

## Wireless Industry Arbitration RULES

Sponsored by the Cellular Telecommunications Industry Association

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To access the AAA Wireless Industry Arbitration Rules and Mediation Procedures with the previous version of the Standard Fee Schedule, visit the Archived Rules area of the site -- [click here](#).

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#### Introduction

At the beginning of 1997, there were an estimated 42 million subscribers to cellular and broadband PCS services. Each year, hundreds of millions of billing and contract-related transactions take place. Occasionally, disagreements develop over these transactions. Many of these disputes could be resolved by arbitration, the submission of a dispute to a disinterested person or persons for final and binding determination. Arbitration has proven to be an effective way to resolve disputes privately, promptly, and economically.

The Cellular Telecommunications Industry Association (CTIA) is a not-for-profit trade association. Its members include providers of commercial mobile radio service (i.e., cellular and PCS wireless services) to customers throughout the United States. CTIA has asked the leading independent experts in arbitration and alternative dispute resolution, the American Arbitration Association (AAA), to administer an arbitration program for the wireless industry and its customers.

The AAA, a public service, not-for-profit organization, offers a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York City and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on all forms of out-of-court dispute settlement.

#### Additional Information

The AAA provides additional information about arbitration and other alternative dispute

resolution procedures under the Wireless Industry Arbitration Rules through a toll-free telephone number. The number is 800-778-7879.

## Administration

The Rules contain three tracks: Regular Track Procedures; Expedited Procedures for cases involving claims of less than \$75,000; and Large/Complex Case Track Procedures for cases involving claims of at least \$500,000.

### Regular Track:

The Regular Track Procedures apply to cases involving claims between \$75,000 and \$500,000, and also apply in Expedited and Large/Complex cases where they do not conflict with any portion of the Expedited Procedures or the Large/Complex Case Procedures. Features of the Regular Track Procedures include:

- optional pre-arbitration mediation and/or early neutral evaluation;
- express arbitrator authority to control the discovery process;
- broad arbitrator authority to control the hearing; and
- written breakdowns of the award and, if requested in a timely manner by all parties or in the discretion of the arbitrator, a written explanation of the award.

### Expedited:

The Expedited Procedures apply to cases involving claims of less than \$75,000. Features of these procedures include:

- a 45-day "time standard" for case completion;
- an expedited arbitrator appointment process, with a single arbitrator appointed directly by the AAA from the Telecommunications Panel; and
- a presumption that cases involving less than \$75,000 will be heard on documents only, with an option of an oral hearing for an additional fee.

### Large/Complex Case Track:

Large/Complex Case Procedures, which supplement Regular Track Procedures, are for use in cases involving claims of at least \$500,000. Key features of the Large/Complex Case Track procedures include:

- mandatory pre-arbitration mediation and/or early neutral evaluation;
- a presumption of multiple arbitrators;
- a mandatory preliminary hearing with the arbitrators, which may be conducted by telephone;

- broad arbitrator authority to order discovery, including depositions; and
- a presumption that there will be multiple hearing days scheduled consecutively or in blocks of hearing days.

## The Telecommunications Panel

The AAA has established and maintains as members of its Telecommunications Panel individuals competent to hear and determine disputes administered under the Wireless Industry Arbitration Rules. These individuals are neutral, as provided in these Rules. Many of the Telecommunications Panel members are engaged directly in the telecommunications industry. Attorney members typically devote at least half of their practice to telecommunications matters. Telecommunications Panel members serving under these Rules must also attend periodic training.

## Administrative Fees

The AAA's administrative fees are based on the amount of the claim or counterclaim. Filing fees range from \$750 on claims below \$75,000 to a negotiated amount for claims in excess of \$10 million. In addition, in some cases there are additional administrative hearing and postponement fees. The fees cover AAA administrative services; they do not cover arbitrator compensation or expenses, if any, reporting services, or any post-award charges incurred by the parties in enforcing the award.

## Mediation

The parties may wish to submit their dispute to mediation privately or through the AAA prior to arbitration. In mediation, a neutral mediator assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. Mediation can be administered by the AAA in accordance with its Mediation Rules. There is no additional administrative fee where parties to a pending arbitration attempt to mediate their dispute under the AAA's auspices, but there may be a fee for the time of the mediator.

## WIRELESS INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION

### Expedited:

Unless the parties agree otherwise, the Expedited Procedures shall be applied in any case where no party's disclosed claim or counterclaim exceeds \$75,000, exclusive of claimed interest and arbitration fees and costs. Parties are encouraged to agree to the Expedited Procedures in cases involving more than \$75,000. The Expedited Procedures will not be applied, absent agreement by the parties, in cases in which there is no disclosed monetary claim, or in which any claim for equitable relief is made. The Expedited Procedures shall be applied as described in Sections E-1 through E-14 of these Rules, in addition to any other portion of these Rules that is not in conflict with the Expedited Procedures.

### Large/Complex Case Track:

Unless the parties agree otherwise, the procedures for Large/Complex Cases set forth in Sections L-1 through L-6 of these Rules shall supplement and, where they are in conflict, shall replace, the Regular Track Procedures for all cases administered by the AAA in which the claim or counterclaim of any party is at least \$500,000, exclusive of claimed interest and arbitration fees and costs. Any party may also elect to use the Large/Complex Case Procedures in cases involving claims under \$500,000, or in cases with undetermined or nonmonetary claims. The Large/Complex Case Track shall be applied as described in Sections L-1 through L-6 of these Rules, in addition to any other portion of these Rules that is not in conflict with the Large/Complex Case Procedures.

### Regular Track:

Unless the parties agree otherwise, all other cases shall be administered in accordance with Sections R-1 through R-52 of these Rules.

## REGULAR TRACK

### R-1. Agreement of Parties\*

The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever they provide for arbitration by the American Arbitration Association (AAA) or under its Wireless Industry Arbitration Rules. These Rules and any amendment of them shall apply in the form obtaining at the time the demand for arbitration or submission agreement is received by the AAA. The parties, by written agreement, may vary the procedures set forth in these Rules.

\* The AAA applies the *Supplementary Procedures for Consumer-Related Disputes* to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

### R-2. Name of Tribunal

Any tribunal constituted by the parties for the settlement of their dispute under these Rules shall be called the Arbitration Tribunal.

### R-3. Administrator and Delegation of Duties

When parties agree to arbitrate under these Rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these Rules, they thereby authorize the AAA to

administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these Rules, and may be carried out through such of the AAA's representatives as it may direct.

#### R-4. Telecommunications Panel

The AAA shall establish and maintain a Telecommunications Panel of arbitrators and shall appoint arbitrators as provided in these Rules.

#### R-5. Regional Offices

The AAA may, in its discretion, assign the administration of an arbitration to any of its regional offices.

#### R-6. Initiation Under an Arbitration Provision in a Contract

Arbitration under an arbitration provision in a contract shall be initiated in the following manner:

- a) the initiating party (the claimant) shall, within the time period, if any, specified in the contract(s), give written notice to the other party (the respondent) of its intention to arbitrate (the demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and the hearing locale requested;
- b) the claimant shall at the same time file at any regional office of the AAA two copies of the notice and two copies of the arbitration provisions of the contract, together with the appropriate filing fee as provided in the schedule of administrative fees.

The AAA shall give notice of such filing to the respondent or respondents. A respondent may file an answering statement in duplicate with the AAA within ten (10) days after notice from the AAA, in which event the respondent shall at the same time send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a counterclaim is made, the appropriate fee shall be forwarded to the AAA with the answering statement. If no answering statement is filed within the stated time, it will be treated as a denial of the claim. Failure to file an answering statement shall not operate to delay the arbitration.

#### R-7. Initiation Under a Submission

Parties to any existing dispute not covered by any agreement to arbitrate may commence an arbitration under these Rules by filing at any regional office of the AAA two copies of a written submission to arbitrate under these Rules, signed by the parties. It shall contain a statement of the matter in dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, together with the appropriate filing fee as provided in the schedule of administrative fees.

#### R-8. Changes of Claim

A party may, at any time prior to the close of the hearing, increase or decrease the amount of its claim or counterclaim upon payment of any difference in the filing fee that would have been required had such amount originally been claimed. No rebate in filing fees will be provided for decreased claims. Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed with the AAA, and a copy shall be mailed to the other party, who shall have a period of ten (10) days from the date of such mailing within which to file an answer with the AAA. After the arbitrator is appointed, no new or different claim or counterclaim may be submitted to that arbitrator except with the arbitrator's consent.

#### R-9. Administrative Telephone Conference, Preliminary Hearing, and Mediation Conference

At the request of any party, or at the discretion of the AAA, in cases not using the Expedited Procedures, an administrative telephone conference with the AAA and the parties and/or their representatives will be scheduled in appropriate cases to expedite the arbitration proceedings.

At the request of any party, or at the discretion of the arbitrator or the AAA, in cases not using the Expedited Procedures, a preliminary hearing with the parties and/or their representatives and the arbitrator may be scheduled by the arbitrator to specify the issues to be resolved, to stipulate to uncontested facts, to establish a schedule for hearings to resolve the dispute, and to consider any other matters that will expedite the arbitration proceedings. If the parties agree, the preliminary conference may be conducted by telephone.

With the consent of the parties, the AAA at any stage of the proceeding may arrange a mediation conference under the AAA's Mediation Rules, in order to facilitate settlement. The mediator shall not be an arbitrator appointed to the case. Where the parties to a pending arbitration agree to mediate under the AAA's Mediation Rules, no additional administrative fee is required to initiate the mediation. If the parties agree, the mediation may be conducted by telephone.

#### R-10. Exchange of Information

Consistent with the expedited nature of arbitration, the arbitrator may direct (i) the production of documents and other information, and (ii) the identification of any witnesses to be called. At least two (2) business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator is authorized to resolve any disputes concerning the exchange of information.

#### R-11. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within ten (10) days after notice of the request has been sent to it by the AAA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale. The AAA must follow any contract provision on the issue of locale, but otherwise its decision shall be final and binding .

#### R-12. Qualifications of an Arbitrator



Any neutral arbitrator appointed pursuant to Section R-13, R-14, R-15, F-6, or L-3, or selected by mutual choice of the parties or their appointees, shall be subject to disqualification for the reasons specified in Section R-18. If the parties specifically so agree in writing, the arbitrator shall not be subject to disqualification for those reasons.

Unless the parties agree otherwise, an arbitrator selected unilaterally by one party is a party-appointed arbitrator and is not subject to disqualification pursuant to Section R-18.

The term "arbitrator" in these Rules refers to the Arbitration Tribunal, whether composed of one or more arbitrators and whether the arbitrators are neutral or party-appointed.

#### R-13. Appointment from Telecommunications Panel

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: the AAA shall send simultaneously to each party to the dispute an identical list of names of persons chosen from the Telecommunications Panel.

Each party to the dispute shall have ten (10) days from the transmittal date in which to strike names to which it objects, number the remaining names in order of preference, and return the list to the AAA. In a single arbitrator case, each party may strike three names on a peremptory basis. In a multi-arbitrator case, each party may strike five names on a peremptory basis. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the Telecommunications Panel without the submission of additional lists.

#### R-14. Direct Appointment by a Party

If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the Telecommunications Panel from which the party may, if it so desires, make the appointment.

If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the AAA shall make the appointment. If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within ten (10) days thereafter an arbitrator has not been appointed by a party, the AAA shall make the appointment.

#### R-15. Appointment of Neutral Arbitrator by Party-Appointed Arbitrators or by Parties

If the parties have selected party-appointed arbitrators, or if such arbitrators have been appointed

as provided in Section R-14, and the parties have authorized them to appoint a neutral arbitrator within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint a neutral arbitrator, who shall act as chairperson.

If no period of time is specified for appointment of the neutral arbitrator and the party-appointed arbitrators or the parties do not make the appointment within ten (10) days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the neutral arbitrator, who shall act as chairperson.

If the parties have agreed that their party-appointed arbitrators shall appoint the neutral arbitrator from the roster, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section R-13, a list selected from the roster, and the appointment of the neutral arbitrator shall be made as provided in that section.

#### R-16. Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator.

#### R-17. Notice to Arbitrator of Appointment

Notice of the appointment of a neutral arbitrator, whether appointed mutually by the parties or by the AAA, shall be sent to the arbitrator by the AAA, together with a copy of these Rules, and the signed acceptance of the arbitrator shall be filed with the AAA within ten (10) days thereafter.

#### R-18. Disclosure and Challenge Procedure

Any person appointed as a neutral arbitrator shall disclose to the AAA any circumstance likely to affect impartiality, including any bias, any financial or personal interest in the result of the arbitration, or any past or present relationship with the parties or their representatives. Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and to others. Upon objection of a party to continued service of a neutral arbitrator, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be final.

#### R-19. Vacancies

If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules.

In the event of a vacancy in a neutral arbitrator office after any hearing has commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

#### R-20. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for any hearing. The AAA shall send a notice of hearing to the parties at least ten (10) days in advance of any hearing date, unless the parties agree otherwise.

#### R-21. Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three (3) days prior to the date set for any hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

#### R-22. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a date, time, and place determined by the arbitrator.

#### R-23. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

#### R-24. Attendance at Hearings

The arbitrator shall ensure the privacy of the hearings. Any person having a direct interest in the arbitration is entitled to attend hearings, but the arbitrator shall have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness.

#### R-25. Postponements

The arbitrator for good cause may postpone any hearing upon the request of a party, upon the agreement of all parties, or upon the arbitrator's own initiative.

#### R-26. Oaths

Before proceeding with the first hearing, or otherwise reviewing any evidence offered by any party, each arbitrator may take an oath of office and, if it is required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

#### R-27. Majority Decision

All decisions of the arbitrators must be by a majority. The award must also be made by a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

#### R-28. Order of Proceedings and Communication with Arbitrator

A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the date, time, and place of the hearing and the presence of the arbitrator, the parties, and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. In some cases, part or all of the above will have been accomplished at the preliminary hearing conducted by the arbitrator pursuant to Section R-9.

The claimant shall then present evidence to support its claim. The respondent shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence. Exhibits, when offered by either party, may be received in evidence by the arbitrator. The names and addresses of all witnesses and a description of the exhibits, in the order received, shall be made a part of the record.

There shall be no direct communication between the parties and a neutral arbitrator other than at oral hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the neutral arbitrator shall be directed to the AAA for transmittal to the arbitrator.

#### R-29. Arbitration in the Absence of a Party or Representative

The arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

#### R-30. Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator may issue a subpoena for witnesses or documents upon the request of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence, other than to preserve any applicable privileges, shall not be necessary. The arbitrator may request offers of proof, and may reject evidence deemed by the arbitrator to be cumulative, unreliable, or immaterial. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default,

or has waived the right to be present, or where the arbitration is proceeding without oral hearing.

#### R-31. Evidence by Affidavit and Posthearing Filing of Documents or Other Evidence

The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator before or after a hearing, the documents or other evidence, unless otherwise agreed by the parties and the arbitrator, shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

#### R-32. Interim Measures

At the request of any party, the arbitrator may take whatever interim measures the arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of property. Such interim measures may take the form of an interim award, and the arbitrator may require security for the costs of such measures. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. The arbitrator may apportion costs associated with applications for interim relief in any interim award or in the final award.

#### R-33. Closing of Hearings

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare any hearings closed.

If briefs are to be filed, hearings shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided in Section R-31 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of hearings.

#### R-34. Reopening of Hearings

Hearings may be reopened on the arbitrator's initiative, or by direction of the arbitrator upon application of a party, at any time before the award is made. If reopening hearings would prevent the making of the award within the specific time agreed to by the parties in the arbitration agreement, the matter may not be reopened unless the parties agree to an extension of time. When no specific date is fixed by agreement of the parties, the arbitrator shall have thirty (30) days from the closing of reopened hearings within which to make an award.

#### R-35. Waiver of Oral Hearing

The parties may provide, by written agreement, for the waiver of oral hearings. If the parties agree to waive oral hearings after the appointment of the arbitrator, the consent of the arbitrator must be obtained.

#### R-36. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

#### R-37. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these Rules, except the time for making the award. The AAA shall notify the parties of any extension.

#### R-38. Serving of Notice

Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these Rules, for any court action in connection therewith, or for the entry of judgment on any award made under these Rules, may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held.

The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these Rules. Where all parties and the arbitrator agree, notices may be transmitted by electronic mail (E-mail), or other method of communication.

#### R-39. Time of Award

The award shall be made promptly by the arbitrator and, unless specified by law, no later than thirty (30) days from the date of closing of hearings, or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

#### R-40. Form of Award

The award shall be in writing and shall be signed by a majority of the arbitrators. It shall be executed in the manner required by law. The arbitrator shall provide a concise, written breakdown of the award. If required by law, if requested in writing by all parties prior to the appointment of the arbitrator, or if the arbitrator believes it is appropriate to do so, the arbitrator shall provide a written explanation of the award.

#### R-41. Scope of Award

The arbitrator may grant any remedy or relief, including equitable relief, that the arbitrator deems just and equitable and that does not exceed the scope of the agreement of the parties. The

arbitrator shall, in the award, assess arbitration fees, expenses, and compensation as provided in Sections R-47, R-48, and R-49 in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA.

#### R-42. Modification of Award

Within twenty (20) days after the transmittal of an award, any party, upon notice to the other parties, may request that the arbitrator correct any clerical, typographical, technical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided.

The other parties shall be given ten (10) days to respond to the request. The arbitrator shall dispose of the request within twenty (20) days after transmittal by the AAA to the arbitrator of the request and any response thereto.

#### R-43. Award upon Settlement

If the parties settle their dispute during the course of the arbitration, the arbitrator may set forth the terms of the agreed settlement in an award. Such an award is referred to as a consent award.

#### R-44. Delivery of Award to Parties

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

#### R-45. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

#### R-46. Applications to the Court and Exclusion of Liability

- a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
- b) Neither the AAA nor any arbitrator in a proceeding under these Rules is a necessary party in judicial proceedings relating to the arbitration.
- c) Parties to these Rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.
- d) Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules.

#### R-47. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe filing and other administrative fees and

service charges to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable.

The filing fee shall be advanced by the initiating party or parties, subject to final apportionment by the arbitrator in the award.

The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

#### R-48. Expenses

Each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proofs. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and the cost of any proof produced at the direct request of the arbitrator, may be the subject of an award, and shall be borne equally by the parties pending an award.

#### R-49. Interest, Fees, and Costs

The award may include: (a) interest at such rate and from such date as the arbitrator may deem appropriate; and (b) an apportionment between the parties of all or part of the fees and expenses of the AAA and the compensation and expenses of the arbitrators.

#### R-50. Neutral Arbitrator's Compensation

Arbitrators shall charge a rate consistent with the arbitrator's stated rate of compensation, beginning with the first day of hearings. The parties shall be entitled upon request to the AAA to know the stated rate of compensation of any prospective neutral arbitrator.

If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the Association and confirmed to the parties.

Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

#### R-51. Deposits

The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

#### R-52. Interpretation and Application of Rules

The arbitrator shall interpret and apply these Rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these Rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final



decision. All other Rules shall be interpreted and applied by the AAA.

## EXPEDITED

### E-1. Applicability

Unless any party or the AAA determines otherwise, these procedures shall apply in any case in which no party's total disclosed claim or counterclaim exceeds \$75,000 , exclusive of claimed interest and arbitration fees and costs. Parties are encouraged to agree to use these procedures in cases involving more than \$2,000. The Expedited Procedures will not be applied, absent agreement by the parties, in cases in which there is no disclosed monetary claim. The Expedited Procedures shall be applied as described herein, in addition to any other portion of these Rules that is not in conflict under the Expedited Procedures.

### E-2 Desk Arbitration

Arbitration under the Expedited Procedures shall be based on written submissions by the parties, setting forth their reasons and evidence for their positions, without an oral hearing, unless any party requests a hearing or the arbitrator determines that an oral hearing is necessary. Written submissions should generally not exceed fifteen pages, exclusive of exhibits. Written submissions shall contain the following statement: "declare under penalty of perjury that the facts and exhibits in this submission are true to the best of my knowledge, information, and belief, except as otherwise stated herein."

### E-3. Limitations on Extensions

In the absence of extraordinary circumstances, the AAA may grant a party no more than one seven-day extension of the time in which to respond to the demand for arbitration or counterclaim. In extraordinary circumstances, the AAA or the arbitrator may grant an additional extension.

### E-4. Changes of Claim or Counterclaim

A claim or counterclaim may be increased in amount upon the agreement of the other party or the consent of the arbitrator, and upon payment of any difference in the filing fee that would have been required if such amount had originally been claimed. No new or different claim may be submitted once the time for filing an answer has expired.

If an increased claim or counterclaim exceeds \$75,000, the case will remain in Expedited unless either party requests Regular Track or Large/Complex Case Track arbitration.

### E-5. Communication of Notices

The parties shall accept all notices from the AAA by mail, overnight delivery, or electronic facsimile (fax). Where all parties and the arbitrator agree, notices may be transmitted by telephone, electronic mail (E-mail), or other method of communication.

### E-6. Appointment and Qualification of Arbitrator

Immediately after the filing of the answering statement or the expiration of the time within which the answering statement is to be filed, the AAA will transmit to the parties a list of, and biographical information about, members of the Telecommunications Panel who are available for service in Expedited cases. The parties are encouraged to agree to an arbitrator from this list, and to advise the AAA of their agreement, or any objections to any of the listed arbitrators, within seven (7) days of the AAA's transmission of the list. The AAA will appoint the agreed-upon arbitrator, or in the event the parties cannot agree on an arbitrator, will designate the arbitrator from among those names not stricken for objections.

The parties will be given notice by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons and under the procedures specified in Section R-18 of the Regular Track portion of these Rules.

#### E-7. Preliminary Telephone Conference

As promptly as practicable after the appointment of the arbitrator, a preliminary telephone conference shall be held among the parties or their attorneys or representatives, and the arbitrator.

The arbitrator shall establish a fair and equitable procedure and schedule for submission of documents and for exchange of exhibits among the parties. At this conference, any party may make a request for an oral hearing.

#### E-8. Exchange of Exhibits Before Hearings

At least two (2) business days prior to any hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator is authorized to resolve any disputes concerning the exchange of exhibits. No prior exchange of exhibits is required for desk arbitrations.

#### E-9. Discovery

There shall be no discovery, except as provided in Section E-8 or as ordered by the arbitrator in extraordinary cases when the demands of justice require it. In no event shall the arbitrator order any depositions.

#### E-10. Date, Time, and Place of Hearing

If a party has requested an oral hearing, the arbitrator shall, after payment of the required hearing fee by the party requesting the hearing, set the date, time, and place of the hearing, which shall be scheduled to take place within thirty (30) days of confirmation of the arbitrator's appointment. The AAA will notify the parties in advance of the hearing date. A formal notice of hearing will also be sent by the AAA to the parties.

#### E-11. Telephone Hearings

Either or both parties or the arbitrator may request a telephone hearing. No hearing fee will be

charged for a single telephone hearing. A hearing fee may be imposed as provided in the AAA's administrative fee schedule for any subsequent telephone hearing.

#### E-12. Hearing

Generally, hearings shall not exceed, in cumulative total, one (1) day. Unless the arbitrator determines otherwise, each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearings, and may require further submission of documents within two (2) days after any hearing. For good cause, the arbitrator may schedule one additional hearing day within seven (7) days after the initial hearing.

Generally, there will be no stenographic record. Any party desiring a stenographic record shall make arrangements directly with a stenographer, and shall notify the other party of these arrangements in advance of the hearing. A copy shall be made available for inspection by the other party and the arbitrator, at the expense of the ordering party.

#### E-13. Time of Award

The award shall be rendered not later than seven (7) days from the date of the final submission of documents or closing of any hearings.

#### E-14. Time Standards

The arbitration shall be completed by settlement or award within forty-five (45) days of confirmation of the arbitrator's appointment, unless all parties and the arbitrator agree otherwise or the arbitrator extends this time in extraordinary cases when the demands of justice require it. The AAA may modify these time standards in the event the parties submit their dispute to mediation.

#### E-15. Arbitrator's Compensation

The arbitrator will receive compensation at a per case rate to be determined by the AAA regional office administering the case.

### LARGE/COMPLEX CASE TRACK

#### L-1. Applicability

- a) Unless the parties agree otherwise, the Large/Complex Case Procedures shall apply to all cases administered by the AAA under these Rules in which the disclosed claim or counterclaim of any party is at least \$500,000, exclusive of claimed interest and arbitration fees and costs. Any party may also elect to use the Large/Complex Case Procedures in cases involving claims or counterclaims under \$500,000, or in cases with undetermined or non-monetary claims. Any such cases are herein referred to as Large/Complex Cases. The Large/Complex Case Procedures are designed to supplement the Regular Track Procedures. To the extent that there is any variance between the Regular Track Procedures and the Large/Complex Case Procedures, the Large/Complex Case Procedures shall apply.

- b) The parties to any arbitration proceeding that is subject to the Large/Complex Case Procedures may, prior to the appointment of the arbitrator(s) and by consent of all parties, agree to eliminate, modify, or alter any of these procedures. In such case, these procedures as so modified or altered shall apply to that particular case. After appointment of the arbitrator(s), such modifications may be made only with the consent of the arbitrator(s).

#### L-2. Administrative Conference

Prior to the dissemination of a list of potential arbitrators, the AAA shall, unless it determines the same to be unnecessary, conduct an administrative conference with the parties or their attorneys or other representatives, either in person or by conference call, at the discretion of the AAA. Such administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the AAA may deem appropriate, including:

- a) to obtain additional information about the nature and magnitude of the dispute and the anticipated length of hearing and scheduling;
- b) to discuss the views of the parties about the technical and other qualifications of the arbitrators;
- c) to obtain conflicts statements from the parties; and
- d) to discuss and arrange for mediation and/or early neutral evaluation with the parties.

#### L-3. Arbitrators

- a) Unless the parties have agreed otherwise, Large/Complex Cases shall be heard and determined by three arbitrators.
- b) The AAA shall provide each party with a list of eight arbitrators selected from the Commercial Panel, four from the Telecommunications Panel, and four from the Large/Complex Case Panel. Parties shall then select an arbitrator, or a panel of three arbitrators if any party has so requested, in the manner provided in the Regular Track portion of these Rules.

#### L-4. Preliminary Hearing

As promptly as practicable after the selection of the arbitrator(s), a preliminary hearing shall be held among the parties or their attorneys or other representatives and the arbitrator(s). With the consent of the arbitrator(s) and the parties, the preliminary hearing may: (a) be conducted by telephone conference call rather than in person; or (b) be omitted.

At the preliminary hearing the matters to be considered shall include, without limitation: (a) service of a detailed statement of claims, damages, and defenses, a statement of the issues asserted by each party and positions with respect thereto, and any legal authorities the parties may wish to bring to the attention of the arbitrator(s); (b) stipulations to uncontested facts; (c) the

extent to which discovery shall be conducted; (d) exchange and premarking of those documents which each party believes may be offered at the hearings; (e) the identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate; (f) whether, and the extent to which, any sworn statements and/or depositions may be introduced; (g) the extent to which hearings will proceed on consecutive days; (h) whether a stenographic or other official record of the proceedings shall be maintained; and (i) the possibility of further use of mediation or other nonadjudicative methods of dispute resolution.

#### L-5. Management of Proceedings

- a) Arbitrator(s) shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy, and cost-effective resolution among the parties of Large/Complex Cases.
- b) Parties shall cooperate in the exchange of documents, exhibits, and information within such party's control if the arbitrator(s) consider such production to be consistent with the goal of achieving a just, speedy, and cost-effective resolution of a Large/Complex Case. The parties may conduct such document discovery as may be agreed to by all the parties provided, however, that the arbitrator(s) may place such limitations on the conduct of such discovery as the arbitrator(s) shall deem appropriate. If the parties cannot agree on document discovery, the arbitrator(s), for good cause shown and consistent with the expedited nature of arbitration, may establish the extent of same.
- c) Parties shall cooperate in the conduct of the deposition of, or the propounding of interrogatories to, witnesses or parties if the arbitrator(s) consider such discovery to be consistent with the goal of achieving a just, speedy, and cost-effective resolution of a Large/Complex Case. The parties may conduct such discovery as may be agreed to by all the parties provided, however, that the arbitrator(s) may place such limitations on the conduct of such discovery as the arbitrators shall deem appropriate. If the parties cannot agree on discovery, the arbitrators, for good cause shown and consistent with the expedited nature of arbitration, may establish the extent of same.
- d) Generally, hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.
- e) The arbitrator(s) may direct the stenographic recording of the hearings, the cost of which shall be borne equally by the parties pending an award.

#### L-6. Optional Review

The parties may provide by prior agreement for the review of any award. Such review shall be initiated by written notice to the AAA within thirty (30) days after the award is issued. The review will be conducted by a new arbitrator selected in the same manner as the initial arbitrator, subject to any conditions to which the parties have agreed. The review arbitrator may not consider any new or different claims, but may review the original award to the same extent as the original arbitrator. The review arbitrator may either hold hearings or not, and may either confirm the original award or issue a new award, neither of which will be reviewable by any other

arbitrator.

## ADMINISTRATIVE FEES

The administrative fees of the AAA are based on the amount of the claim or counterclaim. Arbitrator compensation is not included in this schedule. Unless the parties agree otherwise, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the award.

In an effort to make arbitration costs reasonable for consumers, the AAA has a separate fee schedule for consumer-related disputes. Please refer to Section C-8 of the Supplementary Procedures for Consumer-Related Disputes when filing a consumer-related claim.

The AAA applies the Supplementary Procedures for Consumer-Related Disputes to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

### Pilot Flexible Fee Schedule

Recognizing the continued fragility of the business environment and wishing to provide cost-saving alternatives to parties filing an arbitration case, the American Arbitration Association is offering an optional fee payment schedule that parties may choose instead of the Standard Fee Schedule. It is a pilot that will be available on cases filed through May 30, 2010<sup>(1)</sup>, and is intended to give parties added flexibility in both filing and in selection of arbitrators. Please call 1-800-778-7879 or your nearest office if you have questions.

A non-refundable Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. Upon receipt of the Demand for Arbitration, the AAA will promptly initiate the case and notify all parties as well as establish the due date for filing of an Answer, which may include a Counterclaim. In order to proceed with the further administration of the arbitration and appointment of the arbitrator(s), the appropriate, non-refundable Proceed Fee outlined below must be paid. If a Proceed Fee is not submitted within ninety (90) days of the filing of the Claimant's Demand for Arbitration, the Association will administratively close the file and notify all parties. *No refunds or refund schedule will apply to the Filing or Proceed Fees once received.*

Savings for Mutual Arbitrator Appointment by Parties: Proceed Fees may be reduced by fifty (50) percent where parties mutually select and appoint their arbitrator(s) without the AAA providing a list of arbitrators and an appointment process. Parties must provide the Case Manager with the appropriate stipulations and information pertaining to arbitrator(s) that have been mutually selected and have accepted their appointment(s). Forms for confirmation of

arbitrators mutually selected and appointed by the parties are available through the Case Manager or AAA regional office.

The Flexible Fee Schedule below also may be utilized for the filing of counterclaims. However, as with the Claimant's claim, the counterclaim will not be presented to the arbitrator until the Proceed Fee is paid.

A Final Fee will be incurred for all claims and/or counterclaims that proceed to their first hearing. This fee will be payable in advance when the first hearing is scheduled, but will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified of a cancellation at least 24 hours before the time of the scheduled hearing, the Final Fee will remain due and will not be refunded.

All fees for the Pilot Flexible Fee Schedule, effective June 1, 2009 to May 30, 2010, will be billed in accordance with the schedule below:

| Amount of Claim                   | Initial Filing Fee | Proceed Fee   | Final Fee |
|-----------------------------------|--------------------|---|-----------|
| Above \$0 to \$10,000             | \$300              | \$550*  | \$200     |
| Above \$10,000 to \$75,000        | \$500              | \$600*  | \$300     |
| Above \$75,000 to \$150,000       | \$500              | \$1,500*  | \$750     |
| Above \$150,000 to \$300,000      | \$500              | \$2,525*  | \$1,250   |
| Above \$300,000 to \$500,000      | \$1,000            | \$3,750*  | \$1,750   |
| Above \$500,000 \$1,000,000       | \$1,000            | \$5,600*  | \$2,500   |
| Above \$1,000,000 to \$5,000,000  | \$1,000            | \$7,800*  | \$3,250   |
| Above \$5,000,000 to \$10,000,000 | \$2,000            | \$9,000*  | \$4,000   |
| Above \$10,000,000                | \$2,500            | \$11,500* plus .01% of claim amount over \$10,000,000 | \$6,000   |

|                  |         |                |         |
|------------------|---------|----------------|---------|
|                  |         | up to \$65,000 |         |
| Nonmonetary**    | \$1,000 | \$2,750*       | \$1,250 |
| Consent Award*** |         |                |         |

*(1) The Pilot Flexible Fee Schedule is subject to change or cancellation at any time prior to the date of May 30, 2010.*

*\*Where an arbitrator has been pre-selected and appointed by the parties, the Proceed Fee will be reduced by fifty percent (50%).*

*\*\*This fee is applicable only when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to the highest possible filing fee (see fee range for claims above \$10,000,000.00).*

*\*\*\*The AAA may assist the parties with the appointment of an arbitrator for the sole purpose of having their Consent Award signed. For more information, please contact your local AAA office, case management center or our Customer Service desk at 1-800-778-7879.*

All fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$1,000 for the Initial Filing Fee; \$3,750 for the Proceed Fee; and \$1,750 for the Final Fee.

Under the Flexible Fee Schedule, a party's obligation to pay the Proceed Fee shall remain in effect regardless of any agreement of the parties to stay, postpone or otherwise modify the arbitration proceedings. Parties that, through mutual agreement, have held their case in abeyance for one year will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be closed.

Note: The date of receipt by the AAA of the demand/notice for arbitration will be used to calculate the ninety-day (90) time limit for payment of the Proceed Fee.

### Standard Fee Schedule

An Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. A Case Service Fee will be incurred for all cases that proceed to their first hearing. This fee will be payable in advance at the time that the first hearing is scheduled. This fee will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified at least 24 hours before the time of the scheduled hearing, the Case Service Fee



will remain due and will not be refunded.

All fees for the Standard Fee Schedule, effective January 1, 2010, will be billed in accordance with the schedules below:

| Amount of Claim                   | Initial Filing Fee | Case Service Fee |
|-----------------------------------|--------------------|------------------|
| Above \$0 to \$10,000             | \$775              | \$200            |
| Above \$10,000 to \$75,000        | \$975              | \$300            |
| Above \$75,000 to \$150,000       | \$1,850            | \$750            |
| Above \$150,000 to \$300,000      | \$2,800            | \$1,250          |
| Above \$300,000 to \$500,000      | \$4,350            | \$1,750          |
| Above \$500,000 to \$1,000,000    | \$6,200            | \$2,500          |
| Above \$1,000,000 to \$5,000,000  | \$8,200            | \$3,250          |
| Above \$5,000,000 to \$10,000,000 | \$10,200           | \$4,000          |
| Above \$10,000,000                | *                  | *                |
| Nonmonetary Claims**              | \$3,350            | \$1,250          |

*\* For information regarding the fee schedule for claims in excess of \$10 million, see below.*

*\*\* This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a*

*monetary claim amount is not known, parties will be required to state a range of claims or be subject to a filing fee of \$10,200.*

### Standard Fee Schedule for Claims in Excess of \$10 Million

The following is the Standard Fee Schedule for use in disputes involving claims in excess of \$10 million. If you have any questions, please consult your local AAA office or case management center.

| Claim Size             | Fee  | Case Service Fee |
|------------------------|--|------------------|
| \$10 million and above | Base fee of \$12,800 plus .01% of the amount of claim above \$10 million | \$6,000          |
|                        | Filing fees capped at \$65,000   |                  |

Fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$2,800 for the filing fee, plus a \$1,250 Case Service Fee. Expedited Procedures are applied in any case where no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration costs.

Parties on cases filed under the Standard Fee Schedule that are held in abeyance for one year will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be administratively closed.

### Refund Schedule

The AAA offers a refund schedule on filing fees connected with the Standard Fee Schedule. For cases with claims up to \$75,000, a minimum filing fee of \$350 will not be refunded. For all other cases, a minimum fee of \$600 will not be refunded. Subject to the minimum fee requirements, refunds will be calculated as follows:

> 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.

> 50% of the filing fee will be refunded if the case is settled or withdrawn between six and 30 calendar days of filing.

> 25% of the filing fee will be refunded if the case is settled or withdrawn between 31 and 60 calendar days of filing.

No refund will be made once an arbitrator has been appointed (this includes one arbitrator on a three-arbitrator panel). No refunds will be granted on awarded cases.

Note: The date of receipt of the demand for arbitration with the AAA will be used to calculate refunds of filing fees for both claims and counterclaims.

#### Hearing Room Rental

The fees described above do not cover the cost of hearing rooms, which are available on a rental basis. Check with the AAA for availability and rates.

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