

04 NCAC 08 .0313 was originally published as 04 NCAC 08 .0109 in 28:4 NCR 311 and is adopted following objection by the Rules Review Commission and publication as required by G.S. 150B-21.12(c), with changes and in accordance with G.S. 150B-21.1(a3) as follows:

04 NCAC 08 .0313 ARBITRATION POLICIES

The Authority shall arbitrate any interconnection disputes between a TMC and other telecommunications carriers as described in Section 252 of the 1996 Telecommunications Act (“the Act”). This Rule sets forth the procedures for that process.

1. When the Authority is requested to arbitrate an interconnection agreement pursuant to Section 252(b)(1) of the Act or pursuant to a valid contractual agreement between a North Carolina cooperative and another telecommunication carrier, the petitioning party shall provide the Authority with the information required under Section 252(b)(2) of the Act and the non-petitioning party shall have the opportunity to respond in the timeframe set forth in Section 252(b)(3).
2. The Authority shall send each party a list of approved arbitrators. The parties shall have 15 days to review the list, strike names they object to, rank the remaining names in the order of preference and return the list to the Authority. The Authority shall then select the arbitrator agreed to by the parties. If the parties do not agree on the selection, the Authority shall select an arbitrator of its choosing from the list.
3. The parties seeking the arbitration ~~will~~ shall be held accountable for any financial obligations, and each shall be responsible for an equal portion of the arbitrator fee, regardless of the outcome of the recommendation submitted to the Authority. The fee shall be paid directly to the arbitrator.
4. At the request of any party, or at the discretion of the arbitrator, the arbitrator may:
 - A. schedule a preliminary hearing with the parties or its representatives;
 - B. direct the production of documents and other information and the identification of any witnesses to be called at the hearing; or
 - C. order the parties to attend a formal arbitration hearing.
5. The parties shall respond to requests for hearing dates by the deadline established by the Authority or the arbitrator, be cooperative in scheduling the earliest practical hearing date, and adhere to the established hearing schedule. The arbitrator shall send a notice of hearing to the parties at least 20 calendar days in advance of the hearing date, unless otherwise agreed to by the parties. At least five business days prior to the arbitration hearing, the parties shall exchange copies of all exhibits each party intends to submit at the hearing.
6. The arbitrator shall conclude the resolution of any unresolved issues no later than ~~but before the conclusion~~ of nine months following the date on which the request for arbitration was originally received by the Authority.

- 1 7. The petitioning party shall present evidence to support its petition. The non-petitioning party shall then
2 present evidence in response. The arbitrator has the discretion to vary this ~~procedure and~~ procedure, but
3 each party ~~has~~ shall have the right to be heard and ~~is~~ be given an opportunity to present ~~its~~ his or her case.
- 4 8. The arbitrator shall make a decision on the issues presented for arbitration that contains applicable findings
5 of fact and conclusions of ~~law, as applicable,~~ law and forward this recommended decision to the Authority.
- 6 9. The Authority shall consider the decision of the arbitrator to be a recommendation. The Authority shall
7 make the final decision in any arbitration hearing and may order additional written or oral testimony from
8 the parties in order to render the decision. The Authority may accept the recommended decision from the
9 arbitrator as its final decision, amend the recommended decision, or reject the recommended decision and
10 render its own independent decision.
- 11 10. In accordance with 47 U.S.C. 252, a resolution of any unresolved issues shall be reached not later than nine
12 months following the date on which the request for arbitration was originally received by the Authority.

13
14 *History Note: Authority G.S. 117-31; 47 U.S.C. 252;*

15 ~~*Eff. February 1, 1976*~~

16 *Eff. June 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Rural Electrification Authority

RULE CITATION: 04 NCAC 08 .0313

DEADLINE FOR RECEIPT: Tuesday, May 13, 2014

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

You need an introductory statement for the Rule. I suggest this:

04 NCAC 08 .0313 was originally published as 04 NCAC 08 .0109 in 28:4 NCR 311 and is adopted following objection by the Rules Review Commission and publication as required by G.S. 150B-21.12(c), with changes and in accordance with G.S. 150B-21.1(a3) as follows:

In Item (3), line 15, replace "will" with "shall"

In Item (6), line 29, I think you should delete "but before the conclusion of" so the language reads, "The arbitrator shall conclude the resolution of any unresolved issues no later than ~~but before the conclusion of~~ nine months..."

In Item (7), lines 33 and 34, state, "The arbitrator has the discretion to vary this procedure, ~~and but~~ each party ~~has~~ shall have the right to be heard and is be given an opportunity to present ~~its~~ his or her case."

I think Item (8) would read better if rearranged like this: "The arbitrator shall make a decision on the issues presented for arbitration that contains applicable findings of fact and conclusions of ~~law, as applicable, law~~ and forward this recommended decision to the Authority."

Please change the effective date to June 1, 2014

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

04 NCAC 08 .0313 ARBITRATION POLICIES

The Authority shall arbitrate any interconnection disputes between a TMC and other telecommunications carriers as described in Section 252 of the 1996 Telecommunications Act (“the Act”). This Rule sets forth the procedures for that process.

1. When the Authority is requested to arbitrate an interconnection agreement pursuant to Section 252(b)(1) of the Act or pursuant to a valid contractual agreement between a North Carolina cooperative and another telecommunication carrier, the petitioning party shall provide the Authority with the information required under Section 252(b)(2) of the Act and the non-petitioning party shall have the opportunity to respond in the timeframe set forth in Section 252(b)(3).
2. The Authority shall send each party a list of approved arbitrators. The parties shall have 15 days to review the list, strike names they object to, rank the remaining names in the order of preference and return the list to the Authority. The Authority shall then select the arbitrator agreed to by the parties. If the parties do not agree on the selection, the Authority shall select an arbitrator of its choosing from the list.
3. The parties seeking the arbitration will be held accountable for any financial obligations, and each shall be responsible for an equal portion of the arbitrator fee, regardless of the outcome of the recommendation submitted to the Authority. The fee shall be paid directly to the arbitrator.
4. At the request of any party, or at the discretion of the arbitrator, the arbitrator may:
 - A. schedule a preliminary hearing with the parties or its representatives;
 - B. direct the production of documents and other information and the identification of any witnesses to be called at the hearing; or
 - C. order the parties to attend a formal arbitration hearing.
5. The parties shall respond to requests for hearing dates by the deadline established by the Authority or the arbitrator, be cooperative in scheduling the earliest practical hearing date, and adhere to the established hearing schedule. The arbitrator shall send a notice of hearing to the parties at least 20 calendar days in advance of the hearing date, unless otherwise agreed to by the parties. At least five business days prior to the arbitration hearing, the parties shall exchange copies of all exhibits each party intends to submit at the hearing.
6. The arbitrator shall conclude the resolution of any unresolved issues no later than but before the conclusion of nine months following the date on which the request for arbitration was originally received by the Authority.
7. The petitioning party shall present evidence to support its petition. The non-petitioning party shall then present evidence in response. The arbitrator has the discretion to vary this procedure and each party has the right to be heard and is given an opportunity to present its case.
8. The arbitrator shall make a decision on the issues for arbitration that contains findings of fact and conclusions of law, as applicable, and forward this recommended decision to the Authority.

- 37 9. The Authority shall consider the decision of the arbitrator to be a recommendation. The Authority shall
38 make the final decision in any arbitration hearing and may order additional written or oral testimony from
39 the parties in order to render the decision. The Authority may accept the recommended decision from the
40 arbitrator as its final decision, amend the recommended decision, or reject the recommended decision and
41 render its own independent decision.
- 42 10. In accordance with 47 U.S.C. 252, a resolution of any unresolved issues shall be reached not later than nine
43 months following the date on which the request for arbitration was originally received by the Authority.
- 44
- 45
- 46

47 *History Note: Authority G.S. 117-31; 47 U.S.C. 252*

48 *Eff. February 1, 1976*

49 *Amended Eff. April 1, 2014*

50



Letter notifying the
agency of the continuing
objection to two rules
following the February
20, 2014 meeting

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

February 21, 2014

Frances Liles, Administrator
NC Rural Electrification Authority
Sent via email to files@nc-rea.net

Re: Rules 04 NCAC 08 .0101 and .0109.

Dear Frances:

At its meeting on February 20, 2014, the Rules Review Commission continued its objection to the above-captioned rules in accordance with G.S. 150B-21.12(c).

The Commission objected to both rules finding the agency lacks statutory authority to investigate member complaints against Telephone Membership Corporations.

The Commission additionally objected to Rule 08 .0109, finding the agency has no authority to set the process for arbitration outside of rulemaking as proposed in Item 6.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amanda J. Reeder
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
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Clerk's Office
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Rules Review
Commission
919/431-3000
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Civil Rights
Division
919/431-3036
fax: 919/431-3103

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: NC Rural Electrification Authority

RULE CITATION: 04 NCAC 08 .0109

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

In Item (2), the Authority states that the Administrator will to respond and investigate complaints for members of Electric Membership Corporations (EMCs) and Telephone Membership Corporations (TMCs). G.S. 117-2(11a) specifically allows the Authority to do this for EMCs. Staff is not aware of any corresponding authority for TMCs, and therefore does not see that the Authority is able to do this under the current statutes. [G.S. 117-2 is attached to the Staff Opinion for Rule .0101.]

In Item (6), the Authority states it will act as the arbitrator pursuant to 47 USC 252. Staff believes the Authority can do this. However, in Item (6), the Authority states it will arbitrate using the procedures set out on the Authority's website. Staff is not aware of any statutory authority to allow the Rural Electrification Authority to set this process outside of rulemaking.

§252. Procedures for negotiation, arbitration, and approval of agreements

(a) Agreements arrived at through negotiation

(1) Voluntary negotiations

Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before February 8, 1996, shall be submitted to the State commission under subsection (e) of this section.

(2) Mediation

Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

(b) Agreements arrived at through compulsory arbitration

(1) Arbitration

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

(2) Duty of petitioner

(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning—

- (i) the unresolved issues;
- (ii) the position of each of the parties with respect to those issues; and
- (iii) any other issue discussed and resolved by the parties.

(B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

(3) Opportunity to respond

A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition.

(4) Action by State commission

(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

(B) The State commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

(C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) of this section upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

(5) Refusal to negotiate

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

(c) Standards for arbitration

In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement, a State commission shall—

- (1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;
- (2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and
- (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) Pricing standards

(1) Interconnection and network element charges

Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 of this title, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section—

(A) shall be—

- (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
- (ii) nondiscriminatory, and

(B) may include a reasonable profit.

(2) Charges for transport and termination of traffic

(A) In general

For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5) of this title, a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) Rules of construction

This paragraph shall not be construed—

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

(3) Wholesale prices for telecommunications services

For the purposes of section 251(c)(4) of this title, a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

(e) Approval by State commission

(1) Approval required

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for rejection

The State commission may only reject—

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that—

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title, or the standards set forth in subsection (d) of this section.

(3) Preservation of authority

Notwithstanding paragraph (2), but subject to section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(4) Schedule for decision

If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a) of this section, or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b) of this section, the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section.

(5) Commission to act if State will not act

If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.

(6) Review of State commission actions

In a case in which a State fails to act as described in paragraph (5), the proceeding by the Commission under such paragraph and any judicial review of the Commission's actions shall be the exclusive remedies for a State commission's failure to act. In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section.

(f) Statements of generally available terms

(1) In general

A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 of this title and the regulations thereunder and the standards applicable under this section.

(2) State commission review

A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 of this title and the regulations thereunder. Except as provided in section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(3) Schedule for review

The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission—

(A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or

(B) permit such statement to take effect.

(4) Authority to continue review

Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2).

(5) Duty to negotiate not affected

The submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251 of this title.

(g) Consolidation of State proceedings

Where not inconsistent with the requirements of this chapter, a State commission may, to the extent practical, consolidate proceedings under sections 214(e), 251(f), 253 of this title, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commission in carrying out its responsibilities under this chapter.

(h) Filing required

A State commission shall make a copy of each agreement approved under subsection (e) of this section and each statement approved under subsection (f) of this section available for public inspection and copying within 10 days after the agreement or statement is approved. The State commission may charge a reasonable and nondiscriminatory fee to the parties to the agreement or to the party filing the statement to cover the costs of approving and filing such agreement or statement.

(i) Availability to other telecommunications carriers

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

(j) “Incumbent local exchange carrier” defined

For purposes of this section, the term “incumbent local exchange carrier” has the meaning provided in section 251(h) of this title.

(June 19, 1934, ch. 652, title II, §252, as added Pub. L. 104–104, title I, §101(a), Feb. 8, 1996, 110 Stat. 66.)

04 NCAC 08 .0109 is amended as published in 28:04 NCR, Page 311, with changes, as follows:

04 NCAC 08 .0109 DUTIES OF THE ADMINISTRATOR

~~The [Administrator of the NCREA] is responsible for directing the staff of the authority [Authority] in order to carry on the functions of the [Authority] in , [reviewing and presenting loans to the NCREA Board,] maintaining records, and files [files:] investigating [and providing responses to] complaints. [complaints and is responsible for all aspects of arbitration processes and procedures.] The Administrator has been granted the authority by the Rural Electrification Authority to select and employ any additional staff as required.~~

The Administrator is responsible for directing the staff of the Authority and overseeing the functions of the office.

(1) The Administrator shall oversee the application of the electric and telephone cooperatives rules and regulations to ensure they are administered according to the manner in which they are written.

(2) The Administrator shall investigate and respond to complaints such as requests for deposits, meter tampering disputes, boundary issues disputed bills and power surges from EMC and TMC members and shall request any additional information from the cooperative needed by the Authority to respond to the complaints.

(3) The Administrator may attend any annual meeting or Board meeting of an individual electric or telephone cooperative.

(4) The Administrator shall review all Federal grant or loan applications from electric and telephone cooperatives, request any additional information needed for those applications, and present the grant and loan requests to the Board for review and approval.

(5) The Administrator is responsible for reviewing interconnection agreements and amendments between the TMCs and competing local providers (CLPs) and commercial mobile radio service providers (CMRS) as defined in 47 U.S.C 252 in accordance with Section 252(e) of the Act and present those documents to the Board for approval.

(6) In situations where the Authority is requested to arbitrate an interconnection agreement pursuant to Section 252(b)(1) of the Act or pursuant to a valid contractual agreement between a TMC and another telecommunications carrier, the Administrator is responsible for reviewing the petitions for arbitration. The Authority will arbitrate the matter in accordance with the Resolution on Arbitration Policies on the Authority's website.

History Note: Authority G.S. 117-2(10); 117-2(11a); 117-2(12); 117-4; 117-3.1(a); 117-31; 117-26; 117-32; 47 U.S.C 252
Eff. February 1, 1976.
Amended Effective March 1, 2014



Letter to agency,
notifying it of the
Commission's December
objection

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

December 19, 2013

Frances Liles, Administrator
NC Rural Electrification Authority
120 Penmarc Drive
Suite 104
Raleigh NC 27603

Re: Rules 04 NCAC 08 .0101, .0102, .0107, .0108, .0109, .0110, .0111, .0112, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0212, .0301, .0302, .0303, .0305, .0306, .0307, .0308, .0309, .0310, .0311, .0312, .0401 and .0404.


Dear Frances:

At its meeting the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to these Rules based on ambiguity. The rules as written are unclear and do not clearly state the purposes or procedures contemplated in the Rules. In addition, the Commission objected to Rule 04 NCAC 08 .0210 for lack of statutory authority, as there does not appear to be any authority for the Rural Electrification Authority to investigate member complaints against Telephone Membership Corporations.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,


Amanda J. Reeder
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
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SECTION .0100 - GENERAL PROVISIONS

“04 NCAC 08 .0101 is amended as published in 28:04 NCR, Page 310, as follows”:

04 NCAC 08 .0101 PURPOSE

The North Carolina Rural Electrification Authority (NCREA) consists of five Board members to be appointed by the Governor of North Carolina. The NCREA Board employs an Administrator who is responsible for directing the staff with the successful completion of the required functions of the office. The purpose of the North Carolina Rural Electrification Authority NCREA is to work to secure and continue adequate and dependable electric and telephone services to customers served by the electric membership corporations (EMCs) and the telephone membership corporations (TMCs) in predominately rural areas of the state at the lowest possible cost and on a nondiscriminatory basis, as set forth in G.S. 117. To accomplish this purpose, the Authority acts as an agent in securing long-term loans or grants from any agency of the United States Government for EMCs and TMCs. The Authority also serves as a forum to receive and investigate complaints from members of these cooperatives and arrive at a just and satisfactory solution to the complaints. The NCREA, pursuant to the 1996 Telecommunications Act, is also responsible for receiving and establishing procedural schedules for Petitions for arbitration of interconnection agreements between TMCs and other local and wireless providers. The Authority renders final decisions for these arbitrations based on information received from testimony, data requests and hearings. The Authority approves TMC interconnection agreements and their amendments.

*History Note: Authority G.S. 117-2; 117-4; 117-26; 117-32;
 Eff. February 1, 1976.
 Amended Effective January 1, 2014*

“04 NCAC 08 0102 is amended as published in 28:04 NCR, Page 311, as follows”:

04 NCAC 08 0102 ~~NAME AND ADDRESS OF THE NCREA~~

The office of the ~~Rural Electrification Authority~~ NCREA is located in Raleigh, North Carolina and the mailing address for the Rural Electrification Authority is P. O. Box 25249 is 4321 Mail Service Center, Raleigh, North Carolina 27611-27699. Correspondence and communication with the NCREA should be addressed to the attention of the Administrator or to the Chairman of the NCREA. The NCREA office is open to the public Monday through Friday during the normal business hours established for state government agencies. A copy of the NCREA Board proceedings is available to the general public upon a written request to the NCREA office.

*History Note: Authority G.S. 117-1;
Eff. February 1, 1976.
Amendment Effective January 1, 2014*

1 “04 NCAC 08. 0107 is amended as published in 28:04 NCR, Page 311, as follows”:

2 **04 NCAC 08.0107 MEETINGS**

3 Members of the ~~Rural Electrification Authority~~ NCREA shall meet not more than 12 times in one year. Generally,
4 the meetings will be held at the office; however, meetings may be scheduled in conjunction with other related
5 activities within the state. The Administrator shall send a notice of the date of the meeting to all Board members,
6 cooperatives and interested parties prior to the meeting. If anyone has any matter to present for the Board’s
7 consideration, the Agency must receive all pertinent documents in the NCREA office three weeks prior to the
8 scheduled meeting.

9
10
11 *History Note: Authority G.S. 117-4; 117-5;*
12 *Eff. February 1, 1976.*
13 *Amended Effective January 1, 2014*

1 “04 NCAC 08 .0108 is amended as published in 28:04 NCR, Page 311 as follows”:

2 **04 NCAC 08 .0108 NOTIFICATION OF MEETINGS**

3

4 *History Note: Authority G.S. 117-5*

5 *Eff. February 1, 1976*

1 “04 NCAC 08 .0109 is amended as published in 28:04 NCR, Page 311, as follows”:

2 **04 NCAC 08 .0109 AUTHORITY STAFF**

3 The Rural Electrification Authority employs a secretary, who shall be a competent engineer, and, who also serves as
4 ~~chief administrator.~~ Administrator of the NCREA is responsible for directing the staff of the Authority in order to
5 carry on the functions of the ~~authority~~ Authority in checking loans reviewing and presenting loans to the NCREA
6 Board, maintaining records, and files; and investigating and providing responses to complaints and is responsible for
7 all aspects of arbitration processes and procedures. The Administrator has been granted the authority by the Rural
8 Electrification Authority to select and employ any additional staff as required.

- 9 (1) The Administrator shall oversee the application of the electric and telephone cooperatives rules and
10 regulations to ensure they are administered according to the manner in which they are written.
11 (2) The Administrator shall investigate member complaints and request additional facts or information from
12 the cooperative needed by the NCREA in order to adequately respond to written and verbal member
13 complaints.
14 (3) The Administrator may attend any annual meeting or Board meeting of an individual electric or telephone
15 cooperative, whether invited or not, if he/she feels it necessary to further better public relations or
16 communications between the cooperative and its members and this office.
17 (4) The Administrator shall review electric and telephone loan or grant applications, request any additional
18 information from the cooperatives for those applications, prepare a summary and present the loan requests
19 to the NCREA Board for their review and approval.
20 (5) The Administrator is responsible for reviewing all petitions for arbitration from the TMCs or other
21 telecommunications providers. Upon review of those petitions, the Administrator will provide a summary
22 to the Board and coordinate procedural schedules and any Orders that are written in connection with those
23 arbitrations. The Administrator is also responsible for reviewing interconnection agreements and
24 amendments between the TMCs and other local providers and presenting those documents to the REA
25 Board for their approval

26
27 *History Note:* Authority G.S. 117-2(12); 117-4;

28 *Eff. February 1, 1976.*

29 *Amended Effective January 1, 2014*

1 “04 NCAC 08 .0110 is amended as published in 28:04 NCR, Page 311, as follows”:

2

3 **04 NCAC 08 .0110 CORRESPONDENCE AND COMMUNITCATION**

4

5 *History Note: Authority G.S. 117-2(12);*

6 *Eff. February 1, 1976*

1 “04 NCAC 08 .0111 is amended as published in 28:04 NCR, Page 311, as follows”:

2

3 **04 NCAC 08 .0111 BOARD PROCEEDINGS**

4

5 *History Note: Authority G.S. 117-2(12)*

6 *Eff. February 1, 1976.*

1 “04 NCAC 08 .0112 is amended as published in 28:04 NCR, Page 311, as follows”:

2

3 **04 NCAC 08 .0112 MEMBER VISITATION**

4

5 *History Note: Authority G.S. 117-2(12);*

6 *Eff. February 1, 1976.*

“04 NCAC 08 .0201 is amended as published in 28:04 NCR, Page 312, as follows”:

04 NCAC 08 .0201 DEFINITIONS

(a) A “domestic corporation” ~~is hereby defined as~~ means an ~~electric membership corporation~~ EMC licensed by the State of North Carolina under Chapter 117 of the General Statutes to render its service to its members only in the territory assigned to it by the North Carolina Utilities Commission.

(b) A “domesticated corporation” ~~is a~~ means a foreign electric membership corporation licensed in the State of North Carolina to serve members within a defined area whose main charter is in another state.

(c) The Administrator is the person selected by the NCREA Board to oversee, manage and abide by the requirements and responsibilities of the day-to-day operation of the NCREA office.

History Note: Authority G.S. 117-28;
Eff. February 1, 1976.
Amended Effective January 1, 2014

“04 NCAC 08 .0202 is amended as published in 28:04 NCR, Page 312, as follows”:

04 NCAC 08 .0202 LOAN APPLICATIONS AND CATEGORIES

All ~~EMC~~electric membership corporations, both domestic and domesticated, ~~are required to~~ must petition the ~~North Carolina Rural Electrification Authority~~ NCREA for any funds in the form of grants or loans received from any agency of the United States Government for use in the State of North Carolina. All loan documents shall be presented at least three weeks prior to the scheduled North Carolina Rural Electrification Authority board meeting for review by the administrator.

Note: In the case of a domesticated corporation, only the funds for use in the State of North Carolina shall be included in the petition for the loan or grant. Loan categories shall be as defined by the United State Department of Agriculture, Rural Electrification Administration Bulletin 20-2, latest revision, and shall meet the requirements set forth in all other related bulletins covering loan policies and requirements under Section 4 of the Rural Electrification Act.

*History Note: Authority G.S. 117-26; 117-28;
Eff. February 1, 1976.
Amended Effective January 1, 2014*

1 “04 NCAC 08 .0203 is amended as published in 28:04 NCR, Page 312, as follows”:

2

3 **04 NCAC 08 .0203 LOAN CATEGORIES**

4

5 *History Note: Authority G.S. 117-26;*

6 *Eff. February 1, 1976.*

“04 NCAC 08 .0204 is amended as published in 28:04 NCR, Page 312, as follows”:

04 NCAC 08 .0204 DOCUMENTS REQUIRED FOR LOAN APPLICATIONS

The list of documents required for a loan application by the ~~North Carolina Rural Electrification Authority~~ NCREA are as ~~listed below~~ follows:

<u>DOCUMENT</u>	<u>NCREA</u>
(1) Petition to State Authority	1
(2) Board Resolution	1
(3) REA Form 740a	1
(4) REA Form 7 (Financial & Statistical Report)	1
(5) REA Form 7a (Supplement to REA Form 7)	1
(6) REA Form 740c	1
(7) REA Form 325a (Financial Forecast)	1
(8) Board Resolution Approving Financial Forecast	1
(9) Retail Rate Schedule	1
(10) Area Coverage Policy	1
(11) REA Form 602 with attachment	1
(12) Page 4 of Mortgage (if required)	1
(13) Tabulation of New Services Connected & Retired	1
(14) Environmental Statement	1
(15) Statement Regarding Historic Sights	
Listed in National Register	1
(16) Copy of Letter to National Rural Utilities	
Cooperative Finance Corporation	1
(17) Bylaws	1

History Note: Authority G.S. 117-26; 117-2(11);

Eff. February 1, 1976.

Amended Effective January 1, 2014

1 “04 NCAC 08 .0205 is amended as published in 28:04 NCR, Page 312, as follows”:

2

3 **04 NCAC 08 .0205 PRESENTATION OF DOCUMENTS**

4

5 *History Note: Authority G.S. 117-26; 117-2(10);*

6 *Eff. February 1, 1976.*

1 “04 NCAC 08 .0206 is amended as published in 28:04 NCR, Page 312, as follows”:

2 **04 NCAC 08 .0206 OPERATING STATEMENT RULES AND REGULATIONS**

3 (a) Each December 31 and June 30, a copy of the Financial and Statistical Report (REA Form 7) and Annual
4 Supplement to Financial and Statistical Report (REA Form 7a) shall be filed by the EMC with the ~~North Carolina~~
5 ~~Rural Electrification Authority~~ NCREA.

6 (b) A copy of the service agreements or policies of each EMC’s current operating rules and regulations shall be
7 filed with the NCREA. As rules and regulations are modified, revised copies of all revisions shall be filed with the
8 Authority within thirty days.

9 (c) A copy of the current bylaws of each EMC shall be filed with the NCREA.

10 (d) A copy of the current rate schedules of each EMC shall be filed with the NCREA.

11 (e) Each EMC shall file a data sheet at least once per year showing growth trends in miles of line, facilities, and
12 consumers served.

13 (f) Each EMC is requested to keep a current operating budget report breakdown sheet on file in this office for
14 purposes of loan reviews and reports.

16 *History Note: Authority G.S. 117-2(12);*

17 *Eff. February 1, 1976.*

18 *Amended Effective January 1, 2014*

1 “04 NCAC 08 .0207 is amended as published in 28:04 NCR, Page 313, as follows”:

2

3 **04 NCAC 08 .0207 OPERATING RULES AND REGULATIONS**

4

5 *History Note: Authority G.S. 117-2(12);*

6 *Eff. February 1, 1976.*

1 “04 NCAC 08 .0208 is amended as published in 28:04 NCR, Page 313, as follows”:

2

3 **04 NCAC 08 .0208** **BYLAWS**

4

5 *History Note: Authority G.S. 117-2(12);*

6 *Eff. February 1, 1976.*

1 “04 NCAC 08 .0209 is amended as published in 28:04 NCR, Page 313, as follows”:

2

3 **04 NCAC 08 .0209 RATE SCHEDULES**

4

5 *History Note: Authority G.S. 117-2(12);*

6 *Eff. February 1, 1976.*

1 “04 NCAC 08 .0210 is amended as published in 28:04 NCR, Page 313, as follows”:

2 **04 NCAC 08 .0210 COMPLAINTS**

3 Any member with a complaint against his cooperative (whether it is an electric or telephone membership
4 corporation) may contact the Administrator of the NCREA or the ~~his~~ designated staff member ~~of the North Carolina~~
5 ~~Rural Electrification Authority~~ The ~~administrator~~ Administrator (or staff member) ~~shall~~ will ~~contact the manager~~
6 ~~of the electric membership corporation to~~ investigate the complaint and obtain all data necessary to negotiate a
7 reasonable solution to the complaint. ~~In all cases, the manager of the cooperative is encouraged to settle the~~
8 ~~complaint; however, in all cases the administrator.~~ The Administrator (or his appointed staff member) ~~contacts~~ will
9 contact the member by phone or letter regarding the complaint. The solution to the problem is reached by factual
10 evidence, without biased opinions or discriminations. It is the responsibility of the Administrator ~~Administrator's~~
11 ~~responsibility~~ to ascertain that all service rules and regulations are administered fairly and equally to each member.
12 ~~regardless of whether he designates someone to handle the complaint or sees to it himself.~~ In the event no
13 satisfactory solution can be reached between the complainant and his cooperative, and if the ~~administrator~~
14 Administrator deems it necessary, the ~~administrator~~ Administrator will make a trip to visit the cooperative and its
15 member.

16
17 *History Note: Authority G.S. 117-2(12);*

18 *Eff. February 1, 1976.*

19 *Amended Effective January 1, 2014*

1 “04 NCAC 08 .0211 is amended as published in 28:04 NCR, Page 313, as follows”:

2 **04 NCAC 08 .0211 DATA SHEETS FOR PROGRESS REPORTS**

3

4

5 *History Note: Authority G.S. 117-2(12);*

6 *Eff. February 1, 1976.*

1 “04 NCAC 08 .0212 is amended as published in 28:04 NCR, Page 313, as follows”:

2

3 **04 NCAC 08 .0212 OPERATING BUDGET**

4

5 *History Note: Authority G.S. 117-2(11);*

6 *Eff. February 1, 1976.*

04 NCAC 08 .0301 is amended as published in 28:04 NCR, Page 313, as follows:

04 NCAC 08 .0301 DEFINITIONS

A “domestic corporation” ~~is defined as~~ means a telephone membership corporation (TMC) licensed by the State of North Carolina under Chapter 117 of the General Statutes to render its service to its members only in the territory assigned to it by the North Carolina Utilities Commission and agreed ~~on~~ to by the ~~North Carolina Rural Electrification Authority~~ NCREA.

Arbitration means arbitration proceedings as set out in the United States Telecommunications Act of 1996 and subsequent amendments to that Act. Rules for arbitration are prescribed by the NCREA and the Authority is responsible for establishing procedural schedules and for rendering final decisions for arbitration Petitions.

The NCREA is responsible for the review of interconnection agreements and their amendments upon receipt and presenting the agreements and amendments to the Authority for their approval. An interconnection agreement means an agreement for interconnection as set out in the United States Telecommunications Act of 1996 and subsequent amendments to that Act. Agreements and amendments are negotiated between TMCs and competing local providers (CLPs) or a Commercial Mobile Radio Service Provider (CMRS).

*History Note: Authority G.S. 117-2(12); 117-28;
Eff. February 1, 1976.
Amended Effective December 1, 2013.*

04 NCAC 08 .0302 is amended as published in 28:04 NCR, Page 313, as follows:

04 NCAC 08 .0302 LOAN APPLICATIONS

~~All telephone membership corporations are required to~~ TMCs shall petition the ~~North Carolina Rural Electrification Authority~~ NCREA for any funds in the form of grants or loans received from any agency of the United States Government for use in the State of North Carolina.

Loan categories shall be as defined by the United States Department of Agriculture, Rural Electrification Administration Bulletin 320-4, latest revision, and shall meet the requirements set forth in all other related bulletins covering loan policies and requirements under Title II, Section 201, of the Rural Electrification Act.

All loan documents shall be presented at least three weeks prior to the scheduled (NCREA) Board meeting for review by the Administrator. The Administrator will prepare a summary of the loan and present the loan to the Board for their approval.

History Note: Authority G.S. 117-2(11);

Eff. February 1, 1976.

Amended Effective December 1, 2013.

1 04 NCAC 08 .0303 is repealed as published in 28:04 NCR, Page 314, as follows:

2

3 **04 NCAC 08 .0303 LOAN CATEGORIES**

4

5 *History Note: Authority G.S. 117-2(11);*

6 *Eff. February 1, 1976.*

1 04 NCAC 08 .0305 is repealed as published in 28:04 NCR, Page 314, as follows:

2

3 **04 NCAC 08 .0305 PRESENTATION OF DOCUMENTS**

4

5 *History Note: Authority G.S. 117-2(11)*

6 *Eff. February 1, 1976.*

04 NCAC 08.0306 is amended as published in 28:04 NCR, Page 314, as follows:

04 NCAC 08 .0306 OPERATING STATEMENT RULES AND REGULATIONS

All ~~telephone membership corporations~~ TMCs are required ~~on each December 31 and June 30~~, to file a copy of the Financial and Statistical Report for Telephone Borrowers (REA Form 479), the Annual Supplement to December 31 Financial and Statistical Report (REA Form 479a) and Employment Data (REA Form 15) with the ~~North Carolina Rural Electrification Authority~~ NCREA by December 31st and June 30th of each calendar year.

A copy of the current policies of each TMC shall be filed with the North Carolina Rural Electrification Authority.

A copy of the current bylaws of each TMC shall be filed with the office of the REA.

A copy of the current tariffs of each TMC shall be filed with the NCREA.

Each TMC may be requested from time to time to supply this office certain data information regarding its operation for purposes of reports.

Each TMC is requested to keep a current operating budget breakdown sheet on file with this office for purposes of review and reports.

Each TMC shall provide all negotiated interconnection agreements and their amendments to the Authority for review and approval.

In situations where the TMC and other Party (i.e. other local provider or wireless provider) cannot agree to the terms of the interconnection agreement, one of the Parties may file a Petition with the Authority for an arbitration of the disputed issues. The Authority will receive and review the Petition, establish procedural schedules; the Authority may request and receive data requests and testimonies and may conduct a hearing to collect additional data in order to render a final decision for the arbitration.

History Note: Authority G.S. 117-2(11);

Eff. February 1, 1976.

Amended Effective December 1, 2013.

1 04 NCAC 08 .0307 is repealed as published in 28:04 NCR, Page 314, as follows:

2

3 **04 NCAC 08 .0307 OPERATING RULES AND REGULATIONS**

4

5

6 *History Note: Authority G.S. 117-2(11);*

7 *Eff. February 1, 1976.*

1 04 NCAC 08 .0308 is repealed as published in 28:04 NCR, Page 314, as follows:

2

3 **04 NCAC 08 .0308** **BYLAWS**

4

5 *History Note: Authority G.S. 117-2(11);*

6 *Eff. February 1, 1976.*

1 04 NCAC 08 .0309 is repealed as published in 28:04 NCR, Page 314, as follows:

2

3 **04 NCAC 08 .0309 TARIFFS**

4

5 *History Note: Authority G.S. 117-2(11);*

6 *Eff. February 1, 1976.*

1 04 NCAC 08 .0310 is repealed as published in 28:04 NCR, Page 314, as follows:

2

3 **04 NCAC 08 .0310 COMPLAINTS**

4

5 *History Note: Authority G.S. 117-2(12);*

6 *Eff. February 1, 1976.*

1 04 NCAC 08 .0311 is repealed as published in 28:04 NCR, Page 314, as follows:

2

3 **04 NCAC 08 .0311 DATA SHEETS FOR PROGRESS REPORTS**

4

5 *History Note: Authority G.S. 117-2(11);*

6 *Eff. February 1, 1976.*

1 04 NCAC 08 .0312 is repealed as published in 28:04 NCR, Page 314, as follows:

2

3 **04 NCAC 08 .0312 OPERATING BUDGET**

4

5 *History Note: Authority G.S. 117-2(11);*

6 *Eff. February 1, 1976.*

04 NCAC 08 .0401 is amended as published in 28:04 NCR, Page 315, as follows:

04 NCAC 08 .0401 PETITIONS FOR RULE-MAKING HEARINGS

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the ~~North Carolina Rural Electrification Authority~~ NCREA shall address a petition to:

Administrator

North Carolina Rural Electrification Authority

~~P. O. Box 25249~~

4321 Mail Service Center

Raleigh, North Carolina ~~27611~~ 27699.

(b) The petition ~~should~~ shall contain the following information:

- (1) either a draft of the proposed rule or a summary of its contents,
- (2) reason for proposal,
- (3) effect of the existing rules or orders,
- (4) effect of the proposed rule on existing practices,
- (5) any data supporting proposal,
- (6) list of the groups or individuals most likely to be affected by the proposed rule,
- (7) name(s) and address(es) of petitioner(s),
- (8) the date.

(c) The authority will determine within ~~30~~ 120 days of submission ~~or at the next meeting of the authority, after study of the facts stated in the petition~~, whether the public interest will be served by granting it. The authority will consider all the contents of the submitted petition, plus any additional information it deems relevant.

(d) If the decision is to deny the petition, the ~~administrator~~ Administrator will notify the petitioner in writing, stating the reasons therefore. If the decision is to grant the petition, the Authority ~~within 10 days of decision will~~ shall initiate a rule-making proceeding by issuing a rule making notice, as provided in these rules. If a hearing is held, the Authority will provide the appropriate notice.

*History Note: Authority G.S. 117-2(12); 150b-20 ;
Eff. February 1, 1976.
Amended Effective December 1, 2013.*

04 NCAC 08 .0404 is amended as published in 28:04 NCR, Page 315, as follows:

04 NCAC 08 .0404 DECLARATORY RULINGS

(a) Any person substantially affected by a statute administered by a rule of the NCREA ~~North Carolina Rural Electrification Authority~~ may request a declaratory ruling as to:

(1) whether, and if so how, that statute, or rule applies to a given factual situation; or

(2) whether a particular agency rule is valid.

(b) The authority will have the power to make such declaratory rulings. All requests for declaratory rulings shall be written and mailed to:

Administrator

North Carolina Rural Electrification Authority

~~P. O. Box 25249~~

4321 Mail Service Center

Raleigh, North Carolina ~~27611~~ 27699.

(c) All requests for a declaratory ruling must include the following information:

(1) name and address of petitioner,

(2) statute or rule to which petition relates,

(3) concise statement of the manner in which petitioner is aggrieved by the statute, or rule or its potential application to him,

(4) a statement of whether an oral hearing is desired, and if so the reasons for such an oral hearing,

(5) and the date.

(d) Whenever the authority believes for good cause that the issuance of a declaratory ruling is undesirable, it may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the authority will notify the petitioner of its decision in writing, stating reasons for the denial of a declaratory ruling.

(e) Where a declaratory ruling is deemed appropriate, the authority will issue the ruling within 45 ~~60~~ days of receipt of the petition.

(f) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be appropriate in a particular case.

History Note: Authority G.S. 117-2(12);

Eff. February 1, 1976

Amended Effective December 1, 2013