

## CHAPTER 21. INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS

### Subchapter A. GENERAL PROVISIONS AND DEFINITIONS.

#### §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.

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**§21.7(d) continued**

- (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.