PROJECT NO. 25599

PUC PROCEEDING TO EXAMINE PROCEDURAL RULES RELATING TO THE FORMAL AND INFORMAL RESOLUTION OF DISPUTES INVOLVING TELECOMMUNICATIONS SERVICE PROVIDERS, INCLUDING PUC PROCEDURAL RULES P, Q, AND R	**§ § § § § § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING NEW CHAPTER 21, INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS, AS APPROVED AT THE JANUARY 29, 2004 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new Chapter 21, Interconnection Agreements for Telecommunications Service Providers. The proposed new rules were published in the October 10, 2003 issue of the *Texas Register* (28 TexReg 8739). Project Number 25599 is assigned to this proceeding.

The following sections are adopted with changes to the text as proposed:

Subchapter A, General Provisions and Definitions — §§21.3, Definitions; 21.5, Representative Appearances; 21.7, Standards of Conduct; 21.9, Computation of Time; Subchapter B, Pleadings, Documents, and Other Materials — §§21.31, Filing of Pleadings, Documents and Other Materials; 21.33, Formal Requisites of Pleadings and Documents to be Filed with the Commission; 21.35, Service of Pleadings and Documents; 21.41, Motions; Subchapter C, Preliminary Issues, Orders, and Proceedings — §§21.61, Threshold Issues and Certification of Issues to the Commission; 21.67, Dismissal of a Proceeding; 21.73, Consolidation of Dockets, Consolidation of Issues, and Joint Filings; 21.75, Motions for Clarification and Motions for Reconsideration; 21.77, Confidential Material; Subchapter D, Dispute Resolution — §§21.91, Mediation; 21.95, Compulsory Arbitration; 21.97, Approval of Negotiated Agreements; 21.99,

Approval of Arbitrated Agreements; 21.101, Approval of Amendments to Existing Interconnection Agreements; 21.103, Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i); Subchapter E, Post-Interconnection Agreement Dispute Resolution — §§21.123, Informal Settlement Conference; 21.125, Formal Dispute Resolution Proceeding; and 21.127, Request for Expedited Ruling; and 21.129, Request for Interim Ruling Pending Dispute Resolution.

The following sections are adopted with no changes to the text as proposed:

Subchapter A, General Provisions and Definitions — §§21.1, Purpose and Scope; 21.11, Suspension of Rules and Good Cause Exceptions; Subchapter B, Pleadings, Documents, and Other Materials —§21.37, Examination and Correction of Pleadings and Documents; §21.39, Amended Pleadings; Subchapter C, Preliminary Issues, Orders, and Proceedings — §§21.63, Interim Issues and Orders; 21.65, Interlocutory Appeals; 21.69, Summary Decisions; 21.71, Sanctions; Subchapter D, Dispute Resolution — §§21.93, Voluntary Alternative Dispute Resolution; and Subchapter E, Post-Interconnection Agreement Dispute Resolution — §21.121, Purpose.

The commission withdraws the following sections: §21.10, Waivers; and §21.105, Approval of Agreements Adopting Terms and Conditions of the T2A.

The new rules in Chapter 21 are necessary to establish procedures for the implementation of the Federal Telecommunications Act of 1996 (FTA) as it relates to interconnection agreements and amendments to interconnection agreements, and formal and informal dispute resolution, mediation, and arbitration of interconnection agreements. Chapter 21 replaces the rules currently existing in Chapter 22, subchapters P, Q, and R. In addition, the commission is simultaneously

adopting under separate publication in this issue of the *Texas Register*, the repeal of Chapter 22, Subchapters P, Q, and R.

The new sections clarify existing procedures and are more administratively efficient for both the commission and parties. The new sections reduce the number of copies required and allow for the dissemination of information by electronic mail and website to reduce costs; modify timelines for greater efficiency; modify the confidential information requirements to be consistent with the commission's procedural rule §22.71 of this title, relating to Filing of Pleadings, Documents and Other Materials; establish procedures for motions for reconsideration; delete existing requirements no longer necessary due to uncontested cases being processed administratively; and other non-substantive changes to better reflect commission practice.

The commission received written comments on the proposed new chapter from AT&T Communications of Texas, LP (AT&T); Covad Communications Company (Covad); Southwestern Bell Telephone, LP, doing business as SBC Texas (SBCT); and the State of Texas, by and through the Office of the Attorney General (OAG). Reply comments were received from AT&T, SBCT, OAG, and Verizon Southwest (Verizon).

A public hearing was held at commission offices on Monday, December 8, 2003. Representatives from AT&T, SBCT, and OAG attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

Preamble question

The commission requested comments on the following issues: (1) Proposed new §21.10 allows the commission to find that parties have waived applicable deadlines by implication under certain circumstances; and (2) proposed §21.99(b) and §21.101(h) allow the commission to remand an agreement to the presiding officer for further proceedings. What effects does the proposed language for §§21.10, 21.99(b) and 21.101(h) have on the FTA's nine-month deadline for compulsory arbitrations?

Comments

AT&T opposed the adoption of proposed §21.10, as discussed in more detail below, noting that nothing in the FTA suggests that an implied waiver is permitted or appropriate. AT&T asserted that an implied waiver would allow a back-door exit from the statutory nine-month deadline and that failure to approve a final arbitration award within nine months based on the finding of an implied waiver would contravene federal law. With regard to proposed §21.99(b), AT&T stated that FTA does not allow for an exception to the nine-month deadline in order to remand a proceeding, or a portion thereof, to the presiding officer. AT&T advised that unless the remanded proceedings were concluded and an amended final award issued before the 270th day, the failure to issue an award in a timely manner would be contrary to federal law. AT&T commented that §21.101(h) applies to approval of amendments to existing interconnection agreements and is not subject to the same timeframes as compulsory arbitrations. Therefore, a remand under §21.101(h) would not implicate the FTA's nine-month deadline.

Commission response

The commission addresses these comments under the discussions on §§21.10, 21.99, and 21.101.

General Comments

OAG suggested that the procedures for conduct of arbitrations and post-interconnection agreement dispute resolution hearings be modified to recognize an official "interested party" status in order to more adequately protect the interests of state agency customers and consumers in general. OAG asserted that to allow minimal comments to be filed solely at the discretion of the presiding officer could result in denial of its or any other consumer representative's opportunity to affect decisions on threshold issues concerning public policy. OAG proposed that "interested party" status be limited to formally contested proceedings under proposed §21.95 and §21.125. OAG advised that this limited level of participation would not interfere in the contractual rights of parties or otherwise burden the proceeding with additional discovery, testimony, or other evidentiary issues and would avoid any conflict with the FTA §252.

SBCT opposed the comments submitted by the OAG to expand FTA proceedings to allow participation by non-parties to the interconnection agreement. SBCT asserted that such participation conflicts with the FTA requirement that only issues negotiated by the parties may be subject to an FTA arbitration. SBCT opposed allowing non-parties to submit issues.

Verizon opposed the creation of an "interested party" status as suggested by OAG. Verizon stated that arbitration/dispute resolution proceedings are disputes between two parties and that to the extent these proceedings have public interest ramifications, the arbitrator and commission provide sufficient protection. Verizon commented that including multiple participants may raise

issues that are not even in dispute between the two parties that are privy to the dispute and may make it even more difficult for the commission to meet the FTA deadlines for completing an arbitration proceeding.

SBCT suggested that the commission's Chapter 21 rules include a specific rule similar to §22.145, relating to Subpoenas.

Commission response

The commission declines to modify the procedures for the conduct of arbitrations (§21.95) and post-interconnection agreement dispute resolution (§21.125) hearings as suggested by OAG. Subsection (d) of §21.95, relating to Compulsory Arbitration, does allow interested parties to file a statement of position, recognizing that certain threshold issues may arise in new arbitrations that raise public policy concerns. However, FTA §252(b)(4) limits the state commission's consideration of arbitration petitions and any response(s) thereto to the issues set forth in the petition and response. Moreover, FTA §252(b)(1) limits arbitration to the negotiating parties. As the OAG is not a party to the negotiation regarding interconnection, it cannot, under the FTA, seek arbitration. Further, because the commission cannot consider issues which were not raised in the petition or response, the commission cannot, under the FTA, consider any issues not raised by the negotiating parties. Accordingly, as it is inappropriate for the commission to address a non-negotiating interested party's issues in an FTA proceeding unless such issues are already raised by a negotiating party, §21.95(d) limits the participation of an interested party to the filing of a statement of position.

Subsection (f) of §21.125, relating to Formal Dispute Resolution Proceeding, does not allow for an interested party to file a statement of position on the grounds that a post-interconnection

dispute is a unique disagreement between parties to a contract, and does not generally involve the threshold issues considered in arbitrations creating a new interconnection agreement. Typically, post-interconnection disputes involve fact-specific, business-to-business situations. In the interest of resolving such ongoing business issues as expeditiously as possible, the commission finds it reasonable to place limits upon the participation of non-parties to the contract.

As to SBCT's suggestion that Chapter 21 include a rule similar to §22.145, Subpoenas, under proposed §21.95(j) and §21.125(h), arbitrators have the powers of presiding officers, including the power to issue subpoenas, as cross-referenced to §22.202. Accordingly, rather than relying upon cross-references to another section outside this chapter, the commission clarifies arbitrators' powers to issue subpoenas under proposed §21.95(j) and §21.125(h).

Comments on Subchapter A, General Provisions and Definitions

§21.3, Definitions

Instead of incorporating definitions wholesale from existing Chapter 22, §22.2, SBCT suggested that the definitions actually used in Chapter 21 be incorporated into proposed §21.3 to avoid potential ambiguity in the interpretation of the new Chapter 21 Rules. For example, regarding the definition of "party," SBCT cited that it is unclear whether the commission intended to incorporate Chapter 22, Subchapter F, regarding classification and alignment of parties as well as intervention, into Chapter 21. SBCT commented that there appears to be a conflict between the intervention rules in Chapter 22 (§22.103 and §22.104) and proposed new §21.95(d). SBCT also noted that the reference to the definition of "docket," in §22.2(19) states, "[a] proceeding handled

as a contested case under APA." However, the term "docket" in Chapter 21 primarily describes a docket number and does not mean a contested case under APA.

Commission response

The commission agrees and clarifies the definitions, as identified by the commenter.

§21.5, Representative Appearances

SBCT suggested that authorized representatives should be limited to a party's: (1) employee, (2) attorney licensed in Texas, or (3) a non-Texas licensed attorney if a Texas-licensed co-counsel also represents the party. FTA proceedings require legal interpretation and different rules of conduct apply to attorneys and non-attorney representatives.

Commission response

The commission declines to adopt SBCT's proposal, finding it unnecessarily restrictive. The standards set forth in §21.5 are consistent with existing commission procedures and practices. The commission is not aware of any difficulties that parties have encountered in particular cases that could be solved by SBCT's proposal. Moreover, should SBCT encounter specific problems on a going-forward basis, the commission believes the presiding officer's authority is sufficient to allow such matters to be addressed on a case-by-case basis as circumstances warrant.

§21.7, Standards of Conduct

AT&T urged that the commission clarify whether the *ex parte* communications rule prohibits communication with commission personnel regarding an issue that will likely be the subject of a

subsequent proceeding. AT&T supports an *ex parte* requirement that would prohibit communications during the time period immediately prior to the filing of a dispute resolution proceeding.

SBCT suggested adding a subpart to proposed §21.7(b), specifying the permissible communications with commission personnel, i.e., whether communication is permitted with commission personnel regarding an issue that will likely be the subject of a subsequent proceeding. SBCT claimed that without clarifying the proposed rule, the Texas Disciplinary Rules of Professional Conduct may prohibit certain attorney communications that the commission's rules do not limit for non-attorney representatives. SBCT added that the commission's standards of conduct should include certain standards imposed upon attorneys under the Texas Disciplinary Rules of Professional Conduct, specifically §§3.01, 3.02, 3.03 and 3.04, to ensure that consistent standards apply to all representatives appearing before the commission.

Commission response

Section 21.7 contains standards of conduct "for parties," which suggests that a particular matter is pending. Section 21.7(a)(1) specifies that "[p]rofessional representatives shall observe and practice the standard of ethical and professional conduct prescribed for their professions." The commission finds that the rule, as currently written, already bars inappropriate *ex parte* communications including any communications that violate professional ethics rules, such as those applying to attorneys. Moreover, because certain communications regarding matters that may come before the commission may be helpful to commission staff, as well as to the potential parties, the commission finds that a blanket prohibition, as suggested by AT&T, would disallow

even discussions which enable commission staff to efficiently organize workload, streamline issues, and allocate limited resources. Accordingly, the commission makes no changes based on these comments.

Regarding SBCT's comments that the rules include certain standards of conduct imposed on attorneys, the commission includes a reminder to lawyers of their responsibilities under the Texas Disciplinary Rules of Professional Conduct, including the sections identified by SBCT.

§21.9, Computation of Time

AT&T urged that §21.9(b)(2), regarding extensions of time for decisions by a presiding officer or the commission, be amended to specify an explicit time frame unless parties agree to a longer extension. AT&T suggested a period not to exceed 30 business days as a reasonable limitation that will provide some predictability to the parties.

Commission response

The commission agrees with the suggestion made by AT&T and amends the rule to incorporate the suggested change.

§21.10, Waiver

AT&T indicated strong opposition to proposed §21.10 and its belief that the rule as written is not in the public interest. AT&T asserted that the proposed rule is dangerously vague as to the grounds that might support an implied waiver. AT&T also argued that the rule suggests an ability to completely ignore statutory and regulatory deadlines and established procedural schedules based upon "extremely arbitrary grounds." AT&T argued that this proposed rule fails

to provide for more efficient, more expedient resolution of disputes and only suggests the possibility of unjustified delays in commission rulings.

SBCT agreed with AT&T that the rule is vague regarding the grounds for implied waiver. SBCT suggested clarifying the rule to define when a presiding officer of the commission can conclude an implied waiver occurred. At the prehearing conference SBCT stated that the rule should contain an objective standard which would define when the presiding officer could conclude that a standard had been met that justified an implied waiver.

Verizon agreed with AT&T's recommendation to delete §21.10. Verizon asserted that the section is vague about the standard that would be used by the presiding officer to imply the waiver and invites arbitrary and inconsistent treatment. Verizon stated that the commission's intent with the proposed section appears to be concern over meeting the FTA's nine-month deadline in compulsory arbitrations. Verizon commented that a more effective means of ensuring that a compulsory arbitration is completed within the deadline is to require the party requesting arbitration to file its direct testimony at the time the petition is filed.

Commission response

The commission has considered commenters' stated concerns and withdraws §21.10. However, the withdrawal of this proposed section does not preclude a finding that a party's conduct has caused delay and affected procedural deadlines. The presiding officer has the discretion and authority to appropriately revise, extend, or restart a procedural schedule if a party's actions are found to require such a revision or extension in order to avoid prejudice to the other parties to the proceeding, or to avoid placing an unreasonable burden upon the commission.

§21.11, Suspension of Rules and Good Cause Exceptions

AT&T urged the commission to specifically recognize in the proposed rule that rules cannot be suspended if to do so would be contrary to statutory requirements.

Commission response

The commission declines to amend the proposed rule and believes that AT&T's suggested change would not add anything of substance to the rule. The commission does not have the authority to change statutory requirements and need not so note in its rules.

Comments on Subchapter B, Pleadings, Documents, and Other Materials

§21.31, Filing of Pleadings, Documents, and Other Materials

SBCT proposed that the commission's rules contain an option for parties to file only a complete original, electronic copy of pleadings. SBCT noted that filing and serving a single copy in an

electronic format would further ensure consistency between the copy filed with the commission and the copy served on parties.

SBCT further suggested that there is no need to file copies of discovery requested and responses. Submitting such request impose an administrative burden on the party as well as the commission. In addition, discovery responses tend to contain confidential information requiring confidential treatment that further increases administrative burdens. Furthermore, responses may contain irrelevant and inadmissible information.

Verizon supported the comments of SBCT to allow parties to make electronic filings without the need to file paper copies. Verizon commented that this would ease the burden on parties and on the commission's filing and record retention system. Verizon stated that if a single paper copy is needed for the commission's document retention system, this is still preferable to the current requirements.

Commission response

The commission finds that filing only an electronic copy of pleadings and documents in proceedings under this chapter is impracticable for commission purposes of administrative efficiency and record retention requirements. However, the commission amends §21.31 to reduce the number of copies required for applications for interconnection agreements filed under §21.97 relating to Approval of Negotiated Agreements, §21.101 relating to Approval of Amendments to Existing Interconnection Agreements, and §21.103 relating to Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i), from ten to three. The commission also eliminates the need for parties to

file discovery responses with the commission; however, the commission still requires that discovery requests be filed with the commission in order to monitor the proceedings and for administrative efficiency in case objections to the discovery requests are filed.

§21.33, Formal Requisites of Pleadings and Documents to be Filed with the Commission

AT&T noted that reference in §21.33(a) is made to "pleadings as defined in Section 22.2 of this title" when, in fact, the definition section is contained at proposed §21.3 and does not define the term "pleadings." AT&T also argued that use of the term "pleading" in the proposed rule is overbroad and the rule should, instead, read "a response to a motion, if made, shall be filed . . . ."

AT&T pointed out a typo in §21.33(b) in that "shall" appears before and after the colon. AT&T urged that the requirement that DPLs be signed be deleted from the rule, given that it is not customary for DPLs to be signed and they are almost always attached to a pleading, motion or other signed document.

AT&T asserted that, under proposed §21.33(d) as stated, a party's failure to comply with the specified citation guides would be grounds for rejection of that filing. AT&T urged that this section be amended to read that filings should "endeavor to" comply with well-known rules of citation. AT&T also urged that the requirement that parties provide copies of any cited authority be further narrowed. AT&T asserted that the rule should except all other legal authority cited in filings to which commission staff and party representatives presumably have easy access including reported federal court decisions, Texas state statutes (other than PURA), the United States Code (especially the 1996 Federal Telecommunications Act), the Texas Administrative Code, the Code of Federal Regulations and state and federal rules of civil procedure.

Verizon stated that AT&T's proposal to further narrow the requirement to attach copies of cited authorities to briefs should be adopted. Verizon commented that federal court cases, state and federal statutes and rules, and Texas and federal rules of procedure are all readily available by Internet and that it unnecessarily burdens both the filing party and the commission's filing and document retention system by requiring documents to be longer than necessary.

SBCT commented that it is unclear what reports, "pursuant to PURA" would need to be filed in an FTA proceeding as stated in proposed Rule §21.33(a)(2). SBCT proposed a limit to such reports to those filed pursuant to commission rules or the commission's request.

Commission response

On adoption, the definitions incorporated by reference in the proposed rule have been added to §21.3; therefore, the commission removes all references to §22.2 throughout Chapter 21. The typographical errors in §21.33(b) are corrected. The rule now specifies that parties should "endeavor to" comply with the rules of citation.

In response to comments of AT&T and Verizon, the rule now specifies additional cited authorities that parties need not provide. Regarding signatures on DPLs, if the DPL is an attachment to a pleading, motion, or other signed document, the DPL need not be separately signed. However, if the DPL is filed as a stand-alone document a signature is required. No change to the rule is necessary regarding this comment by AT&T.

In response to SBCT's comment, the commission deletes the reference to PURA in §21.33(a)(2).

§21.35, Service of Pleadings and Documents

SBCT commented that proposed §21.35 should contain all requirements applicable to service on other parties without cross-referencing Chapter 22, §22.74. SBCT further suggested moving proposed §21.41(c), dealing with service, to proposed §21.35 so that all rules dealing with service appear in one rule. SBCT suggested clarifying the incorporated Chapter 22, §22.74, to specify that parties are required to serve all parties of record by 3:00 p.m., consistent with proposed §21.30(h). SBCT further proposed to clarify when service is effective for calculating response deadlines, and provide additional time to respond to pleadings served after 3:00 p.m. or otherwise not received according to the service requirements.

AT&T replied to a proposal by SBCT that the rules specifically provide that pleadings and other documents be served by 3:00 p.m. and that the rules be clarified for response deadlines when documents are served after 3:00 p.m. AT&T suggested that, if the commission intends to specifically address service time, the rules should instead allow for service of pleadings and other documents by 5:00 p.m., rather than 3:00 p.m., and that the rules should specifically permit compliance with the deadline via service by electronic means.

Commission response

The commission agrees to move the requirements of §21.41(c), dealing with service, to proposed §21.35 so that all rules dealing with service appear in one rule. The commission adds the language from §22.74 that was incorporated by reference to §21.35. In addition, the commission adds language that service after 5:00 p.m. local time of the recipient shall be deemed service on the following day.

§21.39, Amended Pleadings

SBCT suggested clarifying proposed §21.39 to ensure parties to an FTA Compulsory Arbitration proceeding present all disputed issues with the petition or response as required by the FTA.

In reply comments, AT&T stated it does not object to SBCT's proposed language in principal as long as the proposed limitation is not used as a "gotcha" device to keep an issue from being raised that was actually negotiated (e.g., where an issue may not be phrased in the right way or may be subsumed in a larger issue).

Commission response

The commission finds some merit in the comments of both SBCT and AT&T. As to SBCT's concerns, the commission agrees that FTA §252(b)(2) requires the petitioner to provide the state commission with all relevant documentation concerning the unresolved issues, and notes that FTA §252(b)(4)(A) limits the consideration of the state commission to the issues set forth in the petition and response. On the other hand, as AT&T observes, in large and lengthy negotiations it can be difficult to track each item that was actually negotiated, particularly as to identifying specific wording of individual sub-issues. The commission observes that the rule language, as proposed, requires a showing of good cause for any amendment outside the ten-day window. Thus, the commission believes that SBCT's concerns are already addressed and finds adding SBCT's proposed wording unnecessary and redundant.

§21.41, Motions

AT&T urged that language be included in this section to require the presiding officer to rule on all motions within a reasonable time. According to AT&T, such a requirement will help ensure that the case proceeds in a timely and efficient manner and within the applicable timeframes.

In regard to §21.41(f), AT&T stated its belief that parties should be given some discretion amongst themselves to agree upon certain extensions without the need for commission intervention. Extensions eligible for such agreement would include filing deadlines that do not ordinarily require action by the presiding officer (e.g. responses to discovery requests, extensions to the discovery deadline, extensions to the filing of testimony), so long as the agreed extension does not affect any other deadline. In such a case, AT&T argued, citing Texas Revised Civil Procedure 11, parties should be able to memorialize their agreement in writing and file it with the commission.

SBCT supported AT&T's comment that parties should be able to agree to extend certain deadlines as long as this does not affect other deadlines.

Commission response

AT&T suggested a reasonableness requirement be added for the presiding officer to act. However, the commission observes that such a requirement is implicit. With respect to the suggestion that parties should be able to agree to extend certain deadlines without approval of the arbitrators, the commission notes that, because the presiding officer(s) also must rely on established procedural schedules for their own preparation for the proceeding, parties must continue to request extensions for particular filings from the presiding officer(s). Parties agreeing among themselves, for example, to move the date for filing rebuttal testimony closer to

the hearing date might not afford the presiding officer sufficient time to fully review the testimony prior to the hearing. Further, parties' extensions to discovery deadlines may modify the dates for filing motions to compel, which are ruled upon by the presiding officer. Moreover, as experienced in a recent commission arbitration, complications can arise where parties' agreements to extend are not entirely clear between the parties and have never been provided to the commission. However, in an effort to provide some flexibility to the parties, the commission has amended this section to allow for agreed modifications to certain discovery deadlines to be filed with the commission, rather than requested in a motion. The commission also modifies §21.41 to move subsection (c) to §21.35, as discussed under comments on §21.35.

Comments on Subchapter C, Preliminary Issues, Orders, and Proceedings

§21.61, Threshold Issues and Certification of Issues to the Commission

AT&T urged the adoption of a deadline for parties to identify any threshold or certified issues. AT&T noted that the current rule for compulsory arbitrations, §22.305(f) (and its proposed corollary §21.95(e)) requires challenges to the "arbitrability" of any issue at the first prehearing conference. AT&T asserted that this would be an appropriate presumptive deadline for parties to raise any threshold or certified issues.

SBCT proposed allowing motions for reconsideration of rulings on threshold issues. An issue that meets the standard for consideration as a threshold issue should be significant enough to merit commission consideration in a motion for reconsideration. SBCT added that briefs should be permitted on the certified issue, consistent with the Chapter 22 rule.

In reply comments, SBCT supported AT&T's proposal that §21.61 contain a deadline for parties to identify threshold or certified issues.

Commission response

The commission agrees with AT&T that parties should raise threshold issues, as well as challenges to the arbitrability of any issues, no later than the first prehearing conference and amends the rule accordingly. The commission elects not to incorporate SBCT's suggested change regarding motions for reconsideration on threshold issues. Allowing motions for reconsideration on threshold issues is both impractical and unnecessary. The compressed timeframes required by statute make interlocutory appeals highly impractical. Furthermore, the parties still have an opportunity to raise their concerns in a motion for reconsideration of the arbitration award. With respect to filing briefs on certified issues, the commission finds that such briefs may be useful. Accordingly, the proposed rule is modified to allow the filing of briefs within five working days of the certified issue's submission.

§21.63, Interim Issues and Orders

AT&T urged that the rule be amended to specify that the presiding officer should issue interim orders within a reasonable time so as not to delay the orderly procession of the case.

Commission response

The commission makes no change on the basis of AT&T's comments. Timely issuance of interim orders is presumed and implied in the current rule.

§21.65, Interlocutory Appeals

AT&T urged a change in this section to reflect the exclusion to the interlocutory appeal rule contained in proposed §21.7(a)(2): "A decision by a presiding officer to exclude a party, witness, attorney, or other representative shall be subject to immediate appeal to the commission."

Commission response

The commission makes no change on the basis of AT&T's comments. The current rule, as written, allows a party to appeal an interim order when "immediate and irreparable injury, loss, or damage will result from enforcement of the order" which addresses AT&T's expressed concern.

§21.67, Dismissal of a Proceeding

AT&T noted that the proposed rule permits dismissal only of a petitioner's entire claim. AT&T urged that the rule should instead permit dismissal of one or more of petitioner's claims instead of requiring dismissal of all claims. AT&T also urged that dismissal of counterclaims may also be appropriate and suggested that the rule be revised to allow for dismissal of a proceeding or for "dismissal of any claim within a proceeding."

SBCT supported AT&T's comments that would allow a presiding officer to dismiss any proceeding or any claim within a proceeding. SBCT stated that this is consistent with current commission practice and allows the presiding officer the latitude to eliminate a particular claim that fits within the listed grounds for dismissal.

Commission response

The commission agrees and has modified proposed §21.67 accordingly.

§21.73, Consolidation of Dockets, Consolidation of Issues, and Joint Filings

Covad urged that this section be expanded to permit multi-party proceedings on common or generic issues as appropriate. Covad proposed language to specifically mandate that issues may only be considered generically if: (1) the issues are of generic applicability to parties in a dispute resolution or arbitration proceeding; (2) the issue(s) has industry wide applicability; (3) the joint consideration would serve the interests of efficiency and avoid unnecessary expense and duplication of resources; and (4) the generic consideration would not prejudice any party. Covad stated that generic proceedings under these circumstances would help to alleviate the strain on limited time, manpower, and financial resources of both the commission and parties and would enhance the ability to maintain consistent decisions concerning like issues.

In reply comments, OAG supported the comments of Covad, with the additional proviso that all "interested parties" as defined in OAG's initial comments be allowed to participate. OAG opined that this would allow the interested parties to have influence in matters of significant public policy affecting consumers.

Verizon opposed Covad's suggestion that multi-party proceedings on common or generic issues should be allowed. Verizon stated that expansion of arbitration proceedings into multi-party proceedings having industry-wide applicability raises notice and due process concerns. Verizon stated that this would require revision to the rules to ensure that all market participants receive notice and an opportunity to participate, would require significant commission resources, and jeopardize the commission's ability to complete the proceeding within the nine-month deadline set by FTA §252(b)(4).

SBCT asserted that consolidation of issues and dockets should be consistent with the FTA and non-parties should not participate unless they meet the conditions for consolidation in proposed §21.73. SBCT stated that Covad's proposal to consider common issues in a generic proceeding failed to explain how such a proceeding would comply with FTA requirements. SBCT claimed that a generic proceeding would allow carriers to avoid negotiation and seek commission adjudication of issues contrary to the FTA.

Commission response

The commission finds that the FTA does not expressly provide for or prohibit multi-party or generic proceedings, but does expressly allow for consolidation of state proceedings under FTA §252(g). Parties are not precluded from agreeing to hold "generic" proceedings on issues of industry concern. Section 21.73 addresses the issues of consolidation of dockets or issues and joint filings and states that the commission or presiding officer shall consider: (1) the administrative burden on parties and the commission; (2) whether there are issues of fact or law common to the proceedings; (3) whether separate proceedings would create a risk of inconsistent resolutions; and (4) whether allowing joinder or consolidation would result in undue delay to the

proceeding. The commission will strongly consider options to reduce administrative burdens on the parties and commission staff. The commission finds that the rule as proposed is consistent with FTA §252(g) and addresses the concerns of parties; however, for clarity the commission adds the language "or prejudice any party" to §21.73(c)(3)(D).

§21.75, Motions for Clarification and Motions for Reconsideration

SBCT suggested that motions for clarification should be available for all orders, except the Proposal for Award issued in a Compulsory Arbitration proceeding pursuant to proposed §21.95(t).

Commission response

The commission clarifies §21.75(a) to indicate that this subsection applies only to arbitration awards. Accordingly, motions for clarification of orders would still be available under §21.41.

§21.77, Confidential Material

AT&T requested that subsection (b) be amended to provide that a party asserting that material is exempt from disclosure have five rather than three business days to respond to a challenge to confidentiality designations. AT&T further requested that subsection (b)(1) be amended to reflect that the standards to be applied are those enacted by the legislature and those contained in the "TPIA itself" (Texas Public Information Act).

In regards to §21.77(f), Acknowledgement, AT&T urged that a notarized statement should not be required. AT&T argued that it is inappropriate and unnecessary to require attorneys of record for a party to execute a notarized statement attesting that they agree to be bound by the protective

order. AT&T requested that the commission eliminate the notarization requirement especially with respect to counsel of record.

SBCT requested a time limit on when a party may file a motion to declassify material designated as confidential. SBCT further suggested that a party should have at least five business days to respond to such a motion. Parties receiving information designated as confidential in response to a discovery request should file any motion to declassify within a reasonable time after receiving discovery responses or within 30 days of receiving information designated as confidential. A party should not be allowed to file a motion to declassify on the day before a hearing. SBCT advocated requiring filing of notices of the presiding officer's belief that material is not confidential, or of a motion to declassify, within 30 days after receipt of information designated as confidential or not less than 15 business days before a scheduled hearing on the merits.

Verizon supported the comments of both AT&T and SBCT that a party should have five business days to respond to a challenge of confidentiality.

Commission response

The commission rejects AT&T and SBCT's proposal to allow five days for responding to a confidentiality challenge in §21.77(b). The party asserting confidentiality should already know the basis for claiming confidentiality and therefore should be able to respond promptly.

The commission agrees with AT&T's request to specify that the Texas Public Information Act standards apply in determining whether material is exempt from disclosure. This modification clarifies the appropriate considerations for determining exceptions to disclosure.

The commission declines to eliminate the notarization requirement in §21.77(f) as requested by AT&T. Requiring a sworn non-disclosure statement strengthens the protection of confidential information.

After considering SBCT's request for time limits on motions to declassify and the presiding officer's belief that material is not confidential, the commission adds that any motion to declassify shall be provided at least 15 working days prior to the hearing on the merits. A notice of the presiding officer's belief shall be provided at least ten working days prior to the hearing on the merits. The commission declines to impose other time limits.

Comments on Subchapter D, Dispute Resolution

§21.91, Mediation

AT&T disagreed with the principle that a party may only request mediation when the other party agrees to mediate. AT&T argued that any party should have the option of requesting that the presiding officer or the commission compel non-binding mediation. AT&T also stated that the rule should preserve the ability of the presiding officer and commission to order parties to mediate in appropriate circumstances. AT&T argued that FTA §252(a)(2) permits "any party" in a negotiation to seek mediation from a state commission, not requiring that both parties agree to mediate.

AT&T also asserted that the commission should consider incorporating into the rule confidentiality provisions similar to those contained in the Texas Civil Practice & Remedies Code. *See* Texas Civil Practice and Remedies Code §154.073.

Verizon opposed AT&T's suggestion to allow the commission to direct an unwilling party to participate in non-binding mediation. Verizon stated that it is unlikely that forcing a party into mediation would be productive and that mediation should be a voluntary process.

Commission response

The commission amends the rule to incorporate the change proposed by AT&T. Although the odds of making progress by forcing a party into mediation seem rather low (and this is especially true due to tight timeframes for negotiation and arbitration), the FTA does permit any party to seek mediation and the rule is modified accordingly. If the mediation is not consensual, however, the timeframes in the FTA should not be tolled and the rule, as written, already contemplates this situation.

§21.95, Compulsory Arbitration

§21.95(a), Request for arbitration

AT&T proposed that the requirement set forth in §21.95(a)(5)(E) to submit a list of resolved issues as part of the petition be deleted. AT&T argued that it is not possible for parties to provide a list of every resolved issue. According to AT&T, having all issues that were discussed and resolved reflected in the agreed contract language should satisfy the requirements of the FTA.

Commission response

The commission agrees with AT&T's observation that it may not be possible for parties to provide a list of every resolved issue. Further, because the agreed contract language provided by

the parties should satisfy the requirements of FTA§252(b)(2)(A)(iii), the commission amends the rule to delete the requirement that a list of resolved issues be provided.

§21.95(d), Participation

AT&T urged that this section be amended to allow for the establishment of industry-wide proceedings. SBCT opposed AT&T's suggestion that this section be modified to allow for the establishment of industry wide proceedings.

SBCT proposed eliminating position statements and lists of issues by "interested persons" because the commission's proposed rules allow consolidation of issues and dockets. SBCT asserted allowing a non-party "interested person" to add issues conflicts with FTA and with the commission's proposed rules requiring specification of all issues in the petition or response. Verizon agreed with SBCT that subsection (d) should be revised to eliminate the provision that allows interested parties to file statements of position or list of issues.

In reply comments, OAG opposed SBCT's comments on subsection (d) suggesting that the commission eliminate the ability of "interested persons" to file a statement of position and/or a list of issues for consideration in the proceeding. OAG commented that prohibiting even this limited form of participation is inconsistent with the commission's reasonable goals of efficiency and avoiding duplicative proceedings, as well as obtaining the widest possible level of participation to avoid having to revisit these kinds of issues on a piecemeal basis. In addition, OAG asserted that SBCT failed to cite a single instance where this provision, which currently exist in §22.305(e) of this title, has burdened any party.

Commission response

The commission declines to adopt AT&T's proposal for industry-wide proceedings. The commission finds that the FTA does not expressly provide for, nor expressly prohibit multi-party or generic proceedings. Parties are not precluded from agreeing to hold "generic" proceedings on issues of industry concern. As noted above, the commission will strongly consider options to reduce administrative burdens on the parties and commission staff and increase the efficiency of these proceedings.

The commission concurs with SBCT that §21.95(d) should not include lists of issues by interested persons. FTA §252(b)(4)(A) limits the commission's consideration of issues to those presented in the parties' petitions and responses. However, the commission disagrees with SBCT regarding position statements by interested parties, since the conflict with the FTA and the proposed rules pertain to identifying issues for consideration as opposed to position statements. Accordingly, the commission deletes the reference to interested persons' list of issues, but retains the language allowing interested persons to file position statements.

§21.95(f), Notice

AT&T urged that the proposed rule be changed to provide that the hearing may not be scheduled earlier than 50 days after the request for arbitration. AT&T noted that 50 days are allowed between the filing of a petition and a hearing in a post-interconnection dispute resolution proceeding and argued that a shorter time should not be allowed in a more comprehensive arbitration.

Commission response

The commission elects not to make the suggested change. The rule, as written, permits broader scheduling options than the change suggested by AT&T would allow. There may be instances in which parties and the commission would like to commence the hearing sooner than 50 days after receipt of a complete request for arbitration. While in most cases arbitrations, particularly comprehensive ones, will not have hearings set that quickly, the rule need not preclude the shorter timeline.

§21.95(k), Discovery

AT&T argued that §21.95(k)(1) overly restricts the scope of discovery and is inconsistent with Texas law and the Texas Rules of Civil Procedure. AT&T asserted that the scope of discovery should be limited only to information that is relevant or reasonably calculated to lead to the discovery of relevant evidence.

Commission response

The commission elects not to amend the rule to address AT&T's concern. Given that the deadlines for arbitration are extremely tight under the FTA, discovery of anything but essential information would not be productive and would harm many parties' ability to properly prepare for the proceeding itself.

However, because commenters have raised issues regarding the scope of discovery and the extension of discovery deadlines, the commission modifies subsection (k) to clarify that the presiding officer has broad discretion regarding discovery and that Chapter 22, Subchapter H, Discovery Procedures, which provides cross-references to the Texas Rules of Civil Procedure, shall serve as guidance for discovery conducted under Chapter 21.

§21.95(k)(2), Limits

AT&T argued that a presumptive limit of 25 RFIs would inevitably hinder a party's ability to prepare its case and provide the commission with the best record upon which to base its final decision.

SBCT requested clarification of proposed §21.95(k)(2) that the discovery limits apply to the aggregate total of requests for information (RFIs), requests for inspection and production of documents (RFPs), and requests for admissions (RFAs).

Commission response

The commission amends the rule as requested by AT&T to reflect a presumptive maximum number of 40 requests, rather than 25. The commission does not believe that a modification to the rule is necessary to address the comments of SBCT in that the discovery limits, as amended, clearly apply to "40 requests" which contemplates an aggregate total of all of RFIs, RFPs, and RFAs.

§21.95(k)(3), Timing

SBCT requested clarification to proposed §21.95(k)(3) to prevent unreasonably shortened discovery response deadlines.

AT&T noted that SBCT suggested, in its comments, that this subsection provide that the discovery response period cannot be less than 20 days, absent agreement of the parties. In its reply comments, AT&T noted support for the current rule which maintains the arbitrator's discretion to determine whether a shorter discovery response deadline is appropriate under the circumstances of the case.

Commission response

The commission declines to modify subsection (k)(3). The presiding officer should have the flexibility to tailor the time periods as the situation warrants.

§21.95(m)(2), Conformity of rules

SBCT advocated that proposed §21.95(m)(2) require notice to the parties regarding a determination on the application of evidentiary rules (or other rules) before filing direct

testimony. Otherwise, parties could submit testimony inconsistent with the presiding officer's determination.

Commission response

The commission disagrees with SBCT's suggestion. The rule currently allows the presiding officer to decide whether or not to apply the *strict* rules of evidence or other rules. Unless and until a presiding officer views the materials tendered by a party and considers objections thereto, the presiding officer cannot determine whether the circumstances warrant strict application or not. The presiding officer must consider the need for a full and complete record for the commission, but must also weigh those interests against an objecting party's concerns. This evaluation cannot occur until a party files evidence and an opposing party has an opportunity to file objections. This approach is consistent with commission historic practice and has not, to the commission's knowledge, resulted in the filing of inconsistent testimony. Therefore, the commission declines to adopt SBCT's proposal.

§21.95(o)(2), Decision point list and witness list

SBCT suggested revisions to proposed §21.95(o)(2) to prevent parties from copying a witness' entire testimony, instead of a summary, into the DPL.

Commission response

Proposed subsection (o)(2) already requires "a short synopsis of each witness's position." Accordingly, SBCT's proposed modification is unnecessary.

§21.95(r), Brief

SBCT commented that proposed §21.95(r) should permit reply briefs since they have become standard practice in FTA proceedings and allow parties to correct misstatements in opposing parties' initial briefs.

In its reply comments, AT&T indicated its support for giving the arbitrator discretion to determine whether the parties should submit reply briefs.

Commission response

The commission declines to adopt SBCT's suggestion. Given the compressed timeframes provided by statute, reply briefs should not be allowed as a matter of course. Rather, the presiding officer should have the discretion to allow reply briefs.

§21.95(s), Time for decision

AT&T urged that the rules be clarified to state exactly what must be completed by the nine-month deadline. AT&T believes completion of the process must be issuance of a final arbitration award by the presiding officer. AT&T suggested removing the final sentence in this subsection and moving it to subsection (t)(3) and making it state specifically that the arbitration team shall complete the arbitration process by issuing the arbitration award no later than nine months after the date on which a party receives a request for negotiation (unless the deadline is waived). Additionally, AT&T argued that all involved, including parties and the commission itself, must comply with the timeframes established in the rules to meet the timelines set forth in the FTA. AT&T therefore urged that the rule should contain a mandatory requirement that the

decision be issued within 30 days of the filing of briefs, if any. If no briefs are filed, AT&T urged that the rule should require issuance of the final order within 30 days of the hearing.

Commission response

The commission agrees with AT&T's suggestion to specify that the arbitration award must be issued within the nine-month timeframe. This would clarify what must be complete within the nine-month period.

§21.95(t), Decision

AT&T argued that this rule should specifically state that the award must be issued, absent waiver or agreement, within the nine-month timeframe. AT&T also requested that the rule provide that the presiding officer issue the arbitration award within a date certain of receipt of any exceptions, perhaps within ten business days.

Commission response

The commission rejects AT&T's suggestion. AT&T's proposed changes are unnecessary and redundant, particularly in light of subsection (s), which specifies the timeframes for decisions.

§21.97, Approval of Negotiated Agreements

AT&T urged that the rule be clarified to state that the incumbent local exchange company (ILEC) is the party required to file the verified statement. As written, AT&T asserted, it is not clear whether only the ILEC is required to file the verified statement.

SBCT advocated deleting proposed §21.97(b) because proposed §21.97(g) already requires SBCT to post notice of approved interconnection agreements. If the commission imposes separate posting requirements, SBCT requested clarification that notice may be provided by direct notice, web posting, or electronic mail.

Commission response

The commission declines to delete §21.97(b), as proposed by SBCT. SBCT's suggested changes would unnecessarily restrict the presiding officer's ability to require notice as circumstances may warrant. Because the commission is retaining separate posting requirements, the commission has made the clarifications suggested by SBCT in its alternative proposal. The commission notes that FTA §252(i) imposes the duty to make available any interconnection, service, or network element provided under an approved agreement to which it is a party upon a local exchange carrier, not just the incumbent local exchange carrier. Arguably, either or both parties to the negotiated agreement may be required to provide notice, since both are local exchange carriers. Thus, the commission determines that the presiding officer should be afforded flexibility in reaching decisions regarding notice and declines to make AT&T's proposed change to this section or the other notice sections identified in AT&T's comments.

§21.99, Approval of Arbitrated Agreements

AT&T noted "significant concerns" with the process for approval of arbitrated agreements and the lack of opportunity to submit comments to the Commissioners during that phase. AT&T argued that the FTA gives the commission the authority to review, modify, or reject terms

contained in interconnection agreements and the inability of parties to provide comments during commission review of agreements is contrary to procedural due process.

SBCT did not oppose AT&T's proposed comment process but questioned what SBCT considered AT&T's "inconsistent demands" regarding compliance with FTA statutory timeframes while including full-blown discovery. Nonetheless, SBCT did not oppose allowing parties' comments during commission review of interconnection agreements if they can be accomplished within the available timeframe.

AT&T was also concerned that the remand procedure in the rule has the potential to create significant delays in the goal of getting a single conforming agreement. AT&T argued that the commission should reject or modify interconnection terms only on the basis of the existing record and on comments from the parties and interested persons. AT&T urged deletion of the remand procedure, particularly if no standards or deadlines are established to govern such remands.

SBCT agreed with AT&T that allowing the commission to remand proceedings to the presiding officer would push a final decision past the statutory deadline. SBCT did not oppose a remand conducted within the statutory deadline or pursuant to the parties' waiver of such deadline. SBCT noted that an interconnection agreement may provide for the parties to negotiate new terms if the commission rejects a part of the agreement, in which case the remainder of the agreement can be approved.

Commission response

In order to afford the parties full opportunity for due process, the commission has added language to allow for the filing of comments within the statutory 30-day commission approval deadline. Given the parties' concern regarding remand and the limited 30-day timeframe, the commission has modified that language in this section to disallow a remand. However, the commission also notes that inclusion of a comment cycle necessitates requiring parties to file their comments as early as possible. Therefore, parties are required to file any comments on the language ordered within five calendar days of the filing of the agreement adopted by arbitration. Replies to any filed comments shall be made within three calendar days of the filing of the comments.

§21.101, Approval of Amendments to Existing Interconnection Agreements

AT&T indicated its support for §21.101(c).

§21.103, Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i)

SBCT noted that the FTA and 47 C.F.R. §51.809 do not require a carrier make available individual interconnection, service, or network element arrangements without incorporating the arrangement into an interconnection agreement or amendment to an interconnection agreement. SBCT proposed requiring ILECs to provide the interconnection agreement or amendment containing the requested arrangement(s) within 15 business days of the request. SBCT asserted that the 15 business day interval is reasonable in light of the volume and size of contracts. At the prehearing conference, SBCT added that 47 C.F.R. §51.809 specifies that the ILEC will make

available the individual interconnection service for network element arrangements at the same rates, terms, and conditions as those provided in the agreement. Therefore, SBCT took the position that there would need to be an agreement containing those terms for them to be provided under the same terms and conditions and that 15 business days would provide both negotiators and contract administrators sufficient time to put the agreement together and work out any disputes on how those sectional MFNs should apply to an existing interconnection agreement.

Commission response

The commission agrees with SBCT that additional time may be necessary to incorporate terms into an agreement. Accordingly, §21.103 is modified to require ILECs to make any interconnection, service, or network element available within 15 working days of request.

§21.105, Approval of Agreements Adopting Terms and Conditions of the T2A

SBCT asserted that this proposed rule is unnecessary because the commission already has proposed rules applicable to the approval of agreements under FTA. With respect to the T2A, the commission previously issued Order No. 55. Moreover, the T2A expired on October 13, 2003, but continues in effect until replaced by a successor agreement as specified in Docket Number 27470.

Commission response

The commission accepts SBCT's proposal to withdraw §21.105, given that the T2A will no longer be available and the proposed rules already address the adoption of agreements.

Comments on Subchapter E, Post-Interconnection Agreement Dispute Resolution

§21.121, Purpose

AT&T recommended that the commission explicitly state that it has authority not only under federal law but under state law as well, given that the commission has made this finding in the past.

SBCT opposed AT&T's comments suggesting that the rule specify that the commission has authority under state law to resolve arbitrations and disputes brought under the FTA. SBCT asserted that blending an FTA proceeding with a state law contested case proceeding would violate due process because the rules would not be clear.

Commission response

The commission elects to make no amendment to the rule on the basis of these comments. Contrary to AT&T's assertion, the rule as written does not purport to describe the authority under which the commission conducts post-interconnection agreement dispute resolution. The reference to the FTA describes the authority under which the commission approves interconnection agreements only. It is undisputed that the commission has the authority to resolve post-interconnection disputes. The commission will resolve such disputes under any and all authority it has and the rule need not reflect all such authority.

§21.123, Informal Settlement Conference

AT&T objected to the tolling provision in this section arguing that it would allow a party to delay the formal dispute resolution process by requesting an informal settlement conference

simply to delay matters. AT&T argued that keeping the formal dispute resolution schedule in place provides an incentive that makes the informal settlement conference a more meaningful exercise.

Commission response

The commission amends the rule to address the concern raised by AT&T. It would indeed be inappropriate to permit one party to toll the resolution of a dispute merely by requesting an informal settlement conference. Under the revised rule, unless agreed by both parties, such tolling will not take place.

§21.125, Formal Dispute Resolution Proceeding

§21.125(a), Initiation of formal proceeding

SBCT advocated the deletion of proposed §21.125(a)(1)(F). SBCT asserted that the formal dispute resolution proceeding may not serve as a means for renegotiating or re-writing binding interconnection agreements. SBCT stated that allowing parties to submit proposed modified contract language encourages the parties to exceed the commission's authority in interpreting an interconnection agreement.

AT&T noted that SBCT requested the elimination of the requirement that a petition initiating a post-interconnection agreement dispute proceeding include proposed modified contract language. AT&T opposed SBCT's proposal that the requirement be eliminated. AT&T argued that proposing modified language may be appropriate to clarify the interconnection agreement, noting that competitive local exchange companies (CLECs) periodically need to bring disputes

under the interconnection agreement where there are gaps in language that could not have been foreseen.

Commission response

The commission disagrees with SBCT's proposal to delete §21.125(a)(1)(F). Agreements may require modification to clarify its meaning or fill gaps in the terms.

§21.125(k), Arbitration award

AT&T urged that the rule be modified to provide a mandatory requirement that the decision be issued within 15 days of the filing of briefs, if any, and, if not, within 15 days of the hearing.

Commission response

The commission rejects AT&T's suggestion to limit the time within which to issue a decision. Such time limits are not required by statute and the commission declines to unnecessarily restrict the presiding officer's discretion.

§21.129, Request for Interim Ruling Pending Dispute Resolution

§21.129(a), Purpose

SBCT requested clarification because two clauses in subsection (a) appear inconsistent. At the public hearing, SBCT stated that the clarification is needed regarding the language in the parenthetical in paragraph (2), "(including issues of pricing and/or payment for any service functionality, or network element when such pricing and/or payment issues affect provisioning)" which appears to be somewhat inconsistent with paragraph (3).

Verizon agreed with SBCT that §21.129(a) is inconsistent and in need of clarification. Verizon stated that since subsection (g) requires the presiding officer to find good cause to grant interim relief, it would appear that the intent of subsection (a)(3) may have been to require payment of undisputed amounts as an essential prerequisite to a finding of good cause. If so, Verizon averred that the sentence should be revised to read, "However, in no event shall the presiding officer find good cause for interim relief if undisputed amounts have not been paid." Even with such a revision, Verizon opposed any proposal in subsection (a)(2) that would allow a petitioner to challenge pricing terms that have been previously agreed to and approved and would allow a petitioner to proceed with a request for interim relief on pricing terms by paying only the amount that the petitioner believes is reasonable. Verizon asserted the following arguments: (1) to the extent interim relief permits a party to change a price in an existing agreement approved under FTA §252, absent a full and complete review of the evidence, it is unlawful and contradicts the plain language of FTA; (2) even if lawful, the interim rule presents a host of other issues, i.e., must the ILEC charge all CLECs the same interim rate to avoid a claim of discrimination, or must CLECs first show that their ability to provide service is "compromised," whatever that means?; and (3) the rule further compresses the time within which the commission must resolve open issues under FTA by creating a separate "mini-case" within an existing arbitration.

Commission response

The commission agrees that subsection (a) is unclear as proposed. Accordingly, the commission clarifies subsection (a)(3) to state that a party may not obtain interim relief to avoid payment of undisputed charges.

The commission disagrees with Verizon's position that interim relief setting a rate is inappropriate. The rate may be in dispute because of ambiguity in the agreement. The case may be that there is no clear basis for either party to assert a particular rate. The commission also finds that the interim rate would not pose the complications suggested by Verizon. The interim rate, given its temporary nature, would not be available to other parties, unless incorporated into the agreement as result of an award. Furthermore, the issues in an interim relief hearing would need to be addressed anyway as part of the larger dispute, so the "mini-case" does not unjustifiably compress time.

§21.129(f), Evidence

SBCT opposed §21.129(f) that allows a request for interim ruling supported only by affidavit. SBCT stated that a responding party should have the opportunity to cross-examine the witness submitting the affidavit. Also, the responding party should have an opportunity to request some type of security when a party seeks an interim ruling.

In reply comments, AT&T disagreed with SBCT's position on §21.129(f). AT&T opposed the "rigid requirement" that any witness testifying in support of a request for relief must be available. AT&T also opposed SBCT's proposal to allow a party responding to a request for interim ruling the opportunity to seek some type of security. AT&T noted that virtually all requests for interim rulings are made by CLECs and argued that the history of interconnection disputes at the commission does not support the need for CLECs to post a bond or other type of security. AT&T also argued that it would be difficult in most cases to quantify the security.

Commission response

The commission elects not to require witnesses to testify in person given the expedited nature of an interim relief hearing. As a practical matter, the movant would want a live witness available to answer the presiding officers' questions, given that §21.129(g) requires the presiding officer to consider whether the movant has a substantial likelihood of success on the merits and whether there is a substantial threat of irreparable injury. Under §21.129(f), the presiding officer must issue a ruling based on the evidence at the interim relief hearing. Consequently, the movant has an incentive to provide a witness at the hearing.

With respect to the SBCT's proposal for security, the commission finds that security is not necessary since §21.129(g)(3) requires consideration of harm to other parties. Furthermore, under §21.129(g)(5), the presiding officer has discretion to consider the existence of security in the decision to grant or deny interim relief.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this chapter, the commission makes other minor modifications for consistency and the purpose of clarifying its intent.

These new sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2004) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act: §14.002, §14.052 and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, *et. seq.*

Subchapter A. GENERAL PROVISIONS AND DEFINITIONS.

§21.1. Purpose and Scope.

(a) Purpose. This chapter establishes procedures for approving interconnection agreements and resolving open issues pursuant to the Federal Telecommunications Act of 1996 (FTA) §252.

(b) Scope.

(1) This chapter shall govern the initiation, conduct, and determination of dispute resolution proceedings, whether instituted by order of the commission, order of the presiding officer, or by request of a party.

(2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, commission staff, or the substantive rights of any person.

(3) To the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control.

§21.3. Definitions.

The following terms, when used in this chapter, shall have the following meanings, unless the context or specific language of a section clearly indicates otherwise:

(1) Administrative review — Process under which an application may be approved without a formal hearing.

(2) Affected person — The definition of affected person is that definition given in the Public Utility Regulatory Act, §11.003(1).

(3) Application — A written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

(4) Arbitration — A form of dispute resolution in which each party presents its position on any unresolved issues to an impartial third person(s) who renders a decision on the basis of the information and arguments submitted.

(5) Arbitration hearing — The hearing conducted by an arbitrator to resolve any issue submitted to the arbitrator. An arbitration hearing is not a contested case under the Administrative Procedure Act, Texas Government Code §§2001.001, et. seq.

(6) Arbitration team — Employees of the commission assigned to serve as arbitrators in a dispute resolution proceeding. One or more members of the arbitration team may serve as the presiding officer(s) of a dispute resolution proceeding. The Arbitration team does not include commission employees specifically assigned to advise commissioners.

(7) Arbitrator — The commission, any commissioner, or any commission employee selected to serve as the presiding officer in a compulsory arbitration hearing.

(8) Authorized representative — A person who enters an appearance on behalf of a party, or on behalf of a person seeking to be a party or otherwise to participate, in a proceeding. The appearance may be entered in person or by subscribing the representative's name upon any pleading filed on behalf of the party or person seeking to be a party or otherwise to participate in the proceeding. The authorized representative shall be considered to remain a representative of record unless a statement or pleading to the contrary is filed or stated in the record.

(9) Commission — The Public Utility Commission of Texas.

(10) Commissioner — One of the members of the Public Utility Commission of Texas.

(11) Complainant — A person who files a complaint intended to initiate a dispute resolution proceeding.

(12) Compulsory arbitration — The arbitration proceeding conducted by the commission or its designated arbitrator pursuant to the commission's authority under FTA §252.

(13) Contested case — A proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

(14) Control number — Number assigned by the commission's Central Records to a docket, project, or tariff.

(15) Days — Calendar days, not working days, unless otherwise specified by this chapter or the commission's substantive rules.

(16) Decision Point List (DPL) — A matrix established before the submittal of testimony that includes the specific issues to be decided in a dispute resolution proceeding.

(17) Dispute resolution proceeding — A proceeding conducted by a presiding officer or commission employee in accordance with this chapter. A dispute resolution proceeding is not a contested case subject to the Administrative Procedure Act, Texas Government Code §§2001.001, et. seq. A dispute resolution proceeding may include formal or informal proceedings.

(18) Docket — A proceeding under this chapter.

(19) FTA — The federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Stat. 56 (1996), (codified at 47 U.S.C. §§151 et seq.).

(20) Hearing — Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

(21) Informal settlement conference — One or more optional, informal meetings between parties to an interconnection agreement and commission staff in which commission staff assist the parties to reach settlement as to all or some of the disputed issues.

(22) Mediation — A voluntary dispute resolution process in which a neutral third party, including, but not limited to, a member of the commission staff, assists the parties in reaching agreement. The mediator does not have the authority to impose a resolution.

(23) Party — A party to negotiations under Subchapter D Dispute Resolution or a party to an agreement under Subchapter E Post-Interconnection Dispute Resolution.

(24) Person — An individual, partnership, corporation, association, governmental subdivision, entity, or public or private organization.

(25) Petition — A written document complying with §21.33 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission) intended to initiate a dispute resolution proceeding with the commission.

(26) Petitioner — A person who files a petition intended to initiate a dispute resolution proceeding with the commission.

(27) Pleading — A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.

(28) Prehearing conference — Any conference or meeting of the parties, prior to the hearing on the merits, on the record and presided over by the presiding officer.

(29) Presiding officer — The commission, any commissioner, any hearings examiner or administrative law judge, or arbitrator presiding over a proceeding or any portion thereof.

(30) Proceeding — Any hearing, investigation, inquiry or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint, conducted by the commission.

(31) Project — A rulemaking or other proceeding that is not a docket or a tariff.

(32) PURA — The Public Utility Regulatory Act, Texas Utilities Code, Title 2, as it may be amended from time to time.

(33) Respondent — A person against whom a petition has been filed.

(34) Working day — A day on which the commission is open for the conduct of business.

§21.5. Representative Appearances.

(a) Generally. Any person may appear before the commission or in a hearing in person or by authorized representative. The presiding officer may require a representative to submit proof of authority to appear on behalf of another person. The authorized representative of a party shall specify the particular persons or classes of persons the representative is representing in the proceeding.

(b) Change in authorized representative. Any person appearing through an authorized representative shall provide written notification to the commission and all parties to the proceeding of any change in that person's authorized representative. The required number of copies of the notification shall be filed in Central Records under the control number(s) for each affected proceeding and shall include the authorized representative's name, address, telephone number, email address, and facsimile number.

(c) Lead counsel. A party represented by more than one attorney or authorized representative in a matter before the commission may be required to designate a lead counsel who is authorized to act on behalf of all of the party's representatives, but all other attorneys or authorized representatives for the party may take part in the proceeding in an orderly manner, as ordered by the presiding officer.

(d) Change in information required for notification or service. Any person or authorized representative appearing before the commission in any proceeding shall provide written

notification to the commission and all parties to the proceeding of any change in their address, telephone number, facsimile number, or email address. The required number of copies of the notification shall be filed in Central Records under the control number(s) for each affected proceeding.

§21.7. Standards of Conduct.

(a) Standards of conduct for parties.

(1) Every person appearing in any proceeding shall comport himself or herself with dignity, courtesy, and respect for the commission, presiding officer, and all other persons participating in the proceeding. Professional representatives shall observe and practice the standard of ethical and professional conduct prescribed for their professions. In particular, lawyers are reminded of their responsibilities under the Texas Disciplinary Rules of Professional Conduct, §§3.01, 3.02, 3.03 and 3.04.

(2) Upon a finding of a violation of paragraph (1) of this subsection, any party, witness, attorney, or other representative may be excluded by the presiding officer from the proceeding in which the violation transpired for such period and upon such conditions as are just, or may be subject to sanctions in accordance with §21.71 of this title (relating to Sanctions). A decision by a presiding officer to exclude a party, witness, attorney, or other representative shall be subject to immediate appeal to the commission.

(b) Communications.

(1) Ex parte communications. Unless required for the disposition of ex parte matters authorized by law, a presiding officer assigned to render a decision may not communicate, directly or indirectly, in connection with any substantive issues currently the subject of a dispute resolution proceeding before that presiding officer with any person, party, or their representatives, except on notice and

opportunity for all parties to participate. Members of the commission or a presiding officer assigned to render a decision may communicate ex parte with employees of the commission who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the commission and its staff in evaluating the evidence.

(2) Communications between presiding officers and Commissioners and employees of the commission acting as advisors to Commissioners. Unless required for the disposition of ex parte matters authorized by law, a presiding officer assigned to render a decision may not communicate, directly or indirectly, in connection with any substantive issues currently the subject of a dispute resolution proceeding before that presiding officer with any commissioner, or with an employee of the commission acting as an advisor to the commission, except on notice and opportunity for all parties to participate.

(3) Application to arbitration team. As used in this section, the term "presiding officer" includes all members of the arbitration team.

(c) Standards for recusal of presiding officers. Presiding officers shall disqualify themselves or shall recuse themselves on the same grounds and under the same circumstances as specified in the Texas Rules of Civil Procedure, Rule 18b.

(d) Motions for disqualification or recusal of a presiding officer.

(1) Any party may move for disqualification or recusal of a presiding officer stating with particularity the grounds why the presiding officer should not preside. The

grounds may include any disability or matter, not limited to those set forth in subsection (c) of this section. The motion shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall be verified by affidavit.

(2) The motion shall be filed within five working days after the facts that are the basis of the motion become known to the party. The motion shall be served on all parties by hand delivery, facsimile transmittal, or overnight courier delivery.

(3) Written responses to motions for disqualification or recusal shall be filed within three working days after the receipt of the motion. The presiding officer may require that responses be made orally at a prehearing conference or hearing.

(4) The presiding officer shall not rule on any issues that are the subject of a pending motion for recusal or disqualification. The commission shall appoint another presiding officer to preside on all matters that are the subject of the motion for recusal until the issue of disqualification is resolved.

(5) The parties to a proceeding may waive any ground for recusal or disqualification after it is fully disclosed on the record, either expressly or by their failure to take action on a timely basis.

(6) If the presiding officer determines that a motion for disqualification or recusal was frivolous or capricious, or filed for purposes of delaying the proceeding, sanctions may be imposed in accordance with §21.71 of this title.

(7) Disqualification or recusal of a presiding officer, in and of itself, has no effect upon the validity of rulings made or orders issued prior to the time the motion for recusal was filed.

(e) Subsequent proceedings. A commission employee who has participated as a mediator under §21.91 of this title (relating to Mediation), a presiding officer under §21.95 of this title (relating to Compulsory Arbitration), or a staff member designated as an advisor to the presiding officer under §21.95 of this title may not participate as an advisor to Commissioners in any subsequent commission proceedings concerning the review and approval of the resulting agreement pursuant to the Federal Telecommunications Act of 1996 (FTA) §252(e), except in cases where two or more of the Commissioners act as the presiding officer. In a proceeding to approve an arbitrated agreement pursuant to §21.99 of this title (relating to Approval of Arbitrated Agreements), the commission or the presiding officer may call upon an employee who has participated on the arbitration team under this chapter to the extent necessary to explain the arbitration team's final decision.

§21.9. Computation of Time.

(a) Counting days.

(1) Except for computation of the arbitration window under Federal Telecommunications Act of 1996 (FTA), in computing any period of time prescribed or allowed by this chapter, by order of the commission or any presiding officer, or by any applicable statute, the period shall begin on the day after the act, event, or default in question. The period shall conclude on the last day of the designated period unless that day is a day the commission is not open for business, in which event the designated period runs until the end of the next day on which the commission is open for business. The commission shall not be considered to be open for business on state holidays on which only a skeleton crew is required.

(2) In computing the window for arbitration under FTA, the arbitration window shall be computed inclusive of the 135th and 160th day of the party's receipt of a request for negotiation under FTA §252.

(b) Extensions.

(1) Documents or pleadings. Unless otherwise provided by statute, the time for filing any documents or pleadings may be extended by the presiding officer, upon a written filing or an oral request on the record made prior to the expiration of the applicable period of time, showing that there is good cause for such extension of

time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion.

(2) Decisions. The time for issuing any decision by a presiding officer or the commission may be extended by the presiding officer in a written order for good cause unless the decision deadline is prescribed by FTA. The time for issuing a decision may not be extended by more than 30 working days unless agreed by the parties. Decision deadlines pursuant to FTA may be waived or extended by parties' written agreement or oral agreement on the record.

§21.11. Suspension of Rules and Good Cause Exceptions.

(a) Suspension. The commission may suspend the operation of one or more of the sections in this chapter if there exists a public emergency or imperative public necessity and the commission ascertains that suspension will best serve the public interest and will not prejudice the rights of any party.

(b) Good cause exception. Notwithstanding any other provision of this chapter or Chapter 22 of this title (relating to Practice and Procedure), except where prohibited by statute, the presiding officer or the commission may grant exceptions to any requirement in this chapter or in a commission-prescribed form for good cause.

Subchapter B. PLEADINGS, DOCUMENTS, AND OTHER MATERIALS.

§21.31. Filing of Pleadings, Documents, and Other Materials.

(a) Applicability. This section applies to all pleadings as defined in §21.3 of this title (relating to Definitions) and the following documents:

(1) letters or memoranda relating to any item with a control number;

(2) discovery requests and responses; and

(3) Decision Point List (DPL) filings.

(b) File with the commission filing clerk. All pleadings and documents required to be filed with the commission shall be filed with the commission filing clerk and shall state the control number in the heading, if known.

(c) Number of items to be filed. Unless otherwise provided by this chapter or ordered by the presiding officer, the number of copies to be filed, including the original, is as follows:

(1) for applications filed pursuant to §21.97 of this title (relating to Approval of Negotiated Agreements, §21.101 of this title (relating to Approval of Amendments to Existing Interconnection Agreements, and §21.103 of this title (relating to Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i)): three copies;

(2) for all other petitions and responses: ten copies;

(3) for discovery requests: ten copies;

(4) for testimony and briefs: ten copies, except when it is known that two or more of the Commissioners will serve as the presiding officer;

(5) for testimony and briefs when two or more of the Commissioners will serve as the presiding officer: 19 copies;

(6) for the final approved interconnection agreement: two copies; and

(7) for other pleadings and documents: ten copies.

(d) Receipt by the commission. Pleadings and any other documents shall be deemed filed when the required number of copies and the electronic copy, if required, in conformance with §21.33 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission), are presented to the commission filing clerk for filing. The commission filing clerk shall accept pleadings and documents if the person seeking to make the filing is in line by the time the pleading or document is required to be filed.

(e) No filing fee. No filing fee is required to file any pleading or document with the commission.

(f) Office hours of the commission filing clerk. With the exception of open meeting days, for the purpose of filing documents, the office hours of the commission filing clerk are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days.

(1) Central Records will open at 8:00 a.m. on open meeting days. With the exception of paragraph (2) of this subsection, no filings will be accepted between the hours of 8:00 a.m. and 9:00 a.m.

(2) On open meeting days, between the hours of 8:00 a.m. and 9:00 a.m., the Commissioners and the Policy Development Division may file items related to the open meeting on behalf of the Commissioners.

(A) The Commissioners and the Policy Development Division shall provide the filing clerk with an extra copy of all documents filed pursuant to this paragraph for public access.

(B) The Policy Development Division shall provide the parties of record copies of documents filed under this paragraph as soon as possible after filing. To the extent practicable, the existence of documents filed under this paragraph shall be announced prior to the discussion on the noticed item at the open meeting. In addition to providing copies via mail or facsimile, staff may transmit the documents to the parties of record by electronic transmission or via hand-delivery at the open meeting.

(g) Filing a copy or facsimile copy in lieu of an original. Subject to the requirements of subsection (c) of this section and §21.33 of this title, a copy of an original document or pleading, including a copy that has been transmitted through a facsimile machine, may be filed, so long as the party or the attorney filing such copy maintains the original for inspection by the commission or any party to the proceeding.

(h) Filing deadline. All documents shall be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer.

§21.33. Formal Requisites of Pleadings and Documents to be Filed with the Commission.

(a) Applicability. This section applies to all pleadings as defined in §21.3 of this title (relating to Definitions) and the following documents:

(1) Letters or memoranda relating to any item with a control number;

(2) Reports pursuant to commission rules or request of the commission;

(3) Discovery requests; and

(4) Decision Point List (DPL) filings.

(b) Requirements of form.

(1) Style.

(A) All requests for dispute resolution or arbitration shall be styled as follows: Petition of {Party} for {Compulsory Arbitration or Post-Interconnection Dispute Resolution} with {Party} under FTA relating to {concise description of major issue}. All responses to requests for dispute resolution or arbitration shall be styled as follows: Response of {Party} to Petition of {Party} for {Compulsory Arbitration or Post-Interconnection Dispute Resolution} under FTA relating to {concise description of major issues}.

(B) Requests for dispute resolution pursuant to §21.131 of this title (relating to Request for Expedited Ruling) and §21.133 of this title (relating to Request for Interim Ruling Pending Dispute Resolution) shall also include

such specific requests, as appropriate, in the pleading style, as follows: Petition of {Party} for {Compulsory Arbitration or Post-Interconnection Dispute Resolution} and Request for {Expedited Ruling and/or Request for Interim Ruling} with {Party} under FTA relating to {concise description of major issues}.

(2) Unless otherwise authorized or required by the presiding officer or this chapter, documents shall:

(A) include the style and number of the docket or project in which they are submitted, if available;

(B) identify by heading the nature of the document submitted and the name of the party submitting the same; and

(C) be signed by the party or the party's representative.

(3) Whenever possible, all documents should be provided on 8.5 by 11 inch paper. However, any log, graph, map, drawing, or chart submitted as part of a filing will be accepted on paper larger than provided in subsection (g) of this section, if it cannot be provided legibly on letter-size paper. The document must be able to be folded to a size no larger than 8.5 by 11 inches. Documents that cannot be folded may not be accepted.

(c) Format. Any filing with the commission, other than the DPL, must:

(1) have double-spaced or one and one-half times spaced print with left margins not less than one inch wide, except that any letter may be single-spaced;

(2) indent and single-space any quotation of 50 words or more in block quote format; and

(3) be printed or formatted in not less than 12-point type for text and 10-point type for footnotes.

(d) Citation.

(1) Form. Any party filing with the commission should endeavor to comply with the rules of citation set forth, in the following order of preference, by: the commission's "Citation Guide;" the most current edition of the "Texas Rules of Form," published by the University of Texas Law Review Association (for Texas authorities); and the most current edition of "A Uniform System of Citation," published by The Harvard Law Review Association (for all other authorities). Neither Rule 1.1 of the Uniform System nor the comparable portion of the "Texas Rules of Form" shall be applicable in proceedings.

(2) Copies. When a party cites to authority other than PURA and other Texas state statutes, commission rules, reported Texas cases, an FCC decision, the United States Code, the Texas Administrative Code, the Code of Federal Regulations, or a document on file with the commission, such party shall provide a copy of the cited authority to the presiding officer and all parties of record. Copies of authority may be provided to the presiding officer and all parties of record electronically.

(e) Signature. Every pleading and document shall be signed by the party or the party's authorized representative, and shall include the party's address, telephone number, facsimile number, and email address. If the person signing the pleading or document is an attorney licensed in Texas, the attorney's State bar number shall be provided.

(f) Page limits. Unless otherwise authorized by the presiding officer, page limits shall be as follows:

(1) With the exception of DPLs and discovery responses, no pleading or brief relating to interconnection agreements shall exceed 50 pages, excluding exhibits.

(2) Prefiled direct testimony shall not exceed 75 pages in length per witness, excluding exhibits and/or attachments. A party requesting the presiding officer to establish a larger page limit shall so move, and shall provide support on relevant factors pursuant to paragraph (4) of this subsection.

(3) The page limitation shall not apply to copies of legal authorities provided pursuant to subsection (d)(2) of this section.

(4) A presiding officer may establish a larger or smaller page limit. In establishing parties' page limits, the presiding officer shall consider such factors as which party has the burden of proof, the number of parties opposing a party's position, alignment of parties, the number and complexity of issues, the number of witnesses per party, and demonstrated need.

(g) Hard copy filing standards. Hard copies of each document shall be filed with the commission in accordance with the requirements set forth in paragraphs (1)-(4) of this subsection.

(1) Each document shall be typed or printed on paper measuring 8.5 by 11 inches. Oversized documents being filed on larger paper pursuant to subsection (b)(3) of this section shall be filed as separate referenced attachments. Except for responses to discovery, no single document shall consist of more than one paper size.

(2) One copy of each document, that is not the original file copy, shall be filed without bindings, staples, tabs, or separators.

(A) This copy shall be printed on both sides of the paper or, if it cannot be printed on both sides of the paper, every page of the copy shall be single sided.

(B) All pages of the copy filed pursuant to this paragraph, starting with the first page of the table of contents, shall be consecutively numbered through the last page of the document, including attachments, if any.

(3) For documents for which an electronic filing is required, all non-native figures, illustrations, or objects shall be filed as referenced attachments. No non-native figures, illustrations, or objects shall be embedded in the text of the document. "Non-native figures" means tables, graphs, charts, spreadsheets, illustrations, drawings and other objects which are not electronically integrated into the text portions of a document.

(4) Whenever possible, all documents and copies shall be printed on both sides of the paper.

(h) Electronic filing standards. Any document may be filed, and all documents containing more than ten pages shall be filed, electronically in accordance with the requirements of paragraphs (1)-(7) of this subsection. Electronic filings are registered by submission of the relevant electronic documents via diskette or the internet, in accordance with transfer standards available in the commission's central records office or on the commission's World Wide Website, and the submission of the required number of paper copies to the filing clerk under the provisions of this section and §21.31 of this title (relating to Filing of Pleadings, Documents and Other Materials).

(1) All non-native figures, illustrations, or objects must be filed as referenced attachments. No non-native figures, illustrations, or objects shall be imbedded in the text of the document. "Non-native figures" means tables, graphs, charts, spreadsheets, illustrations, drawings and other objects which are not electronically integrated into the text portions of a document.

(2) Oversized documents shall not be filed in electronic media, but shall be filed as referenced attachments.

(3) Each document that has five or more headings and/or subheadings shall have a table of contents that lists the major sections of the document, the page numbers for each major section and the name of the electronic file that contains each major section of the document. Discovery responses are exempt from this paragraph.

(4) Each document shall have a list of file names that are included in the filing and shall be referenced in an ASCII text file.

(5) The table of contents and list of file names shall be placed at the beginning of the document.

(6) Each diskette shall be labeled with the control number, if known, and the name of the person submitting the document.

(7) Any information submitted under claim of confidentiality should not be submitted in electronic format.

(i) Disk format standards. Each document that is submitted to the filing clerk on diskette shall be submitted as set forth in paragraphs (1)-(3) of this subsection.

(1) 3.5 inch diskette;

(2) 1.44 M double sided, high density storage capacity; and

(3) IBM format.

(j) File format standards.

(1) Electronic filings shall be made in accordance with the current list of preferred file formats available in the commission's central records office and on the commission's World Wide Website.

(2) Electronic filings that are submitted in a format other than that required by paragraph (1) of this subsection will not be accepted until after successful conversion of the file to a commission standard.

§21.35. Service of Pleadings and Documents.

(a) Pleadings and Documents submitted to a presiding officer. At or before the time any document or pleading regarding a proceeding is submitted by a party to a presiding officer, a copy of such document or pleading shall be filed with the commission filing clerk and served on all parties. These requirements do not apply to documents which are offered into evidence during a hearing or which are submitted to a presiding officer for in camera inspection; provided, however, that the party submitting documents for in camera inspection shall file and serve notice of the submission upon the other parties to the proceeding. Pleadings and documents submitted to a presiding officer during a hearing, prehearing conference, or open meeting shall be filed with the commission filing clerk as soon as is practicable.

(b) Methods of service. Except as otherwise expressly provided by order, rule, or other applicable law, service on a party may be made by delivery of a copy of the pleading or document to the party's authorized representative or attorney of record either in person; by agent; by courier receipted delivery; by first class mail; by certified mail, return receipt requested; or by registered mail to such party's address of record, or by facsimile transmission to the recipient's current facsimile machine.

(1) Service by mail shall be complete upon deposit of the document, enclosed in a wrapper properly addressed, stamped and sealed, in a post office or official depository of the United States Postal Service, except for state agencies. For state

agencies, mailing shall be complete upon deposit of the document with the General Services Commission.

(2) Service by agent or by courier receipted delivery shall be complete upon delivery to the agent or courier.

(3) Service by facsimile transmission shall be complete upon actual receipt by the recipient's facsimile machine.

(4) Unless otherwise established by the receiving party, if service is made by hand delivery, facsimile transmission, or electronic mail, it shall be presumed that all pleadings are received on the day filed. If service is made by overnight delivery, it shall be presumed that pleadings are received on the day after filing. If service is made by regular mail, it shall be presumed that pleadings are received on the third day after filing. Service after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

(c) Evidence of service. A return receipt or affidavit of any person having personal knowledge of the facts shall be prima facie evidence of the facts shown thereon relating to service. A party may present other evidence to demonstrate facts relating to service.

(d) Certificate of service. Every document required to be served on all parties pursuant to subsection (a) of this section shall contain the following or similar certificate of service: "I, (name) (title) certify that a copy of this document was served on all parties of record in this proceeding on (date) in the following manner: (specify method). Signed,

(signature)." The list of the names and addresses of the parties on whom the document was served, should not be appended to the document.

§21.37. Examination and Correction of Pleadings and Documents.

(a) Construction of pleadings and documents. All documents shall be construed so as to do substantial justice.

(b) Procedural sufficiency of pleadings and documents. All pleadings and documents that do not comply in all material respects with other sections of this chapter shall be conditionally accepted for filing. Upon notification by the presiding officer of a deficiency in a pleading or document, the responsible party shall correct or complete the pleading or document in accordance with the notification. If the responsible party fails to correct the deficiency, the pleading or document may be stricken from the record and the proceeding may be subject to dismissal under §21.67 of this title (relating to Dismissal of a Proceeding).

(c) Additional requirements. Additional requirements as set forth in §21.39 of this title (relating to Amended Pleadings) apply.

§21.39. Amended Pleadings.

(a) Filing amended pleadings.

(1) A pleading may be amended without leave of the presiding officer, provided that the amended pleading is served upon all parties, is filed no later than ten days after the initial pleading was filed, and does not seek relief for which notice in accordance with this chapter has not been provided. The filing of an amended pleading shall restart the time in which a party may respond to the filing.

(2) A party must seek authorization to file an amended pleading if the amended pleading seeks a new type of relief for which notice in accordance with this chapter has not been provided.

(3) Any amended pleading offered for filing more than ten days after the initial pleading was filed will be considered by the presiding officer only if there is a showing of good cause for such filing and that consideration of such filing will not unduly delay the proceeding by injecting issues to which the remaining parties may be entitled to respond. If additional notice is required or additional time needed for opposing parties to respond to the proposed pleading, the presiding officer may order such additional notice or time as is reasonable under the circumstances.

(b) Amendments to conform to issues tried at hearing without objection. When issues not raised by the pleadings are tried or otherwise heard or argued at hearing by express or implied consent of the parties, upon a determination by the presiding officer that no

prejudice to any of the parties will occur, the issues shall be treated in all respects as if they had been raised in the pleadings. Amendment of the pleadings to conform them to the evidence may be made with leave of the presiding officer upon any party's motion until the close of evidence, but failure to so amend shall not affect whether the issues may be properly considered by the presiding officer.

§21.41. Motions.

(a) General requirements. A motion shall be in writing, unless the motion is made on the record at a prehearing conference or hearing. It shall state the relief sought and the specific grounds supporting a grant of relief. If the motion is based upon alleged facts that are not a matter of record, the motion shall be supported by an affidavit. Written motions shall be served on all parties in accordance with §21.35 of this title (relating to Service of Pleadings and Documents).

(b) Time for response. Unless otherwise provided by the presiding officer, commission rule, or statute, a responsive pleading, if made, shall be filed by a party within five working days after receipt of the pleading to which the response is made.

(c) Rulings on motions. The presiding officer shall serve orders ruling on motions upon all parties, unless the ruling is made on the record in a hearing or prehearing conference open to the public.

(d) Motions for continuances.

(1) Motions for continuance and for extension of a deadline shall set forth the specific grounds for which the moving party seeks continuance and/or extension and shall reference all other motions for continuance and/or extension filed by the moving party in the proceeding. The moving party shall attempt to contact all other parties and shall state in the motion each party that was contacted and whether

that party objects to the relief requested. The moving party shall have the burden of proof with respect to the need for the continuance and/or extension.

(2) Continuances will not be granted based on the need for discovery if the party seeking the continuance previously had the opportunity to obtain and/or compel discovery from the person from whom discovery is sought, except when necessary due to discovery abuses, surprise or discovery of facts or evidence which could not have been discovered previously through reasonably diligent effort by the moving party.

(3) The presiding officer may grant timely filed motions for continuance and/or extension of deadline continuances agreed to by all parties provided that any applicable statutory deadlines are extended as necessary.

(e) Deadlines for motions for continuance and extension of filing deadline.

(1) Unless otherwise ordered by the presiding officer, motions for continuance of a prehearing conference, informal settlement conference, or discovery conference shall be in writing and shall be filed no less than two working days prior to the conference or hearing.

(2) Unless otherwise ordered by the presiding officer, motions for continuance of the hearing on the merits shall be in writing and shall be filed not less than three working days prior to the hearing. In addition to the requirements in subsection (e)(1) of this section, motions for continuance shall state proposed dates for a rescheduled hearing.

(3) Unless otherwise ordered by the presiding officer, motions for extension of a filing deadline shall be in writing and shall be filed not less than one working day prior to the filing deadline.

(4) Untimely motions for continuance and/or extension of a deadline shall be presumed denied. The moving party has the burden to show good cause for untimely filing.

(f) Modification of discovery deadlines.

(1) Notwithstanding the foregoing, the deadlines for responses, objections and motions to compel may be modified by agreement of the affected parties, by filing a letter or other document evidencing the agreement no later than the date the responses, objections or motions to compel are due.

(2) In the event parties' agreed modification of a discovery deadline affects a scheduled discovery conference, parties must also comply with subsection (e) of this section.

(3) Unless the parties show good cause for untimely filing, the presiding officer may impose the original deadlines for subsequent filings.

(4) In no event shall the modification of discovery deadlines by agreement be allowed if such modification would affect a statutory deadline, unless parties' agreed modification is accompanied by a written waiver.

Subchapter C. PRELIMINARY ISSUES, ORDERS, AND PROCEEDINGS.

§21.61. Threshold Issues and Certification of Issues to the Commission.

(a) Threshold issues. Threshold issues are legal or policy issues that a presiding officer determines to be of such significance to the proceeding that these issues should be addressed prior to the other issues in the proceeding. Threshold issues include, but are not limited to, issues to be certified to the commission.

(1) Threshold issues may be identified by the presiding officer or by motion of a party to the proceeding. Parties shall raise any threshold issues as well as challenges to the arbitrability of any issue at the first prehearing conference. If such challenges are not raised at the first prehearing conference, they shall be deemed waived by the parties. Parties shall be given an opportunity to brief the question of threshold issues. At the discretion of the presiding officer, reply briefs may be permitted. Any determination on threshold issues shall be made in a written order.

(2) Once a presiding officer has determined that there is a threshold issue(s) in a proceeding, the presiding officer shall take up the threshold issue(s) prior to proceeding with the other issues or certify the issue(s) to the commission pursuant to subsection (b) of this section. A decision on a threshold issue is not subject to motion for reconsideration.

(b) Certification. Certified issues shall be addressed prior to proceeding with the other issues in the proceeding.

(1) Issues for certification. The presiding officer may certify to the commission a significant issue that involves an ultimate finding in the proceeding. Issues appropriate for certification are:

(A) the commission's interpretation of its rules and applicable statutes;

(B) which rules or statutes are applicable to a proceeding; or

(C) whether commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

(2) Procedure for certification. The presiding officer shall submit the certified issue to the Policy Development Division, with notice to the parties when the issue is so submitted. The Policy Development Division shall place the certified issue on the commission's agenda to be considered at the earliest time practicable. Parties may file briefs on the certified issue within five working days of its submission.

(3) Abatement.

(A) In a compulsory arbitration, the presiding officer may abate all or a part of the proceeding while a certified issue is pending only if agreed to by the parties.

(B) In a post-interconnection dispute proceeding, the presiding officer may abate all or a part of the proceeding while a certified issue is pending at the presiding officer's discretion.

(4) Commission action. The commission shall issue a written decision on the certified issue no later than six working days after the open meeting at which the

issue is decided by the commission, unless extended for good cause. A commission decision on a certified issue is not subject to motion for reconsideration.

§21.63. Interim Issues and Orders.

The presiding officer may issue interim orders addressing motions, procedural and discovery matters, requests for interim relief, and such other matters as may aid in the conduct of the hearing and the efficient and fair disposition of the proceeding. Interim orders may be written or stated orally on the record.

§21.65. Interlocutory Appeals.

The commission may consider an appeal of an interlocutory or interim order only when it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result from enforcement of the order, and when the appellant clearly shows that it is entitled to preservation of the status quo pending issuance of a final arbitration order. As a condition to granting interlocutory relief, the commission may require the appellant to provide security in an amount and form (*e.g.,* bond or escrow) to be determined by the commission.

§21.67. Dismissal of a Proceeding.

(a) Motions for dismissal.

(1) Upon the motion of the presiding officer or the motion of any party, the presiding officer may dismiss, with or without prejudice, any proceeding, or claim within a proceeding, without an evidentiary hearing, for any of the following reasons:

(A) lack of jurisdiction;

(B) moot questions or obsolete petitions;

(C) res judicata;

(D) collateral estoppel;

(E) unnecessary duplication of proceedings;

(F) failure to prosecute;

(G) failure to state a claim for which relief can be granted; or

(H) other good cause shown.

(2) The party that initiated the proceeding shall have five working days from the date of receipt to respond to a motion to dismiss. If a hearing on the motion to dismiss is held, that hearing shall be confined to the issues raised by the motion to dismiss.

(3) If the presiding officer determines that the proceeding, or any claim within the proceeding, should be dismissed, the presiding officer shall issue an order dismissing the proceeding or claim within the proceeding.

(4) An order dismissing a proceeding, or claim within a proceeding, under paragraph (3) of this subsection may be appealed pursuant to §21.75 of this title (relating to Motions for Clarification and Motions for Reconsideration).

(b) Withdrawal of application.

(1) A party that initiated a proceeding may withdraw its application, petition, or complaint, without prejudice to refiling of same, at any time before that party has filed its direct testimony.

(2) After the filing of its direct testimony, a party may withdraw its application, petition, or complaint, without prejudice to refiling of same, only upon a finding of good cause by the presiding officer.

(3) In the absence of a finding of good cause, a party, after the filing of its direct testimony, may withdraw its application, petition, or complaint, with prejudice to refiling of same.

(4) Alternatively, in the absence of a finding of good cause, a party, after the filing of its direct testimony, may withdraw its application, petition, or complaint without prejudice if all parties agree. If parties do not agree, the withdrawing party may be allowed to withdraw without prejudice only upon the payment of the other parties' reasonable attorneys' fees and costs.

(5) If withdrawal of an application is approved, the presiding officer shall issue an order of dismissal with or without prejudice, as appropriate.

§21.69. Summary Decision.

(a) Motion for summary decision. The presiding officer may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion.

(b) Filing and contents of motion. Any party to a proceeding may move for summary decision on any or all of the issues. The motion may be filed at any time before the close of the hearing on the merits. The party filing the motion shall demonstrate that the issue or issues may be resolved by summary decision in accordance with the standard set forth in subsection (a) of this section. Affidavits in support of the motion shall be based on personal knowledge and shall set forth such facts as would be admissible in evidence. A motion for summary decision shall specifically describe the facts upon which the request for summary decision is based, the information and materials which demonstrate those facts, and the laws or legal theories that entitle the movant to summary decision.

(c) Response to motion. Any response to a motion for summary decision shall be filed within the time set by the presiding officer. A party opposing the motion shall show, by affidavits, materials obtained by discovery or otherwise, admissions, matters officially

noticed, or evidence of record, that there is a genuine issue of material fact for determination at the hearing, or that summary decision is inappropriate as a matter of law.

(d) Hearing on the motion. If appropriate, the presiding officer shall set the motion for hearing.

(e) No further hearing. No further evidentiary hearing shall be held on issues for which summary decision has been granted. The presiding officer will issue a decision or interim order on the issues recommended to be resolved by summary decision. Parties may file motions to reconsider and replies to motions to reconsider recommending resolution of issues by summary decision within the time set by the presiding officer. An order granting or denying partial summary decision is appealable to the commission.

§21.71. Sanctions.

(a) Causes for imposition of sanctions. A presiding officer, on his or her own motion or on the motion of a party, after notice and an opportunity for a hearing, may impose appropriate sanctions against a party or its representative for:

(1) filing a motion or pleading that was brought in bad faith, for the purpose of harassment, or for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abusing the discovery process in seeking, making or resisting discovery;

(3) failing to obey an order of the presiding officer or the commission.

(b) Types of sanctions. A sanction imposed under subsection (a) of this section may include, as appropriate and justified, issuance of an order:

(1) disallowing further discovery of any kind or a particular kind by the disobedient party;

(2) charging all or any part of the expenses of discovery against the offending party or its representative;

(3) holding that designated facts be deemed admitted for purposes of the proceeding;

(4) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;

(5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of such requests;

(6) punishing the offending party or its representative for contempt to the same extent as a district court;

(7) requiring the offending party or its representative to pay, at the time ordered by the presiding officer, the reasonable expenses, including attorney's fees, incurred by other parties because of the sanctionable behavior; and

(8) striking pleadings or testimony, or both, in whole or in part, or staying further proceedings until the order is obeyed.

(c) Imposition of sanctions by the commission. In addition to the sanctions listed in subsection (b) of this section that may be imposed by a presiding officer, except for subsection (b)(6) of this section, the commission, after notice and opportunity for hearing, may impose sanctions including:

(1) disallow the disobedient party's rights to participate in the proceeding;

(2) dismiss the application with or without prejudice;

(3) institute civil action; or

(4) impose any other sanction available to the commission by law.

(d) Procedure. A motion for sanctions may be filed at any time during the proceeding or may be initiated *sua sponte* by the presiding officer.

(1) A motion to compel discovery is not a prerequisite to the filing of a motion for sanctions.

(2) A motion should contain all factual allegations necessary to apprise the parties and the presiding officer of the conduct at issue, should request specific relief, and

shall be verified by affidavit. To the extent that expenses, including attorney's fees, are requested as relief, the requesting party shall provide detailed billing records.

(3) A motion shall be served on all parties. Upon receipt of the motion, a hearing shall be held on the motion.

(4) Any order regarding sanctions issued by a presiding officer shall be appealable. Any sanction imposed by the presiding officer shall be automatically stayed to allow the party to appeal the imposition of the sanction to the commission.

§21.73. Consolidation of Dockets, Consolidation of Issues, and Joint Filings.

(a) Consolidation of dockets. The commission or presiding officer may on its own motion or upon a motion from a party, to the extent practical, consolidate separate dispute resolution proceedings and the approval proceedings pursuant to this chapter.

(b) Consolidation of issues. The commission or presiding officer may on its own motion or upon the motion of a party, to the extent practical, consolidate similar issues from separate dispute resolution and approval proceedings pursuant to this chapter.

(c) Joint filings or joinder.

(1) Joint filings. Parties may jointly file dispute resolution and approval proceedings when there are common issues of law or fact.

(2) Joinder. A person may request joinder when there are common issues of law or fact and shall agree to be bound by any judgment rendered as to the common issues.

(3) Factors to be considered. The commission or presiding officer shall determine whether the proceedings should be maintained as a joint proceeding or be severed or should be consolidated in whole or in part. In making this determination the commission or presiding officer shall consider:

(A) administrative burden on the parties and the commission;

(B) whether there are issues of fact or law common to the proceedings;

(C) whether separate proceedings would create a risk of inconsistent resolutions; and

(D) whether allowing joinder or consolidation would result in undue delay of the proceedings or prejudice any party.

§21.75. Motions for Clarification and Motions for Reconsideration.

(a) Motions for clarification. This subsection only applies to motions for clarification of Arbitration Awards. Motions for clarification of an Arbitration Award may be made to the presiding officer requesting that an ambiguity be clarified or an error, other than an error of law, be corrected.

(1) Procedure. A motion for clarification shall be filed within ten working days of the issuance of the presiding officer's decision or order. The motion for clarification shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery. Responses to a motion for clarification shall be filed within five working days of the filing of the motion.

(2) Content. A motion for clarification shall specify the alleged ambiguity or error and, as appropriate, include proposed contract language that corrects the alleged ambiguity or error.

(3) Denial or granting of motion. The presiding officer shall grant or deny the motion within ten working days of the filing of the motion. If the motion is granted, the presiding officer shall issue a decision within 15 working days of the filing of the motion.

(b) Motions for reconsideration. Motions for rehearing, appeals, or motions for reconsideration shall be styled "Motion for Reconsideration" and shall be made directly to the commission. For purposes of dispute resolution and approval proceedings the

terms "appeal," "motion for rehearing," and "motion for reconsideration" are interchangeable.

(1) Limitations.

(A) Only parties to the negotiation in a compulsory arbitration pursuant to §21.95 of this title (relating to Compulsory Arbitration) may file motions for reconsideration.

(B) In a proceeding pursuant to §21.97 of this title (relating to Approval of Negotiated Agreements), only parties to the negotiated agreement may file motions for reconsideration. Issues subject to motions for reconsideration are limited to modifications made to the agreement.

(C) In a proceeding pursuant to §21.99 of this title (relating to Approval of Arbitrated Agreements), only parties to the arbitrated agreement may file motions for reconsideration.

(D) In a proceeding pursuant to §21.125 of this title (relating to Formal Dispute Resolution Proceeding), only parties to the agreement may file motions for reconsideration. Issues subject to motions for reconsideration are limited to interpretations of and modifications made to the negotiated agreement.

(E) In a proceeding pursuant to §21.101 of this title (relating to Approval of Amendments to Existing Interconnection Agreements), only parties to the amended agreement may file motions for reconsideration. Issues subject to motions for reconsideration are limited to amendments or modifications made to the agreement.

(F) In a proceeding pursuant to §21.105 of this title (relating to Approval of Agreements Adopting Terms and Conditions of T2A), only parties to the agreement may file motions for reconsideration. Issues subject to motions for reconsideration are limited to non-T2A portions of the agreement.

(G) Any motions for reconsideration not filed by parties will be considered as comment filed by an interested party.

(2) Procedure. A motion for reconsideration shall be filed within 20 days of the issuance of the order under consideration. The motion for reconsideration shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery. Responses to a motion for reconsideration shall be filed within ten days of the filing of the motion.

(3) Content. A motion for reconsideration shall specify the reasons why the order is unjustified or improper. If the moving party objects to contract language recommended by the presiding officer, then the motion shall contain alternative contract language along with an explanation of why the alternative language is appropriate.

(4) Agenda ballot. Upon filing a motion for reconsideration, the Policy Development Division shall send separate ballots to each Commissioner to determine whether the motion will be considered at an open meeting. The Policy Development Division shall notify the parties by facsimile and electronic mail whether any Commissioner by individual ballot has added the motion to an open meeting agenda, but will not identify the requesting Commissioner(s).

(5) Denial or granting of motion.

(A) The motion is deemed denied if, after five working days of the filing of a motion, no Commissioner by separate agenda ballot has placed the motion on the agenda for an open meeting. In such event, the Policy Development Division shall so notify the parties by facsimile and electronic mail.

(B) If a Commissioner does ballot in favor of considering the motion, it shall be placed on the agenda for the next regularly scheduled open meeting or such other meeting as the Commissioner may direct by the agenda ballot. In the event two or more Commissioners vote to consider the motion, but differ as to the date the motion shall be heard, the motion shall be placed on the latest of the dates specified by the ballots.

§21.77. Confidential Material.

(a) General. If any party believes that any material it files with the commission or provides to the presiding officer during any proceeding under this chapter should be exempt from disclosure under the Texas Public Information Act (TPIA), it may designate such material as confidential information and submit the information under seal, pursuant to the requirements of §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials). Material is presumed to be subject to disclosure under the TPIA unless designated as confidential.

(b) Disputes. In the event that a presiding officer believes that the material is not confidential, the presiding officer shall, unless waived by the party challenging the declassification, hold a hearing regarding declassification of the material. In the event a party disputes another party's designation of material as confidential, such party shall file a motion challenging the designation at least 15 working days before the hearing on the merits. The challenge shall include a statement as to why the material should not be held to be confidential under current legal standards, or that the party asserting confidentiality did not allow counsel to review such materials. The presiding officer shall notify the party of his belief that the material is not confidential at least ten days before the hearing on the merits. The party asserting confidentiality has three working days after the presiding officer notifies the party of his belief that the material is not confidential, or after another party's challenge is filed, to respond and bears the burden of proof on confidentiality. In determining whether material is exempt from disclosure, the presiding

officer shall consider whether the material is considered to be confidential under the TPIA. Any presiding officer's decision relating to whether or not material is confidential is subject to motion for reconsideration to the commission. A party shall have three working days from the date of the presiding officer's decision to file a motion for reconsideration. The commission's decision shall be deemed a final administrative decision.

(c) Exemption from disclosure. Material received by the commission or by a presiding officer in accordance with this procedure shall be treated as exempt from public disclosure until and unless such confidential information is determined to be public information pursuant to a specific provision in the TPIA, an Open Records Decision by the Attorney General, an order of the presiding officer entered after notice to the parties and hearing, or an order of a court having jurisdiction.

(d) Material provided to parties. Material claimed to be confidential information must be provided to the other parties to the arbitration hearing provided they agree in writing to treat the material as confidential information. One copy of the material shall be provided to each party. The receiving party shall keep the confidential information properly secured during all times when the documents are not being reviewed by a person authorized to do so. The receiving party shall only make copies of the confidential information as permitted by the protective order in place in the proceeding.

(e) Review by parties. Unless otherwise agreed to by the parties or ordered by the presiding officer, each receiving party may designate no more than eight individuals associated with the party who will be allowed access to the confidential information. The individuals who may have access to the confidential information shall be limited to the receiving party's counsel of record, regulatory personnel acting at the direction of counsel, and subject matter experts and outside consultants employed by the receiving party. These individuals may use the confidential information only for the purpose of presenting or responding to matters raised in the arbitration hearing during the course of that proceeding. These individuals shall not disclose the confidential information to any person who is not authorized under this section, or the protective order in effect for that proceeding, to view this information.

(f) Acknowledgment. Each individual who is provided access to the confidential information shall sign a notarized statement affirmatively stating that the individual has personally reviewed this section and the protective order in the proceeding and understands and will observe the limitations upon the use and disclosure of confidential information. By signing such statements a party may not be deemed to have acquiesced in the designation of the material as confidential information or to have waived any rights to contest such designation or to seek further disclosure of the confidential information.

(g) Disposition of confidential information. Upon the completion of commission proceedings to review the arbitration agreement pursuant to FTA §252 and any appeals thereof, confidential information received by the parties shall be returned to the

producing party. Any notes or work product prepared by the receiving party which were derived in whole or in part from the confidential information shall be destroyed at that time. Material filed with the commission will remain under seal at the commission and will continue to be treated as confidential information under this chapter. The commission may destroy confidential information in accordance with its records retention schedule.

(h) Use in other proceedings. Any confidential information produced pursuant to this section may not be used in any other proceedings before the commission. However, this section does not prevent the discovery or admissibility of any material otherwise discoverable, merely because the material was presented in the course of an arbitration hearing under this section.

Subchapter D. DISPUTE RESOLUTION.

§21.91. Mediation.

(a) Request for mediation. Any party negotiating a request for interconnection, services, or network elements under the Federal Telecommunications Act of 1996 (FTA) §251 may request, in writing, at any time, that the commission assist the parties by mediating any differences that have arisen in the negotiations. The request shall identify the parties involved in the negotiations, the potential issues for which mediation may be needed and, if possible, an estimate of the time period during which mediation will be pursued.

(b) Mediator. Upon receipt of a request for mediation, the commission shall notify the parties of the commission employee who is assigned to serve as a mediator. The commission employee assigned to serve as a mediator may not participate in arbitration or review and approval proceedings initiated under this chapter. The mediator will work with the parties to establish an appropriate schedule and procedure for mediating any disputes. The mediator's role is limited to assisting the parties in attempting to reach an agreed resolution of the issues.

(c) Procedure. Mediation proceedings shall not be transcribed and only parties to the negotiation may participate in the mediation proceeding.

(d) Mediation and formal dispute resolution. In the event a party negotiating a request for interconnection, services, or network elements under FTA has requested both formal dispute resolution and mediation, and the responding party has agreed to mediation, the mediation will precede formal dispute resolution and any procedural deadlines applicable to formal dispute resolution are tolled for the duration of the mediation proceedings, including time needed for commission approval of a mediated agreement. To the extent parties do not successfully mediate all matters at issue, the formal dispute resolution proceeding shall not be reinitiated until the parties jointly file an update of unresolved issues and a revised procedural schedule.

§21.93. Voluntary Alternative Dispute Resolution.

In order to facilitate negotiated resolutions of any dispute concerning a request for interconnection, services or network elements pursuant to the Federal Telecommunications Act of 1996 (FTA) §251, the parties are encouraged, but not required, to pursue any method of alternative dispute resolution agreeable to them, including, without limitation, mediation or private binding arbitration, in which the commission is not a direct participant. Agreements reached through the parties' use of alternative dispute resolution methods will be considered as equivalent to negotiated agreements, and will be processed for review and approval pursuant §21.97 of this title (relating to Approval of Negotiated Agreements).

§21.95. Compulsory Arbitration.

(a) Request for arbitration.

(1) Any party to negotiations concerning a request for interconnection, services or network elements pursuant to the Federal Telecommunications Act of 1996 (FTA) §251 may request arbitration by the commission by filing with the commission's filing clerk a petition for arbitration. The petitioner shall send a copy of the petition and any documentation to the negotiating party with whom agreement cannot be reached not later than the day on which the commission receives the petition.

(2) The petition must be received by the commission during the period from the 135th to the 160th day (inclusive) after the date the negotiating party received the request for negotiation. The commission shall perform a sufficiency review of the petition. To the extent that a petition is determined to be insufficient, the commission shall file a notice of insufficiency within five working days of receipt of the petition. In the absence of a notice of insufficiency, the petition shall be presumed sufficient.

(3) Where a petition for arbitration is found insufficient, the presiding officer may consider dismissal without prejudice pursuant to §21.67 of this title (relating to Dismissal of a Proceeding) and order the petitioner to refile.

(4) A petition that is procedurally sufficient must be on file with the commission by the 160th day after the date on which petitioner requested negotiation.

(5) In addition to the requirements of form specified in §21.33 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission) the petition for arbitration shall include:

(A) the name, address, telephone number, facsimile number, and email address of each party to the negotiations and the party's designated representative;

(B) a description of the parties' efforts to resolve their differences by negotiation, including but not limited to the dates of the request for negotiation and the projected timeline for compliance under FTA deadlines;

(C) a Decision Point List (DPL) that includes a list of any unresolved issues and the position of each of the parties on each of those issues;

(D) proposed contract language for each unresolved issue;

(E) all agreed contract language;

(F) if the request concerns a request for interconnection under §26.272 of this title (relating to Interconnection), the material required by §26.272(g) of this title;

(G) the most current version of the interconnection agreement being negotiated by the parties, if any, containing both the agreed language and the disputed language of both parties; and

(H) a certificate of service.

(b) Response. Any non-petitioning party to the negotiation shall respond to the request for arbitration by filing the response with the commission's filing clerk and serving a copy on

each party to the negotiation. Pursuant to FTA §252(b)(3) the response must be filed within 25 days after the commission received the request for arbitration. The response shall indicate any disagreement with the matters contained in the petition for arbitration, including a detailed response to the DPL and alternative proposed contract language, and may provide such additional information as the party wishes to present.

(c) Selection and replacement of presiding officer.

(1) Upon receipt of a complete petition for arbitration, a presiding officer shall be selected to act for the commission, unless two or more of the Commissioners choose to hear the arbitration en banc. The parties shall be notified of the commission-designated presiding officer, or of the Commissioners' decision to act as presiding officer themselves. The presiding officer along with designated commission staff will act as an arbitration team. The presiding officer may be advised on legal and technical issues by members of the arbitration team. The commission staff members selected to be part of the team shall be identified to the parties.

(2) If at any time a presiding officer is unable to continue presiding over a case, a substitute presiding officer shall be appointed who shall perform any remaining functions without the necessity of repeating any previous proceedings. The substitute presiding officer shall read the record of the proceedings that occurred prior to their appointment before issuing an arbitration award or other decision.

(d) Participation. Only parties to the negotiation may participate as parties in the arbitration hearing. The presiding officer may allow interested persons to file a statement of position to be considered in the proceeding.

(e) Prehearing conference; challenges. As soon as practical after selection, the presiding officer shall schedule a prehearing conference with the parties to the arbitration. At the prehearing conference, parties should be prepared to raise any challenges to the appointment of the presiding officer or to the inclusion of any issue identified for arbitration in the petition and responses. If such challenges are not raised at the first prehearing conference, they shall be deemed waived by the parties. The presiding officer shall serve parties with the orders ruling on challenges within ten working days of the first prehearing conference. The presiding officer has the authority to schedule additional prehearing conferences to consider discovery, procedural schedules, clarification of issues, amending pleadings, stipulations, evidentiary matters, requests for interim relief, and any other matters as may assist the disposition of the proceedings in a fair and efficient manner.

(f) Notice. The presiding officer shall make arrangements for the arbitration hearing, which may not be scheduled earlier than 35 days after the commission receives a complete request for arbitration. The presiding officer shall notify the parties, not less than ten days before the hearing, of the date, time, and location of the hearing.

(g) Record of hearing. The arbitration hearing shall be open to the public. If any party requests it, a stenographic record shall be made of the hearing by an official court reporter appointed by the commission. It is the responsibility of the party ordering the stenographic record to request that the commission have an official reporter present. A party may purchase a copy of the transcript from the official reporter at rates set by the commission. The court reporter shall provide the transcript and exhibits in a hearing to the presiding officer at the time the transcript is provided to the requesting party. If no court reporter is requested by a party, the presiding officer shall record the proceedings and maintain the official record and exhibits. Each party to the arbitration hearing shall be responsible for its own costs of participation in the arbitration process.

(h) Hearing procedures.

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

(2) Redirect may be allowed at the discretion of the presiding officer, provided that parties have reserved time for redirect.

(3) The presiding officer may temporarily close the arbitration hearing to the public to hear evidence containing information filed as confidential under §21.77 of this title (relating to Confidential Material). The presiding officer shall close the hearing only if there is no other practical means of protecting the confidentiality of the information.

(4) In addition to providing sufficient copies for all parties, the presiding officer, and, if appropriate, the court reporter, parties shall provide three copies of all exhibits for purposes of appeal at the hearing.

(i) Applicable rules. The rules of privilege and exemption recognized by Texas law shall apply to arbitration proceedings under this subchapter. The Texas Rules of Civil Procedure, Texas Rules of Civil Evidence, Texas Administrative Procedure Act §2001.081, and Chapter 22 of this title (relating to Practice and Procedure) may be used as guidance in proceedings under this chapter.

(j) Authority of presiding officer.

(1) Generally. The presiding officer has broad discretion in conducting the arbitration hearing, including the authority given to a presiding officer pursuant to §22.202 of this title (relating to Presiding Officer). In addition, the presiding officer has broad discretion to ask clarifying questions and to direct a party or a witness to provide information, at any time during the proceeding, as set out in subsection (q) of this section.

(2) Subpoenas.

(A) Issuance of Subpoenas. Pursuant to APA, §2001.089, the presiding officer may issue a subpoena for the attendance of a witness or for the production of books, records, papers, or other objects. Motions for subpoenas to compel the production of books, records, papers, or other objects shall

describe with reasonable particularity the objects desired and the material and relevant facts sought to be proved by them.

(B) Service and return. A subpoena may be addressed to the sheriff or any constable, who may serve the subpoena in any manner authorized by the Texas Rules of Civil Procedure; and service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena, or by any other method authorized by the Texas Rules of Civil Procedure.

(C) Fees. Subpoenas shall be issued by the presiding officer only after sums have been deposited to ensure payment of expense fees incident to the subpoenas. Payment of any such fees or expenses shall be made in the manner prescribed in APA, §2001.089 and §2001.103.

(D) Motions to quash. Motions to quash subpoenas shall be filed within five working days after the issuance of the subpoena, unless the party ordered to respond to the subpoena shows that it was justifiably unable to file objections at that time.

(k) Discovery. Pursuant to subsection (j) of this section, the presiding officer has broad discretion regarding discovery. Except as modified in paragraphs (1) - (3) of this subsection, Chapter 22, Subchapter H of this title (relating to Discovery Procedures) shall serve as guidance for all discovery conducted under this chapter.

(1) Scope. The presiding officer shall permit only such discovery as the presiding officer determines is essential, considering public policy, the needs of the parties

and the commission, the commission's deadlines under FTA §252(b)(4)(c), and considering the desirability of making discovery effective, expeditious and cost effective. The presiding officer shall be the judge of the relevance and materiality of the discovery sought.

(2) Limits. Parties may obtain discovery relevant to the arbitration by submitting requests for information (RFIs), requests for inspection and production of documents (RFPs), requests for admissions (RFAs), and depositions by oral or written examination. RFIs, RFPs and RFAs shall contain no more than 40 requests (subparts are counted as separate requests). The presiding officer, upon a motion filed by a party, may permit a party to propound more than 40 requests provided that the moving party has made a clear demonstration of the relevance of and the need for the additional requests. Factors to be considered by the presiding officer in determining whether to allow additional requests shall include, but are not limited to: the number of unresolved issues, the complexity of the unresolved issues, and whether the proceeding addresses costs and/or cost studies.

(3) Timing. Discovery may commence upon the filing of the petition for arbitration. Parties shall file a proposed discovery schedule that accommodates the commission's deadlines under FTA §252(b)(4)(c), taking into consideration relevant commission regulatory timeframes. The presiding officer may impose a discovery schedule that accommodates the commission's deadlines under FTA §252(b)(4)(c). If any party requests an extension that will affect the ability to complete the proceeding within the commission's deadlines under FTA

§252(b)(4)(c), all parties must agree to the extension and file a joint waiver to extend such deadlines.

(l) Time for hearing. The arbitration hearing shall be conducted expeditiously and in an informal manner. The presiding officer is empowered to impose reasonable time limits. The presiding officer may continue a hearing from time to time and place to place. Unless additional time is allowed by the commission or additional information is requested by the presiding officer, the hearing may not exceed five working days.

(m) Evidence.

(1) Relevance. The parties may only offer such evidence as is relevant and material to a proceeding and shall provide such evidence as the presiding officer may deem necessary to determination of the proceeding. The presiding officer shall be the judge of the relevance and materiality of the evidence offered.

(2) Conformity to rules. The presiding officer shall have the authority to decide whether or not to apply strict rules of evidence (or any other rules) as to the admissibility, relevance, or weight of any material tendered by a party on any matter of fact or expert opinion. The presiding officer shall provide notice of this decision prior to the deadline for filing direct testimony.

(3) Exhibits. The offering of exhibits shall be governed by §22.226 of this title (relating to Exhibits).

(4) Offers of proof. Offers of proof shall be governed by §22.227 of this title (relating to Offers of Proof).

(5) Stipulation of facts. Stipulation of facts shall be governed by §22.228 of this title (relating to Stipulation of Facts).

(6) Prefiled evidence.

(A) Parties to the hearing shall provide their direct cases to the presiding officer at least 15 working days prior to the hearing unless the presiding officer establishes a different deadline. Ten copies of the direct case shall be filed with the commission filing clerk and a copy shall be provided to each of the other parties to the hearing at the same time it is provided to the presiding officer.

(B) The prepared direct case shall include all of the party's direct evidence on all DPL issues in the proceeding, including written direct testimony of all of its witnesses and all exhibits that the party intends to offer as part of its direct case. The prepared case shall present the entirety of the party's direct evidence on each of the issues in controversy and shall serve as the party's complete direct case.

(C) Prefiled evidence shall include, to the extent allowed or requested by the presiding officer, prefiled rebuttal testimony and exhibits and shall be filed not less than eight working days prior to the hearing unless the presiding officer establishes a different deadline.

(7) Public Information. Except as provided in §21.77 of this title (relating to Confidential Information), all materials filed with the commission or provided to the presiding officer shall be considered public information under the Texas Public Information Act (TPIA), Texas Government Code, §552.001, *et. seq.*

(n) Sanctions. Whenever a party fails to comply with a presiding officer's order or commission rules in a manner deemed material by the presiding officer, the presiding officer shall fix a reasonable period of time for compliance. If the party does not comply within that time period, then after notice and opportunity for a hearing, the presiding officer may impose a remedy as set forth in §21.71 of this title (relating to Sanctions).

(o) Decision Point List (DPL) and witness list.

(1) Ten days after the filing of the response to the petition, the parties shall file a revised DPL that is jointly populated to the extent practicable, taking into consideration the status of discovery.

(2) Parties shall file a jointly populated DPL in a format approved by the presiding officer, no later than five working days before the commencement of the hearing. An electronic copy of the DPL shall also be provided. The DPL shall identify all issues to be addressed, the witnesses who will address each issue, and a short synopsis of each witness's position on each issue, with specific citation to the parties' testimony relevant to that issue. The DPL shall also provide the parties' competing contract language. Except as provided in §21.77 of this title (relating to Confidential Material), all materials filed with the commission or provided to the presiding officer shall be considered public information under the TPIA, Texas Government Code, §552.001, *et. seq.*

(p) Cross-examination. Each witness presenting written prefiled testimony shall be available for cross-examination by the other parties to the arbitration. The presiding officer shall judge the credibility of each witness and the weight to be given their testimony based upon their response to cross-examination. If the presiding officer determines that the witness's responses are evasive or non-responsive to the questions asked, the presiding officer may disregard the witness's testimony on the basis of a lack of credibility.

(q) Clarifying questions. The presiding officer or an arbitration team member, at any point during the proceeding, may ask clarifying questions and may direct a party or a witness to provide additional information as needed to fully develop the record of the proceeding. This has no effect on a party's responsibility to meet its burden of proof. If a party fails to present information requested by the presiding officer, the presiding officer shall render a decision on the basis of the best information available from whatever source derived. Moreover, failure to provide requested information may subject a party to sanctions, as set forth in §21.71 of this title.

(r) Briefs. The presiding officer may require the parties to submit post-hearing briefs or written summaries of their positions. The presiding officer shall determine the filing deadline and any limitations on the length of such submissions. Reply briefs shall not be permitted unless the presiding officer determines that they would aid in the resolution of the proceeding, after consideration of applicable deadlines.

(s) Time for decision. The presiding officer shall endeavor to issue a Proposal for Award on the arbitration within 30 days after the filing of any post-hearing briefs. If post-hearing briefs are not filed, the presiding officer shall endeavor to issue the Proposal for Award within 30 days after the conclusion of the hearing. The arbitration team shall issue an arbitration award not later than nine months after the date on which a party receives a request for negotiation under FTA, unless the parties have waived the nine-month deadline in writing or orally on the record.

(t) Decision.

(1) Proposal for Award. The Proposal for Award shall be based upon the record of the arbitration hearing. The presiding officer may agree with the positions of one or more of the parties on any or all issues or may offer an independent resolution of the issues. The presiding officer is the judge of whether a party has met its burden of proof. The Proposal for Award shall include:

(A) a ruling on each of the issues presented for arbitration by the parties, including specific contract language;

(B) a statement of any conditions imposed on the parties to the agreement in order to comply with the provisions of FTA §252(c);

(C) a statement of how the final decision meets the requirements of FTA §251, including any regulations adopted by the Federal Communications Commission (FCC) pursuant to FTA §251;

(D) the rates for interconnection, services, and/or network elements established according to FTA §252(d);

(E) a schedule for implementation of the terms and conditions by the parties to the agreement;

(F) a narrative report explaining the rulings included in the Proposal for Award, unless the arbitration is conducted by two or more of the commissioners acting as the presiding officers; and

(G) to the extent that a ruling establishes a new or different price for an unbundled network element, combination of unbundled network elements, or resold service, a statement requiring that all certificated carriers be notified of such price either through web posting, mass mailing, or electronic mail within ten days of the date the ruling becomes final.

(2) Exceptions to the Proposal for Award. Within ten working days of the issuance of the Proposal for Award the parties shall file any Exceptions to the Proposal for Award specifying any alleged ambiguities or errors. To the extent that a party objects to contract language within the Proposal for Award, the party's Exceptions to the Proposal for Award must include alternative contract language along with an explanation of why the alternative language is appropriate, with citation to the record.

(3) Arbitration Award. The Arbitration Award shall be based upon the record of the arbitration hearing. The presiding officer shall endeavor to issue the Arbitration Award within ten working days of the receipt of parties' Exceptions to the Proposal for Award. The presiding officer may agree with the positions of one or more of the parties on any or all issues or may offer an independent resolution of

the issues. The presiding officer is the judge of whether a party has met its burden of proof. The Arbitration Award shall include:

(A) a ruling on each of the issues presented for arbitration by the parties, including specific contract language;

(B) a statement of any conditions imposed on the parties to the agreement in order to comply with the provisions of FTA §252(c), if any;

(C) a statement of how the final decision meets the requirements of FTA §251, including any regulations adopted by the FCC pursuant to §251;

(D) the rates for interconnection, services, and/or network elements established according to FTA §252(d), as appropriate;

(E) a schedule for implementation of the terms and conditions by the parties to the agreement;

(F) a narrative report explaining the presiding officer's rationale for each of the rulings included in the final decision, unless the arbitration is conducted by two or more of the commissioners acting as the presiding officers; and

(G) to the extent that a ruling establishes a new or different price for an unbundled network element, combination of unbundled network elements, or resold service, a statement requiring that all certificated carriers be notified of such price either through web posting, mass mailing, or electronic mail within ten days of the date the ruling becomes final.

(u) Distribution. The Proposal for Award and Arbitration Award shall be filed with the commission as a public record and shall be mailed by first class mail, or transmitted via facsimile to all parties of record in the arbitration. On the same day that a decision is issued, the presiding officer shall notify the parties by facsimile or electronic mail that a decision has been issued. If a decision involves 9-1-1 issues, the presiding officer shall also notify the Commission on State Emergency Communications (CSEC) by facsimile or electronic mail on the same day.

(v) Implementation. Unless modified, implementation of the terms and conditions of the Arbitration Award shall comply with §21.99 of this title (relating to Approval of Arbitrated Agreements).

(w) Motions for reconsideration. No motions for reconsideration of the Proposal for Award are permitted. Motions for reconsideration of the Arbitration Award shall be filed pursuant to §21.75 of this title (relating to Motions for Clarification and Motions for Reconsideration).

§21.97. Approval of Negotiated Agreements.

(a) Application. Any agreement adopted by negotiation shall be submitted to the commission for review and approval and may be submitted by any one of the parties to the agreement, provided that all parties to the agreement seek approval. The parties requesting approval shall submit an application for approval of the agreement with the commission's filing clerk and must serve a copy on each of the parties to the agreement. Any agreement submitted to the commission for approval is a public record and no portion of the agreement may be treated as confidential information under §21.77 of this title (relating to Confidential Material). An application for approval of a negotiated agreement shall include:

(1) a complete and unredacted copy of the negotiated agreement;

(2) the name, address, and telephone number of each of the parties to the agreement;

(3) an affidavit by each of the signatory parties explaining how the agreement is consistent with the public interest, convenience, and necessity, including all relevant requirements of state law; and

(4) to the extent that an agreement adopted by negotiation establishes a new or different price for an unbundled network element, combination of unbundled network elements, or resold service, a verified statement that all certificated carriers will be notified of such price either through web posting, mass mailing or electronic mail within ten days of the date the ruling becomes final.

(b) Notice. The presiding officer may require the parties to the agreement to provide reasonable notice of the filing of the agreement. The presiding officer may require publication of the notice in addition to direct notice to affected persons. At the presiding officer's discretion, notice may be provided by direct notice, electronic mail or a web posting, provided all affected persons are made aware of the website. The presiding officer shall determine the appropriate scope and wording of the notice to be provided.

(c) Proceedings.

(1) Administrative review. The commission delegates its authority to the presiding officer to administratively approve or deny any negotiated interconnection agreements. Notice of approval or denial shall be issued within 15 days of the filing of the application. If a notice of denial is filed, the notice of denial without prejudice shall include written findings indicating any deficiencies in the agreement. An application considered under this section shall be administratively reviewed by the presiding officer unless the presiding officer determines that a formal review of the application is appropriate pursuant to paragraph (2) of this subsection. Additionally, at the presiding officer's discretion, approval can be referred directly to the commission should the presiding officer determine that there is an issue(s) more appropriately decided by the commission that does not necessarily require formal resolution.

(2) Formal resolution. If the presiding officer determines that an application for approval of a negotiated agreement should not be approved administratively, a formal review may be conducted and may require formal resolution under §21.95

of this title (relating to Compulsory Arbitration) or §21.125 of this title (relating to Formal Dispute Resolution Proceeding), as appropriate.

(d) Comments. An interested person may file comments on the negotiated agreement by filing the comments with the commission's filing clerk and serving a copy of the comments on each party to the agreement within five days of filing of the application. The comments shall include the following information:

(1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

(2) specific allegations that the agreement, or some portion thereof:

(A) discriminates against a telecommunications carrier that is not a party to the agreement; or

(B) is not consistent with the public interest, convenience, and necessity; or

(C) is not consistent with other requirements of state law; and

(3) the specific facts upon which the allegations are based.

(e) Issues. In any proceeding conducted by the commission pursuant to subsection (c)(2) of this section, the commission will consider only evidence and argument concerning whether the agreement, or some portion thereof:

(1) discriminates against a telecommunications carrier that is not a party to the agreement; or

(2) is not consistent with the public interest, convenience, and necessity; or

(3) is not consistent with other requirements of state or federal law.

(f) Authority of presiding officer. The presiding officer has broad discretion in conducting the formal resolution, including the authority given to a presiding officer pursuant to §22.202 of this title (relating to Presiding Officer) and pursuant to §21.95 of this title (relating to Compulsory Arbitration). Discovery shall be governed by §21.95(k) of this title. In addition, in a formal resolution proceeding, the presiding officer has broad discretion to ask clarifying questions and to direct a party or a witness to provide information, at any time during the proceeding, as set out in §21.95(q) of this title.

(g) Filing of agreement. Once the presiding officer approves the agreement, then the parties to the agreement shall file two copies, one unbound, of the complete agreement with the filing clerk within 15 working days of the presiding officer's decision. The copies shall be clearly marked with the control number assigned to the proceeding and the language "Complete interconnection agreement as approved (or modified and approved) on (insert date)." Also within 15 working days of the approval of the agreement, the incumbent local exchange company (ILEC) shall post notice of the approved interconnection agreement on its website in a separate, easily identifiable area of the website. The ILEC website shall provide a complete list of approved interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website shall provide a direct link to the commission's website.

§21.99. Approval of Arbitrated Agreements.

(a) Application. Any interconnection agreement resulting from arbitration shall be submitted to the commission for approval and filed in the same proceeding within 30 days of the date of the presiding officer's Arbitration Award, unless otherwise provided. Following the issuance of the presiding officer's Arbitration Award under §21.95 of this title (relating to Compulsory Arbitration), the parties shall jointly file ten copies of the final interconnection agreement, with the commission's filing clerk, incorporating all contract language ordered by the presiding officer. Any interconnection agreement submitted to the commission for approval is a public record and no portion of the interconnection agreement may be treated as confidential information under §21.77 of this title (relating to Confidential Material). The application for approval of an arbitrated agreement shall be accompanied by:

(1) a complete and unredacted copy of the arbitrated interconnection agreement including any portions of the agreement that were not the subject of arbitration;

(2) the name, address, telephone number, facsimile number, and email address of each of the parties to the agreement; and

(3) to the extent that an agreement adopted by arbitration establishes a new or different price for an unbundled network element, combination of unbundled network elements, or resold service, a verified statement that all certificated carriers will be notified of such price either through web posting, mass mailing or electronic mail within ten days of the date the ruling becomes final.

(b) Parties' comments. Any party wishing to file comments on the interconnection agreement incorporating the contract language ordered by the presiding officer as required in subsection (a) of this section, shall do so within five calendar days following the filing of the application under subsection (a) of this section. Any reply comments shall be filed within three calendar days of any initial comments.

(c) Commission approval. The commission will issue its final decision on an agreement adopted by arbitration within 30 days following the filing of the application under subsection (a) of this section. The commission's final decision may reject, approve, or modify the agreement, with written findings as to any deficiencies. If the commission does not act to approve or reject the agreement adopted by arbitration within 30 days after submission by the parties under subsection (a) of this section, the agreement shall be deemed approved.

(d) Effective date. An interconnection agreement approved by arbitration becomes effective within ten days after the date that the commission's order approving the interconnection agreement is signed by all Commissioners unless otherwise specified in the order approving the agreement.

(e) Filing of agreement. Following the commission's approval of the agreement, the parties to the interconnection agreement shall file two copies, one unbound, of the complete agreement, consistent with the commission's direction, with the commission's filing clerk within ten working days of the commission's decision. The copies shall be clearly

marked with the control number for the proceeding and the language "Complete interconnection agreement (as modified) and approved on (insert date)." Also within 15 working days of the approval of the agreement, the incumbent local exchange company (ILEC) shall post notice of the approved interconnection agreement on its website in a separate, easily identifiable area of the website. The ILEC website shall provide a complete list of approved interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website shall provide a direct link to the commission's website.

§21.101. Approval of Amendments to Existing Interconnection Agreements.

(a) Application. Any amendments, including modifications, to a previously approved interconnection agreement shall be submitted to the commission for review and approval. Any one party to the agreement may file the application for approval of the amendments, provided that all parties to the agreement seek approval. The parties requesting approval shall file three copies of the application with the commission's filing clerk and, when applicable, serve a copy on each of the other parties to the agreement. An application for approval of an amended agreement shall include:

(1) a complete and unredacted copy of the amended portions of the interconnection agreement, along with any other relevant portions to place the amendments in context;

(2) the name, address, telephone number, facsimile number, and email address of each of the parties to the agreement;

(3) an affidavit by each of the signatory parties explaining how the agreement is consistent with the public interest, convenience, and necessity, including all relevant requirements of state law; and

(4) to the extent that an amendment to previously approved interconnection agreement establishes a new or different price for an unbundled network element, combination of unbundled network elements, or resold service, a verified statement that all certificated carriers will be notified of such price either through web posting, mass mailing or electronic mail within ten days of the date the ruling becomes final.

(b) Notice. The commission may require the parties to the agreement to provide reasonable notice of the filing of the agreement. The commission may require publication of the notice in addition to direct notice to affected persons. At the commission's discretion, direct notice may be provided by electronic mail or a website, provided all affected persons are made aware of the website. The commission shall determine the appropriate scope and wording of the notice to be provided.

(c) Proceeding.

(1) Administrative review. The commission delegates its authority to the presiding officer to administratively approve or deny any interconnection agreement amendments. Notice of approval or denial shall be issued within 15 days of the filing of the application. If a notice of denial is filed, the notice of denial without prejudice shall include written findings indicating any deficiencies in the agreement. Amendments to interconnection agreements shall be administratively reviewed by the presiding officer unless the presiding officer determines that a formal review of the amendments is appropriate pursuant to paragraph (2) of this subsection. At the presiding officer's discretion, approval can be referred directly to the commission should the presiding officer determine that there is an issue(s) more appropriately decided by the commission that does not necessarily require formal resolution.

(2) Formal resolution. If the presiding officer determines that an application for approval of an amendment to an interconnection agreement cannot be

administratively approved, a formal review may be conducted and may require formal resolution under §21.95 of this title (relating to Compulsory Arbitration) or §21.125 of this title (relating to Formal Dispute Resolution Proceeding), as appropriate.

(d) Comments. An interested person may file comments on the amended agreement by filing the comments with the commission's filing clerk and serving a copy of the comments on each party to the agreement within five days of the filing of the application. The comments shall include the following information:

(1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

(2) specific allegations that the agreement, or some portion thereof:

(A) discriminates against a telecommunications carrier that is not a party to the agreement; or

(B) is not consistent with the public interest, convenience, and necessity; or

(C) is not consistent with other requirements of state law; and

(3) the specific facts upon which the allegations are based.

(e) Issues. In any proceeding conducted by the commission pursuant to subsection (c)(2) of this section, the commission will consider only evidence and argument concerning whether the agreement, or some portion thereof:

(1) discriminates against a telecommunications carrier that is not a party to the agreement; or

(2) is not consistent with the public interest, convenience, and necessity; or

(3) is not consistent with other requirements of state law.

(f) Authority of presiding officer. The presiding officer has broad discretion in conducting the proceeding, including the authority given to a presiding officer pursuant to §22.202 of this title (relating to Presiding Officer) and pursuant to §21.95 of this title. Discovery shall be governed by §21.95(k) of this title. In addition, the presiding officer has broad discretion to ask clarifying questions and to direct a party or a witness to provide information, at any time during the proceeding, as set out in §21.95(q) of this title.

(g) Effective date. Any amendment to an existing interconnection agreement shall become effective upon issuance by the commission of a notice of approval.

(h) Formal approval. When an amendment to an existing interconnection agreement is subject to the formal review process as proposed in subsection (c) of this section, the commission will issue its final decision on the amendment within 90 days following the filing of the application. The commission may reject, approve, or modify the amendment, or the commission may remand the agreement to the presiding officer for further proceedings. If the commission rejects the amendment, the final decision shall include written findings indicating any deficiencies in the amendment.

(i) Filing of agreement. If the presiding officer approves the amendments to the agreement, the parties to the agreement shall file two copies, one unbound, of the complete amended interconnection agreement with the commission's filing clerk within ten working days of the presiding officer's decision. The copies shall be clearly marked with the control number assigned to the proceeding and the language "Amended interconnection agreement as approved (or modified and approved) on (insert date)." Also within 15 working days of the approval of the agreement, the incumbent local exchange company (ILEC) shall post notice of the approved interconnection agreement on its website in a separate, easily identifiable area of the website. The ILEC website shall provide a complete list of approved interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website shall provide a direct link to the commission's website.

§21.103. Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i).

(a) Application. Under the Federal Telecommunications Act of 1996 (FTA) §252(i), a local exchange carrier shall make available within 15 working days of receipt of request, any interconnection, service, or network element provided under a previously approved interconnection agreement to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. Any agreement adopting terms and conditions of a previously approved interconnection agreement pursuant to FTA §252(i) shall be submitted to the commission for review and approval. Any or all of the parties to the agreement may file the application for approval. The parties requesting approval shall file three copies of the application with the commission's filing clerk and, when applicable, serve a copy on each of the other parties to the agreement. An application for approval of an agreement adopting terms and conditions pursuant to FTA §252(i) shall include:

(1) a complete and unredacted copy of the agreement;

(2) the name, address, telephone number, facsimile number, and email address of each of the parties to the agreement;

(3) the identity of the previously approved interconnection agreement from which the agreement is taken, including specific docket number and contract effective date and term; and

(4) an affidavit from the requesting telecommunications carrier explaining how the agreement is consistent with the public interest, convenience, and necessity, including all relevant requirements of state law.

(b) Provisions incorporated from §21.101 of this title (relating to the Approval of Amendments to Existing Interconnection Agreements). Applications for approval filed under this section shall be processed according to the following provisions of §21.101 of this title, which are incorporated by reference into this section: §21.101(b), (c), (d), (e), (f), and (g).

Subchapter E. POST-INTERCONNECTION AGREEMENT DISPUTE RESOLUTION.

§21.121. Purpose.

This subchapter establishes procedures for commission resolution of disputed issues arising under or pertaining to interconnection agreements approved by the commission pursuant to its authority under the Federal Telecommunications Act of 1996 (FTA). The disputed issues may include, but are not limited to, matters not explicitly addressed in the interconnection agreement. The dispute resolution procedures are intended to resolve disputes concerning:

(1) proper interpretation of terms and conditions in the interconnection agreements;

(2) implementation of activities explicitly provided for, or implicitly contemplated in, the interconnection agreements, including, but not limited to, interim rates and terms expiring before the contract expiration date; and

(3) enforcement of terms and conditions in such interconnection agreements.

§21.123. Informal Settlement Conference.

(a) Filing a request. Either party to an interconnection agreement may request an informal settlement conference by filing ten copies of a written request with the commission and, on the same day, delivering a copy of the request either by hand delivery or by facsimile to the other party (respondent) to the interconnection agreement from which the dispute arises. The written request should include:

(1) The name, address, telephone number, facsimile number, and email address of each party to the interconnection agreement and the requesting party's designated representative;

(2) A description of the parties' efforts to resolve their differences by negotiation;

(3) A list of the discrete issues in dispute, with a cross-reference to the area or areas of the agreement applicable or pertaining to the issues in dispute; and

(4) The requesting party's proposed solution to the dispute.

(b) The settlement conference. The commission staff conducting the informal settlement conference shall notify the parties of the time, date, and location of the settlement conference, which, if held, shall be held no later than ten working days from the date the request was filed. The commission staff may require the respondent to file a response to the request. The parties should provide the appropriate personnel with authority to discuss and to resolve the disputes at the settlement conference. If the parties are in disagreement as to the need for a settlement conference, the presiding officer may deny the request for good cause.

(c) Conduct. The settlement conference shall be conducted as informal meetings and will not be transcribed. Only parties to the interconnection agreement may participate as parties to the settlement conference.

(d) Results of settlement conference. The settlement conference may result in an agreement on the resolution of the dispute described in the request. If an agreement is reached, the agreement will be binding on the parties. In the event that the parties do not reach an agreement as a result of the settlement conference, either party may utilize other procedures for dispute resolution provided in this subchapter. The commission staff conducting the informal settlement conference may participate in a subsequent dispute resolution proceeding involving the parties to the informal settlement conference.

(e) Both formal dispute resolution and informal settlement request. In the event a party negotiating a request for interconnection, services, or network elements under the Federal Telecommunications Act of 1996 (FTA) has requested both formal dispute resolution and an informal settlement conference, the informal settlement conference will precede formal dispute resolution. If agreed to by both parties, any procedural deadlines applicable to formal dispute resolution will be tolled for the duration of the informal settlement proceedings, including time needed for commission approval of an informal settlement agreement. To the extent parties do not settle all matters at issue in the informal settlement conference, the formal dispute resolution proceeding shall not be

initiated until the parties jointly file an update of unresolved issues and a revised procedural schedule.

§21.125. Formal Dispute Resolution Proceeding.

(a) Initiation of formal proceeding. A formal proceeding for dispute resolution under this subchapter will commence when a party files a petition with the commission and, on the same day, delivers a copy of the petition either by hand delivery or by facsimile to the other party (respondent) to the interconnection agreement from which the dispute arises.

(1) The petition shall comply with §21.33 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission). The petition shall include:

(A) the name, address, telephone number, facsimile number, and email address of each party to the interconnection agreement and the petitioner's designated representative;

(B) a description of the parties' efforts to resolve their differences by negotiation;

(C) a detailed list of the discrete issues in dispute, with a cross-reference to the area or areas of the parties' most current interconnection agreement, identified by docket number, applicable or pertaining to the issues in dispute;

(D) an identification of pertinent background facts and relevant law or rules applicable to each disputed issue;

(E) the petitioner's proposed solution to the dispute;

(F) proposed modified contract language, if any; and

(G) a certificate of service.

(2) To the extent applicable, the petitioner may also include in the petition a request for an expedited ruling under §21.127 of this title (relating to Request for Expedited Ruling) or an interim ruling under §21.129 of this title (relating to Request for Interim Ruling Pending Dispute Resolution).

(3) The commission shall perform a sufficiency review of a petition. To the extent that a petition is determined to be insufficient, the commission shall file a notice of insufficiency within five working days of receipt of the petition. In the absence of a notice of insufficiency, the petition shall be presumed sufficient.

(4) Where a request for formal dispute resolution found insufficient, the presiding officer may consider dismissal without prejudice pursuant to §21.67 of this title (relating to Dismissal of a Proceeding) and order the party to refile.

(b) Response to the petition. Unless §21.127 or §21.129 of this title apply, the respondent shall file a response to the petition within ten days after the filing of the petition. On the response filing date, the respondent shall serve a copy of the response on the petitioner. The response shall specifically affirm or deny each allegation in the petition. The response shall include the respondent's position on each issue in dispute, a cross-reference to the area or areas of the parties' most current interconnection agreement, identified by docket number, applicable or pertaining to the issue in dispute, and the respondent's proposed solution on each issue in dispute. In addition, the response also shall:

(1) stipulate to any undisputed facts; and

(2) identify relevant law or rules applicable to each disputed issue.

(c) Reply to response to complaint. Unless §21.127 or §21.129 of this title apply, the petitioner may file a reply within five working days after the filing of the response to the petition and serve a copy on respondent on the same day. The reply shall be limited solely to new issues raised in the response to the petition.

(d) Provisions incorporated from §21.95 of this title (relating to Compulsory Arbitration). Except as specified otherwise in this subchapter, the following provisions of §21.95 of this title are incorporated by reference into this subchapter: §21.95(c), (d), (e), (f), (g), (h), (i), (k), (l), (m), (n), (o), (p), (q), and (r), except that any discovery schedule shall take into consideration the 50-day deadline in subsection (g) of this section.

(e) Number of copies to be filed. Unless otherwise ordered by the presiding officer, parties shall file ten copies of pleadings subject to this subchapter.

(f) Participation. Only parties to the interconnection agreement may participate as parties in the dispute resolution proceeding subject to this subchapter.

(g) Notice and hearing. Unless §21.127 or §21.129 of this title apply, the presiding officer shall make arrangements for the hearing to address the petition, which shall commence no later than 50 days after filing of the complaint. If the parties' joint procedural schedule sets a hearing more than 50 days after the filing of the petition, then approval of the joint procedural schedule shall be conditioned upon the parties filing a joint waiver of the 50-

day deadline. The presiding officer shall notify the parties, not less than 15 days before the hearing, of the date, time, and location of the hearing. The hearing shall be transcribed by a court reporter designated by the presiding officer.

(h) Authority of presiding officer. The presiding officer has broad discretion in conducting the dispute resolution proceeding, including the authority given to a presiding officer pursuant to §22.202 of this title (relating to Presiding Officer) and pursuant to §21.95 of this title (relating to Compulsory Arbitration). The presiding officer shall also have the authority to award remedies or relief deemed necessary by the presiding officer to resolve a dispute subject to the procedures established in this subchapter. The authority to award remedies or relief includes, but is not limited to, the award of prejudgment interest, specific performance of any obligation created in or found by the presiding officer to be intended under the interconnection agreement subject to the dispute, issuance of an injunction, or imposition of sanctions for abuse or frustration of the dispute resolution process subject to this subchapter and Subchapter D of this chapter (relating to Dispute Resolution), except that the presiding officer does not have authority to award punitive or consequential damages.

(i) Discovery. Parties may obtain discovery by submitting requests for information (RFIs), which include requests for inspection and production of documents, requests for admissions, and depositions by oral examination, as provided by §22.141(b) of this title (relating to Form and Scope of Discovery), and as allowed within the discretion of the arbitrator.

(j) Prefiled evidence/witness list. The arbitrator shall require the parties to file a direct case and a joint Decision Point List (DPL) on or before the commencement of the hearing. The arbitrator shall require the parties to file their direct cases under the same deadline. The prepared direct case shall include all of the party's direct evidence, including written direct testimony of all of its witnesses and all exhibits that the party intends to offer. The DPL shall identify all issues to be addressed, the witnesses who will be addressing each issue, and a short synopsis of each witness's position on each issue. Except as provided in §21.77 of this title (relating to Confidential Information), all materials filed with the commission or provided to the arbitrator shall be considered public information under the Texas Public Information Act (TPIA), Texas Government Code, §552.001, *et seq.*

(k) Arbitration Award.

(1) The presiding officer shall endeavor to issue a final decision on the dispute resolution within 30 days after the filing of any post-hearing briefs in the dispute resolution proceeding. If no post-hearing briefs are filed, the presiding officer shall endeavor to issue a final decision within 30 days of the close of the hearing.

(2) The Arbitration Award shall be filed with the commission as a public record and shall be mailed by first-class mail to all parties of record in the dispute resolution proceeding. On the same day that the Arbitration Award is issued, the presiding officer shall notify the parties by facsimile that it has been issued. If the decision involves 9-1-1 issues, the presiding officer shall also notify the Commission on State Emergency Communications (CSEC) by facsimile on the same day.

(3) The Arbitration Award shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties. The presiding officer may agree with the positions of one or more parties on any or all issues or may offer an independent resolution of the issues. The presiding officer is the judge of whether a party has met their burden of proof. The presiding officer may provide for later implementation of specific provisions as addressed in the presiding officer's decision. The decision may also contain the items addressed in §21.95(t)(1) to the extent deemed necessary by the presiding officer to explain or support the decision.

(4) Within five working days from the date the arbitrator's decision is issued, any commissioner may place the presiding officer's decision on the agenda for the next available open meeting. The decision shall be stayed until the commission affirms or modifies the decision, but such stay shall not stay any order of interim relief already in effect in the proceeding

(5) If no commissioner places the arbitrator's decision on the open meeting agenda within five working days, the arbitrator's decision is final and effective on the expiration of that fifth working day. The arbitrator shall notify the parties when the arbitrator's decision is deemed final under this paragraph.

(l) Filing of agreement. Where modifications are ordered, the parties to the interconnection agreement shall file in the same docket number, two copies, one unbound, of the complete agreement with the filing clerk within five working days of approval. The

copies shall be clearly marked with the control number assigned to the proceeding and the language "Complete interconnection agreement as approved (or modified and approved) on (insert date)." Also within 15 working days of the approval of the agreement, the incumbent local exchange company (ILEC) shall post notice of the approved interconnection agreement on its website in a separate, easily identifiable area of the website. The ILEC website shall provide a complete list of approved interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website shall provide a direct link to the commission's website.

(m) Motions for reconsideration. Motions for reconsideration shall be governed by §21.75 of this title (relating to Motions for Clarification and Motions for Reconsideration).

§21.127. Request for Expedited Ruling.

(a) Purpose. This section establishes procedures pursuant to which a party who files a complaint to initiate a dispute resolution under this subchapter may request an expedited ruling when the dispute directly affects the ability of a party to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality, or network element. The presiding officer has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant. Except as specifically provided in this section, the provisions and procedures of §21.125 of this title (relating to Formal Dispute Resolution Proceeding) apply.

(b) Filing a request. Any request for expedited ruling shall be filed at the same time and in the same document as the complaint filed pursuant to §21.125 of this title. The complaint shall be entitled "Complaint and Request for Expedited Ruling." In addition to the requirements listed in §21.125(a) of this title, the complaint shall also state the specific circumstances that make the dispute eligible for an expedited ruling.

(c) Response to complaint. The respondent shall file a response to the complaint within five working days after the filing of the complaint. In addition to the requirements listed in §21.125(b) of this title, the respondent shall state its position on the request for an expedited ruling. The respondent shall serve a copy of the response on the complainant by hand-delivery or facsimile on the same day as it is filed with the commission.

(d) Hearing. After reviewing the complaint and the response, the presiding officer will determine whether the complaint warrants an expedited ruling. If so, the presiding officer shall make arrangements for the hearing, which shall, to the extent practicable, commence no later than 20 days after the filing of the complaint. The presiding officer shall notify the parties, not less than three working days before the hearing of the date, time, and location of the hearing. If the presiding officer determines that the complaint is not eligible for an expedited ruling, the presiding officer shall so notify the parties within five days of the filing of the response.

(e) Decision Point List (DPL) and witness list. Parties shall file a jointly populated DPL and witness list, in a format approved by the presiding officer, no later than five days before the commencement of the hearing. The presiding officer shall require the parties to file their DPL under the same deadline. The DPL shall identify all issues to be addressed, the witness, if any, who will be addressing each issue, and a short synopsis of each witness's position on each issue. If the schedule accommodates the filing of prefiled testimony, parties' DPL shall include specific citation to the parties' testimony relevant to that issue. Except as provided in §21.77 of this title (relating to Confidential Material), all materials filed with the commission or provided to the presiding officer shall be considered public information under the Texas Public Information Act, Texas Government Code, §552.001, *et seq.*

(f) Decision. The presiding officer shall issue a written decision on the petition within 15 days after the close of the hearing. On the day of the issuance, the presiding officer shall notify the parties by facsimile that the decision has been issued. If the decision involves 9-1-1 issues, the presiding officer shall also notify the Commission on State Emergency Communications (CSEC) by facsimile on the same day.

(g) Motions for reconsideration. Motions for reconsideration shall be governed by §21.75 of this title (relating to Motions for Clarification and Motions for Reconsideration).

§21.129. Request for Interim Ruling Pending Dispute Resolution.

(a) Purpose.

(1) This section establishes procedures pursuant to which a party who files a petition to initiate a dispute resolution under either §21.125 of this title (relating to Formal Dispute Resolution Proceeding) or §21.127 of this title (relating to Request for Expedited Ruling) may also request an interim ruling on whether the party is entitled to relief pending the resolution of the merits of the dispute.

(2) This section is intended to provide an interim remedy when the dispute compromises the ability of a party to provide uninterrupted service or precludes the provisioning of any service, functionality or network element (including issues of pricing and/or payment for any service functionality, or network element when such pricing and/or payment issues effect provisioning).

(3) However, in no event may a party obtain interim relief to avoid payment of undisputed amounts. The party seeking an interim ruling on payment issues bears the burden of proof to demonstrate what amounts are not disputed and what payments have been made pursuant to applicable contract provisions.

(b) Filing a request. Any request for an interim ruling shall be filed at the same time and in the same document as the petition filed pursuant to §21.125 or §21.127 of this title. The heading of the petition shall include the phrase "Request for Interim Ruling." The petition shall set forth the specific grounds supporting the request for interim relief pending the resolution of the dispute, as well as a statement of the potential harm that

may result if interim relief is not provided. A petition that includes a request for interim ruling shall be verified by affidavit. Such petition must list the contact person, address, telephone number, facsimile number, and email address for both the petitioner and respondent.

(c) Service. The petitioner shall serve a copy of the petition and request for an interim ruling on the respondent by hand-delivery or facsimile on the same day as the pleading is filed with the commission. The petitioner shall certify on the pleading filed with the commission that service has been accomplished in compliance with this section.

(d) Response. The respondent shall file a response to the petition within three working days of the filing of the request for an interim ruling.

(e) Hearing. Within six working days of the filing of a petition and request for interim ruling, the presiding officer selected under this subchapter shall conduct a hearing to determine whether interim relief should be granted during the pendency of the dispute resolution process. The presiding officer will notify the parties of the date and time of the hearing by facsimile within three working days of the filing of a petition and request for interim ruling. The parties should be prepared to present their positions and evidence on factors including but not limited to: the type of service requested; the economic and technical feasibilities of providing that service; and the potential harm in providing the service.

(f) Evidence. The presiding officer will issue an interim ruling on the request based on the evidence provided at the hearing. Evidence to support a request for interim ruling shall be provided by affidavit or shall be verified.

(g) Consideration. The presiding officer may, after notice and opportunity for hearing, grant a request for interim relief only on a showing of good cause. In determining whether good cause exists, the presiding officer shall consider:

(1) whether there is a substantial likelihood of success on the merits of the movant's claims;

(2) whether there is a substantial threat that the movant will suffer irreparable injury if interim relief is not granted;

(3) whether the threatened injury to the movant outweighs any harm that the other party might suffer if interim relief is granted, including consideration of both parties' ability to compete;

(4) the need for relief prior to the reasonably anticipated date of a final decision in the proceeding; and

(5) any other relevant factors as determined by the presiding officer.

(h) Ruling. The presiding officer shall issue a written ruling on the request for interim relief within five working days of the close of the hearing and will notify the parties by facsimile of the ruling. If the decision involves 9-1-1 issues, the presiding officer shall also notify the Commission on State Emergency Communications (CSEC) by facsimile on the same day. The interim ruling will be effective throughout the dispute resolution

proceeding until a final decision is issued pursuant to this subchapter, unless overturned by the presiding officer or otherwise determined by the commission upon appeal.

This agency hereby certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that new Chapter 21, Interconnection Agreements for Telecommunications Service Providers, is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 9TH DAY OF FEBRUARY 2004.

PUBLIC UTILITY COMMISSION OF TEXAS

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JULIE PARSLEY, COMMISSIONER

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PAUL HUDSON, CHAIRMAN

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