settlement is reached, it shall be submitted to the presiding judge who shall issue an appropriate decision or ruling. All such dispute resolution proceedings shall be subject to the provisions of subpart U.

(f) Any party may request that a settlement judge be appointed to assist the parties in reaching a settlement. If such a request or suggestion is made and is not opposed, the presiding judge will advise the Chief Administrative Law Judge who may appoint a settlement judge who is acceptable to all parties. The settlement judge shall convene and preside over conferences and settlement negotiations and shall report to the presiding judge within the time prescribed by the Chief Administrative Law Judge, on the results of settlement discussions with appropriate recommendations as to future proceedings. If settlement is reached, it shall be submitted to the presiding judge who shall issue an appropriate decision or ruling. [Rule 91].

4. Section 502.94 is amended by revising paragraph (c) to read as follows:

§ 502.94 Prehearing conference.

* * * * *

(c) At any prehearing conference, consideration shall be given to whether the use of alternative dispute resolution would be appropriate or useful for the disposition of the proceeding whether or not there has been previous consideration of such use.

5. Section 502.301 is amended by revising paragraph (b) to read as follows:

§ 502.301 Statement of policy.

* * * * *

(b) With the consent of both parties, claims filed under this subpart in the amount of $50,000 or less will be decided by a Settlement Officer appointed by the Commission's Alternative Dispute Resolution Specialist, without the necessity of formal proceedings under the rules of this part. Authority to issue decisions under this subpart is delegated to the appointed Settlement Officer.

* * * * *

6. Subpart U is revised in its entirety to read as follows:

Subpart U—Alternative Dispute Resolution

Sec.

502.401 Policy.
502.402 Definitions.
502.403 General authority.
502.404 Neutrals.
502.405 Confidentiality.
502.406 Arbitration.
502.407 Authority of the arbitrator.
502.408 Conduct of arbitration proceedings.
502.409 Arbitration awards.
502.410 Representation of parties.
502.411 Mediation and other alternative means of dispute resolution.

§ 502.401 Policy.

It is the policy of the Federal Maritime Commission to use alternative means of dispute resolution to the fullest extent compatible with the law and the agency's mission and resources. The Commission will consider using ADR in all areas including workplace issues, formal and informal adjudication, issuance of regulations, enforcement and compliance, issuing and revoking licenses and permits, contract award and administration, litigation brought by or against the Commission, and other interactions with the public and the regulated community. The Commission will provide learning and development opportunities for its employees to develop their ability to use conflict resolution skills, instill knowledge of the theory and practice of ADR, and to facilitate appropriate use of ADR. To this end, all parties to matters under this part are required to consider use of a wide range of alternative means to resolve disputes at an early stage. Parties are encouraged to pursue use of alternative means through the Commission's Bureau of Consumer Complaints and Licensing in lieu of or prior to initiating a Commission proceeding. All employees and persons who interact with the Commission are encouraged to identify opportunities for collaborative, consensual approaches to dispute resolution or rulemaking.

§ 502.402 Definitions.

(a) *Alternative means of dispute resolution* means any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, factfinding, minitrials, arbitration, and use of ombuds, or any combination thereof;

(b) *Award* means any decision by an arbitrator resolving the issues in controversy;

(c) *Dispute resolution communication* means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant; except that a written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(d) *Dispute resolution proceeding* means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate;

(e) *In confidence* means, with respect to information, that the information is provided—

(1) With the expressed intent of the source that it not be disclosed; or

(2) Under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;

(f) *Issue in controversy* means an issue which is material to a decision concerning a program of the Commission, and with which there is disagreement—

(1) Between the Commission and persons who would be substantially affected by the decision; or

(2) Between persons who would be substantially affected by the decision;

(g) *Neutral* means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy; and

(h) *Person* has the same meaning as in 5 U.S.C. 551(2).

§ 502.403 General authority.

(a) The Commission intends to consider using a dispute resolution proceeding for the resolution of an issue in controversy, if the parties agree to such proceeding.

(b) The Commission will consider not using a dispute resolution proceeding if—

(1) A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) The matter significantly affects persons or organizations who are not parties to the proceeding;

(5) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

(6) The Commission must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the Commission's fulfilling that requirement.

(c) Alternative means of dispute resolution authorized under this subpart are voluntary procedures which supplement rather than limit other available agency dispute resolution techniques.

§ 502.404 Neutrals.

(a) A neutral may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

(b) A neutral who serves as a conciliator, facilitator, or mediator serves at the will of the parties.

(c) With consent of the parties, the Commission's Dispute Resolution Specialist will seek to provide a neutral in dispute resolution proceedings through Commission staff, arrangements with other agencies, or on a contractual basis.

(d) Fees. Should parties choose a neutral other than an official or employee of the Commission, fees and expenses shall be borne by the parties as the parties shall agree.

§ 502.405 Confidentiality.

(a) Except as provided in paragraphs (d) and (e) of this section, a neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral, unless—

(1) All parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing;

(2) The dispute resolution communication has already been made public;

(3) The dispute resolution communication is required by statute to be made public, but a neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

(4) A court determines that such testimony or disclosure is necessary to—

(i) Prevent a manifest injustice;

(ii) Help establish a violation of law; or

(iii) Prevent harm to the public health or safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.

(b) A party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication, unless—

(1) The communication was prepared by the party seeking disclosure;

(2) All parties to the dispute resolution proceeding consent in writing;

(3) The dispute resolution communication has already been made public;

(4) The dispute resolution communication is required by statute to be made public;

(5) A court determines that such testimony or disclosure is necessary to—

(i) Prevent a manifest injustice;

(ii) Help establish a violation of law; or

(iii) Prevent harm to the public health and safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;

(6) The dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award; or

(7) Except for dispute resolution communications generated by the neutral, the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding.

(c) Any dispute resolution communication that is disclosed in violation of subsection (a) or (b) shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(d)(1) The parties may agree between or amongst themselves to alternative confidential procedures for disclosures by a neutral. Upon such agreement the parties shall inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of paragraph (a) of this section that will govern the confidentiality of the dispute resolution proceeding in accordance with the guidance on confidentiality in federal proceedings published by the Inter Agency ADR Working Group and adopted by the ADR Council. (see *http://www.financenet.gov /financenet/fed/iadrwg/confid.pdf*). If the parties do not so inform the neutral, (a) shall apply.

(2) To qualify for the exemption under paragraph (j) of this section, an alternative confidential procedure under this subsection may not provide for less disclosure than the confidential procedures otherwise provided under this section.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral shall make reasonable efforts to notify the parties

and any affected nonparty participants of the demand. Any party or affected nonparty participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information shall have waived any objection to such disclosure.

(f) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(g) Paragraphs (a) and (b) of this section shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Paragraphs (a) and (b) of this section shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

(i) Paragraphs (a) and (b) of this section shall not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a party to or participant in such proceeding, so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

(j) A dispute resolution communication which is between a neutral and a party and which may not be disclosed under this section shall also be exempt from disclosure under 5 U.S.C. 552(b)(3).

§ 502.406 Arbitration.

(a) (1) Arbitration may be used as an alternative means of dispute resolution whenever all parties consent, except that arbitration may not be used when the Commission or one of its components is a party. Consent may be obtained either before or after an issue in controversy has arisen. A party may agree to—

(i) Submit only certain issues in controversy to arbitration; or

(ii) Arbitration on the condition that the award must be within a range of possible outcomes.

(2) The arbitration agreement that sets forth the subject matter submitted to the arbitrator shall be in writing. Each such arbitration agreement shall specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes.

(b) With the concurrence of the Dispute Resolution Specialist, binding arbitration may be used to resolve any and all disputes that could be the subject of a Commission administrative proceeding before an Administrative Law Judge. The Dispute Resolution Specialist may withhold such concurrence after considering the factors specified in § 502.403, should the Commission's General Counsel object to use of binding arbitration.

(c)(1) The Commission's Dispute Resolution Specialist will appoint an arbitrator of the parties' choosing for an arbitration proceeding.

(2) A Commission officer or employee selected as an arbitrator by the parties and appointed by the Dispute Resolution Specialist shall have authority to settle an issue in controversy through binding arbitration pursuant to the arbitration agreement; provided, however, that decisions by arbitrators shall not have precedential value with respect to decisions by Administrative Law Judges or the Commission. Administrative Law Judges may be appointed as arbitrators with the concurrence of the Chief Administrative Law Judge.

(d) The arbitrator shall be a neutral who meets the criteria of 5 U.S.C. 573.

§ 502.407 Authority of the arbitrator.

An arbitrator to whom a dispute is referred may—

(a) Regulate the course of and conduct arbitral hearings;

(b) Administer oaths and affirmations;

(c) Compel the attendance of witnesses and production of evidence at the hearing under the provisions of 9 U.S.C. 7 only to the extent the Commission is otherwise authorized by law to do so; and

(d) Make awards.

§ 502.408 Conduct of arbitration proceedings.

(a) The arbitrator shall set a time and place for the hearing on the dispute and shall notify the parties not less than 5 days before the hearing.

(b) Any party wishing a record of the hearing shall—

(1) Be responsible for the preparation of such record;

(2) Notify the other parties and the arbitrator of the preparation of such record;

(3) Furnish copies to all identified parties and the arbitrator; and

(4) Pay all costs for such record, unless the parties agree otherwise or the arbitrator determines that the costs should be apportioned.

(c)(1) The parties to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(2) The arbitrator may, with the consent of the parties, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each party has an opportunity to participate.

(3) The hearing shall be conducted expeditiously and in an informal manner.

(4) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

(5) The arbitrator shall interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(d) The provisions of § 502.11 regarding *ex parte* communications apply to all arbitration proceedings. No interested person shall make or knowingly cause to be made to the arbitrator an unauthorized ex parte communication relevant to the merits of the proceeding, unless the parties agree otherwise. If a communication is made in violation of this subsection, the arbitrator shall ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of a communication made in violation of this subsection, the arbitrator may, to the extent consistent with the interests of justice and the policies underlying this subchapter, require the offending party to show cause why the claim of such party should not be resolved against such party as a result of the improper conduct.

(e) The arbitrator shall make an award within 30 days after the close of the hearing, or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless the parties agree to some other time limit.

§ 502.409 Arbitration awards.

(a)(1) The award in an arbitration proceeding under this subchapter shall include a brief, informal discussion of the factual and legal basis for the award, but formal findings of fact or conclusions of law shall not be required.

(2) Exceptions to or an appeal of an arbitrator's decision may not be filed with the Commission.

(b) An award entered in an arbitration proceeding may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. Such an award also may not be used as precedent or otherwise be considered in any factually unrelated proceeding.

§ 502.410 Representation of parties.

(a) The provisions of § 502.21 apply to representation of parties in dispute resolution proceedings, as do the provisions of § 502.27 regarding representation of parties by nonattorneys.

(b) A neutral in a dispute resolution proceeding may require participants to demonstrate authority to enter into a binding agreement reached by means of a dispute resolution proceeding.

§ 502.411 Mediation and other alternative means of dispute resolution.

(a) Parties are encouraged to utilize mediation or other forms of alternative dispute resolution in all formal proceedings. The Commission also encourages those with disputes to pursue mediation in lieu of, or prior to, the initiation of a Commission proceeding.

(b) Any party may request, at any time, that a mediator or other neutral be appointed to assist the parties in reaching a settlement. If such a request is made in a proceeding assigned to an Administrative Law Judge, the provisions of § 502.91 apply. For all other matters, alternative dispute resolution services may be requested directly from the Commission's Alternative Dispute Resolution Specialist, who may serve as the neutral if the parties agree or who will arrange for the appointment of a neutral acceptable to all parties.

(c) The neutral shall convene and conduct mediation or other appropriate dispute resolution proceedings with the parties.

(d) Ex-parte Communications. Except with respect to arbitration, the provisions of 502.11 do not apply to dispute resolution proceedings, and mediators are expressly authorized to conduct private sessions with parties.

By the Commission.

Bryant L. VanBrakle,

Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 96–262; FCC 01–146]

Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether tariffed competitive LEC-provided access service for toll free, or ''8YY,'' numbers should be benchmarked to a different figure than the Commission has adopted for CLEC tariffed switched access traffic generally.

DATES: Comments are due by June 20, 2001. Reply comments are due by July 20, 2001. Written comments by the public on the proposed and/or modified information collections discussed in this Further Notice of Proposed Rulemaking are due by June 20, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections by July 20, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to vhuth@omb.eop.gov. Parties should also send one paper copy of their filings to Jane Jackson, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–A225, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Jeffrey H. Dygert, Common Carrier Bureau, (202) 418–1500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 96–262 released on April 27, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

This FNPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

The FNPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection(s) contained in this FNPRM, as required by the PRA, Public Law 104–13. Public and agency comments on the proposed and/or modified information collections discussed in this Notice of Proposed Rulemaking are due by June 20, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections by July 20, 2001.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Synopsis of FNPRM

I. Further Notice of Proposed Rulemaking

1. Shortly before we issued the final rule that is published elsewhere in this issue, AT&T asserted, for the first time in this proceeding, that CLEC originating 8YY, toll-free traffic should be subject to a different benchmark scheme than other categories of switched access traffic. AT&T argues that the benchmark for CLEC 8YY traffic should immediately move to the access rate of the competing ILEC and that CLECs should be mandatorily detariffed above that point. In support of this position, AT&T asserts that certain CLECs with higher access charges attempt to obtain as customers end users that typically generate high volumes of 8YY traffic, such as hotels and universities. AT&T further asserts that some CLECs then ''install limited, high-capacity facilities designed only to handle 8YY traffic'' and ''share their access revenues with the customers generating the [8YY] traffic'' through agreements that provide for payments to the end user based on the level of 8YY