

CHAPTER 21. INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter E. POST-INTERCONNECTION AGREEMENT DISPUTE RESOLUTION.

§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.

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- (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.

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- (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).