

PROJECT NO. 55293

AGENCY REVIEW OF CHAPTER 21	§	PUBLIC UTILITY COMMISSION
– INTERCONNECTION	§	
AGREEMENTS FOR	§	OF TEXAS
TELECOMMUNICATIONS	§	
SERVICE PROVIDERS PURSUANT	§	
TO TEXAS GOVERNMENT CODE	§	
§2001.039	§	

**PROPOSAL FOR PUBLICATION OF RULE AMENDMENTS TO
CHAPTER 21, INTERCONNECTION AGREEMENTS FOR
TELECOMMUNICATIONS SERVICE PROVIDERS**

The Public Utility Commission of Texas (commission) proposes rule amendments to multiple sections of its Chapter 21, Interconnection Agreements for Telecommunications Service Providers. The specific proposed amendments are detailed below. This rule review is performed in accordance with Texas Government Code §2001.039, which requires a state agency to review and consider for readoption each of its rules every four years.

The proposed changes make amendments to the following rules: 16 Texas Administrative Code (TAC) §21.5, relating to Representative Appearances; §21.31, relating to Filing of Pleadings, Documents, and Other Materials; §21.33, relating to Formal Requisites of Pleading and Documents to be Filed with the Commission; §21.35, relating to Service of Pleadings and Documents; §21.41, relating to Motions; §21.61, relating to Threshold Issues and Certification of Issues to the Commission, §21.75, relating to Motions for Clarification and Motions for Reconsideration; §21.95, relating to Compulsory Arbitration; §21.99, relating to Approval of Arbitrated Agreements; §21.101, relating to Approval of Amendments to Existing Interconnection Agreements; §21.103, relating to Approval of Agreements Adopting Terms and Conditions pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i); §21.123, relating to Informal

Settlement Conference; and §21.125, relating to Formal Dispute Resolution Proceeding.

The proposed amendments make minor and confirming changes to the following sections, such as removing requirements to file multiple copies of a document with the commission and remove outdated information: 16 TAC §21.5; §21.31; §21.33; §21.75; §21.95; §21.99; §21.101; §21.103; §21.123; and §21.125.

The proposed amendments to §21.33 and §21.35 authorize electronic filing of documents in lieu of filing multiple paper copies and also remove the paper filing requirements across the chapter to be consistent with current commission electronic filing practices.

The proposed amendments to §21.41 clarify the process for granting continuances and extending filing deadlines by revising the applicable standards of review.

The proposed amendments to §21.61 permit more flexibility in the determination and appeal of threshold issues.

The proposed amendments to §21.95 revise the requirements for waiver regarding telecommunication service provider interconnection agreements and require an arbitration notice to be issued in writing, electronically or otherwise.

The proposed amendments to §21.123 and §21.125 provide for electronic delivery as a method for service to align with current commission practice.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rules, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rules are in effect, the following statements will apply:

- (1) the proposed rules will not create a government program and will not eliminate a government program;
 - (2) implementation of the proposed rules will not require the creation of new employee positions and will not require the elimination of existing employee positions;
 - (3) implementation of the proposed rules will not require an increase and will not require a decrease in future legislative appropriations to the agency;
 - (4) the proposed rules will not require an increase and will not require a decrease in fees paid to the agency;
 - (5) the proposed rules will not create a new regulation;
 - (6) the proposed rules will not expand, limit, or repeal an existing regulation;
 - (7) the proposed rules will not change the number of individuals subject to the rule's applicability;
- and
- (8) the proposed rules will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rules. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Jena Abel, Agency Counsel, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Abel has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be streamlined filing requirements for activities related to commission review of telecommunications interconnection agreements. There will not be no probable economic cost to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed sections are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission

is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by June 28, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by June 28, 2024. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 55293.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which

grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, *et. seq.* which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14,052; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, *et. seq.*

§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 ~~must~~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 ~~must~~shall provide written notification to the commission and all parties to the proceeding of any change in that person's authorized representative. A copy of the notification must be filed with the commission's Central Records Division under the applicable control number~~The required number of copies of the notification shall be filed in Central Records under the control number(s)~~ for each affected proceeding and ~~must~~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 by the presiding officer to designate a lead counsel who is authorized to act on behalf of all ~~of~~ the party's representatives.; All~~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 ~~must~~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 within ten working days of the change. A copy of the notification must be filed with the commission's Central Records Division under the applicable control number~~The required number of copies of the notification shall be filed in Central Records under the control number(s)~~ for each affected proceeding.

§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 ~~must~~shall be filed with the commission's Central Records Division~~filing clerk~~ and ~~must~~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.~~

~~(c)~~ **Receipt by the commission.** Pleadings and any other documents ~~are~~shall be deemed filed when ~~received by 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's Central Records Division filing clerk for filing. ~~Central Records will~~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.

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

~~(e)~~ **Office hours of Central Records**~~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) For the purpose of filing documents, the~~The~~ office hours of Central Records are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days, except on Fridays, when Central Records will close for all purposes from noon to 1:00 p.m.

(2) Central Records will open at 8:00 a.m. on open meeting days. With the exception of paragraph (3) of this subsection, no filings will be accepted between the hours

of 8:00 a.m. and 9:00 a.m.

- (3) On open meeting days, between the hours of 8:00 a.m. and 9:00 a.m., the presiding officer, a commissioner, or the Office of Policy and Docket Management (OPDM)~~Commissioners and the Policy Development Division~~ may file items related to the open meeting on behalf of the commission or an individual commissioner~~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 presiding officer or OPDM ~~Policy Development Division~~ shall provide the parties of record a copy of each document~~copies of documents~~ filed under this paragraph as soon as possible after filing. To the extent practicable, the existence of a document~~documents~~ filed under this paragraph ~~will~~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.~~

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

§21.33. Formal Requisites of Pleading 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 ~~required underpursuant to~~ commission rules or ~~requested byrequest 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 ~~mustshall~~ 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 ~~mustshall~~ 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) ~~mustshall~~ 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 ~~must~~shall:
 - (A) include the style and control 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" ~~are~~ 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 ~~must~~ 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 ~~must~~ be signed by the party or the party's authorized representative, and ~~must~~ 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 ~~must~~shall be provided.

(f) **Page limits.** Unless otherwise authorized by the presiding officer, page limits must be in accordance with the following standards~~shall be as follows~~:

- (1) With the exception of DPLs and discovery responses, no pleading or brief relating to interconnection agreements ~~may~~shall exceed 50 pages, excluding exhibits.
- (2) Prefiled direct testimony ~~must~~shall not exceed 75 pages in length per witness, excluding exhibits ~~and/or~~ attachments. A party ~~may request~~requesting the presiding officer to establish a larger page limit ~~and must~~shall ~~so move, and shall~~ provide support on relevant factors in accordance with ~~pursuant to~~ paragraph (4) of this subsection.
- (3) The page limitation ~~does~~shall not apply to copies of legal authorities provided under ~~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 ~~will~~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 ~~may~~shall be filed with the commission in accordance with the requirements set forth in paragraphs (1)-(4) of this subsection.

- (1) Each document ~~must~~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 ~~must~~ shall be filed as separate referenced attachments. Except for responses to discovery, ~~each document must consist of the same no single document shall consist of more than one~~ paper size.

- (2) ~~A One~~ copy of each document ~~must, that is not the original file copy, shall~~ be filed without bindings, staples, tabs, or separators.
 - (A) This copy ~~must~~ 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 ~~must~~ shall be single sided.
 - (B) All pages of the copy filed ~~underpursuant to~~ this paragraph, starting with the first page of the table of contents, ~~must~~ 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 ~~must~~ shall be filed as referenced attachments. ~~Non-native~~ ~~non-native~~ figures, illustrations, or objects ~~must not~~ 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) ~~Unless otherwise provided by §21.31 of this title (relating to Filing of Pleadings, Documents and Other Materials), this section, or the applicable commission rule under this title~~ ~~Whenever possible~~, all documents and copies ~~must~~ 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 ~~must~~ 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 ~~external storage for digital media~~ or the internet, in accordance with transfer standards available in the commission's central records office or on the commission's ~~website~~World Wide Website, and, as applicable, the submission of the required number of ~~paper~~ copies to the ~~commission~~ 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 ~~may~~ 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 ~~must~~ not be filed in electronic media, but ~~must~~ be filed as referenced attachments.
- (3) Each document that has five or more headings ~~and~~ or subheadings ~~must~~ 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 the requirements of this paragraph.
- (4) Each document ~~must~~ have a list of file names that are included in the filing and ~~must~~ be referenced in ~~an~~ ASCII text file.

- (5) The table of contents and list of file names ~~must~~shall be placed at the beginning of the document.
- (6) Each ~~external storage device for digital media must~~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) **External storage for digital media.** Each document that is submitted to the commission on an external storage device for digital media may be password-protected but must be made accessible to commission staff. In addition to the applicable requirements of subsection (h) of this section, each external storage device for digital media provided to the commission must be accompanied by:

- (1) a statement indicating the contents of the device'
- (2) the docket number in which each document on the device is to be filed; and
- (3) a statement indicating which documents are to be filed confidentially.

~~(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 ~~must~~shall be made in accordance with the current list of preferred file formats ~~published by~~available in the commission's Central Records Division ~~central records office and~~ on the commission's website~~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-approved 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 a document or pleading ~~must~~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 ~~must~~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 ~~must~~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. Service of a pleading or document under this paragraph may also be made by electronic mail.
- (1) Service by mail ~~is~~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 ~~is~~shall be complete upon deposit of the document with the

General Services Commission.

(2) Service by agent or by courier receipted delivery ~~is~~ complete upon delivery to the agent or courier.

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

(4) Service by electronic mail is complete upon issuance by the sender's electronic mail account.

~~(5)~~(4) Unless otherwise established by the receiving party, if service is made by hand delivery, facsimile transmission, or electronic mail, it ~~is~~ presumed that all pleadings are received on the day filed.

(A) If service is made by overnight delivery, it ~~is~~ presumed that pleadings are received on the day after filing.

(B) If service is made by regular mail, it ~~is~~ presumed that pleadings are received on the third day after filing.

(C) Service after 5:00 p.m. local time of the recipient ~~will~~ 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 ~~is~~ ~~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 in accordance ~~with~~ ~~pursuant to~~ subsection (a) of this section ~~must~~ 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.

§21.41. Motions.

- (a) **General requirements.** A motion ~~must~~shall be in writing, unless the motion is made on the record at a prehearing conference or hearing. It ~~must~~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 ~~must~~shall be supported by an affidavit. Written motions ~~must~~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, ~~must~~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 ~~must~~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 and extensions.**
- (1) **Generally.** Motions for continuance and for extension of a deadline ~~must~~shall set forth the specific grounds for which the moving party seeks a continuance ~~or~~ anand/or extension and ~~must~~shall reference all other motions for continuance ~~or~~and/or extension filed by the moving party in the proceeding. ~~The moving party shall attempt to contact all other parties and must state in the motion each party that was contacted and whether that party objects to the relief requested.~~

(2) **Standard of Review.** The moving party ~~must show good cause shall have the~~
~~burden of proof~~ with respect to the need for the continuance ~~or~~ extension.

(A2) **Motions for Continuance.** The moving party must show good cause with
respect to the need for a continuance. Motions for
continuance ~~Continuances~~ will not be granted based on the need for
discovery if the party seeking the continuance previously had the
opportunity to obtain ~~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.

(B) **Motions for Extension.** Unless otherwise provided by statute, the time for
filing any documents may be extended, upon the filing of a motion, 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.

(3) **Granting of motion.** The presiding officer may grant timely filed motions for
continuance ~~or extension 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.**

(1) Unless otherwise ordered by the presiding officer, motions for continuance of a

prehearing conference, informal settlement conference, or discovery conference ~~mustshall~~ be in writing and ~~mustshall~~ 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 ~~mustshall~~ be in writing and ~~mustshall~~ be filed not less than three working days prior to the hearing. In addition to the requirements in ~~paragraph (1) of this subsection~~ ~~(e)(1) of this section~~, motions for continuance ~~mustshall~~ 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.~~

- ~~(34)~~ Untimely motions for continuance ~~and/or extension of a deadline willshall~~ be presumed to be denied. The moving party has the burden to show good cause for untimely filing.

(f) **Modification of ~~discovery~~ deadlines.**

- (1) ~~Notwithstanding the requirements of subsections (b), (d), and (e) of this section~~ ~~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 the 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 of a modified deadline, the presiding officer may impose the original deadlines for subsequent filings.
- (4) In no event ~~will~~shall the modification of discovery deadlines by agreement be allowed if such modification would affect a statutory deadline, unless the parties' agreed modification is accompanied by a written waiver and is approved by the presiding officer.

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

(a) **Threshold issues.** Threshold issues are legal or policy issues that ~~the~~ presiding officer determines to be of such significance ~~that the issues must to the proceeding that these issues should~~ be addressed prior to proceeding with the other issues in the ~~docket proceeding~~. Threshold issues include, ~~but are not limited to,~~ issues to be certified to the commission in accordance with subsection (b) of this section.

(1) Threshold issues may be identified by the presiding officer or by motion of a party to the proceeding.

(A) The presiding officer will establish a reasonable timeframe to raise or challenge a threshold issue.

(B) Parties ~~must~~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 will~~shall~~ be deemed waived by the parties.

(C) The presiding officer will provide 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 by the presiding officer will~~shall~~ be made in a written order.

(2) Once a presiding officer has determined that there are one or more threshold issues in a proceeding, the presiding officer may certify each issue in accordance with subsection (b) of this section. A decision on a threshold issue is subject to a motion for reconsideration and is eligible for appeal. For purposes of this paragraph the term "motion for reconsideration" and "appeal" are interchangeable.

~~(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 ~~will shall~~ be addressed by the commission ~~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 include 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 ~~will file shall submit~~ the certified issue and issue notice to the parties 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 will be placed 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 from the date the presiding officer files the certified issue ~~of its submission.~~

(3) **Abatement.**

- (A) In a compulsory arbitration proceeding, 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 ~~will~~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 a motion for reconsideration or appeal. For purposes of this paragraph the term "motion for reconsideration" and "appeal" are interchangeable.

§21.75. Motions for Clarification and Motions for Reconsideration.

- (a) **Motions for clarification.** This subsection only applies to motions for clarification of ~~arbitration awards~~Arbitration Awards. Motions for clarification of an arbitration award~~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 ~~must~~shall be filed within ten working days of the issuance of the presiding officer's decision or order. The motion for clarification ~~must~~shall be served on all parties by hand delivery, facsimile transmission, electronic mail, or by overnight courier delivery. Responses to a motion for clarification ~~must~~shall be filed within five working days of the filing of the motion.
 - (2) **Content.** A motion for clarification ~~must~~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 ~~will~~shall grant or deny the motion within ten working days of the filing of the motion. If the motion is granted, the presiding officer ~~will~~shall issue a decision or revised order within 15 working days of the filing of the motion.
- (b) **Motions for reconsideration.** Motions for ~~reconsideration~~rehearing, appeals, or motions for ~~rehearing~~must~~reconsideration shall~~ be styled accordingly and will be presented directly to the commission~~"Motion for Reconsideration" and shall be made directly to the commission~~. For purposes of dispute resolution and approval proceedings the terms

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

(1) **Limitations.**

- (A) Only parties to the negotiation in a compulsory arbitration ~~underpursuant to~~ §21.95 of this title (relating to Compulsory Arbitration) may file motions for reconsideration.
- (B) In a proceeding ~~underpursuant 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 ~~underpursuant 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 ~~underpursuant 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 ~~underpursuant 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.~~

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

- (2) **Procedure.** A motion for reconsideration ~~mustshall~~ be filed within 20 days of the issuance of the order under consideration. The motion for reconsideration ~~mustshall~~ be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery, or by electronic mail. Responses to a motion for reconsideration ~~mustshall~~ be filed within ten days of the filing of the motion.
- (3) **Content.** A motion for reconsideration ~~mustshall~~ 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 ~~mustshall~~ contain alternative contract language along with an explanation of why the alternative language is appropriate.
- (4) **Commission Agenda ~~ballot~~.** Upon filing a motion for reconsideration, the ~~commission will~~ Policy Development Division shall send separate ballots to each Commissioner to determine whether the motion will be placed on an open meeting agenda and considered at an open meeting. The ~~commission~~ Policy Development Division willshall notify the parties by facsimile ~~orand~~ electronic mail whether any ~~commissioner, Commissioner~~ by individual ballot, has added the motion to an open meeting agenda, but will not identify the requesting

~~commissioner~~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, the parties have not been notified that the motion has been placed on an open meeting agenda.~~

~~(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 the commission determines that ruling on the motion is necessary, the motion will be placed on the agenda for the next regularly scheduled open meeting or such other meeting as determined by the commission.~~

~~(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.~~

§21.95. Compulsory Arbitration.**(a) Request for arbitration.**

- (1) Any party to negotiations concerning a request for interconnection, services or network elements ~~in accordance with~~~~pursuant to~~ the Federal Telecommunications Act of 1996 (FTA) §251 may request arbitration by the commission by filing with the ~~commission~~~~commission's filing clerk~~ a petition for arbitration. The petitioner ~~must~~~~shall~~ send a copy of the petition and any documentation to the negotiating party with whom agreement cannot be reached ~~the date the petition is filed with the commission~~~~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 ~~will~~~~shall~~ perform a sufficiency review of the petition. To the extent that a petition is determined to be insufficient, the commission ~~will~~~~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 ~~will~~~~shall~~ be presumed sufficient.
- (3) Where a petition for arbitration is found insufficient, the presiding officer may consider dismissal without prejudice ~~in accordance with~~~~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 ~~filed 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 ~~must~~ 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 ~~party of the parties~~ on each ~~issue of those issues~~;
- (D) ~~the~~ proposed contract language from each party, as applicable, for each unresolved issue;
- (E) all ~~agreed~~-contract language agreed upon by the parties;
- (F) if the arbitration 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 that complies with the requirements of §21.35 of this title (relating to Service of Pleadings and Documents).

- (b) **Response.** Any non-petitioning party to the negotiation ~~must~~ respond to the request for arbitration by filing the response with the ~~commission~~commission's filing clerk and serving a copy on each party to the negotiation. In accordance with~~Pursuant~~ to FTA

§252(b)(3) the response must be filed within 25 days after the commission received the request for arbitration. The response ~~must~~ 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, ~~the commission may delegate authority to~~ 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 ~~will~~ be notified of the commission-designated presiding officer ~~or whether the commission will hear the arbitration directly by electronic mail or in writing, or of the Commissioners' decision to act as presiding officer themselves~~. The presiding officer ~~and 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 ~~included in the arbitration~~ ~~selected to be part of the~~ team ~~will~~ 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 ~~will~~ be appointed who ~~will~~ perform any remaining functions without the necessity of repeating any previous proceedings. The substitute presiding officer ~~will~~ 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 ~~is practicable~~~~practical~~ after selection, the presiding officer ~~will~~~~shall~~ schedule a prehearing conference with the parties to the arbitration. At the prehearing conference, parties ~~may~~~~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.

(1) The presiding officer may establish criteria for waiver of issues, including threshold issues, identified for arbitration. If a challenge to the appointment of the presiding officer is not raised at the first prehearing conference, such a challenge will be deemed waived by the parties.~~If such challenges are not raised at the first prehearing conference, they shall be deemed waived by the parties.~~

(2) The presiding officer ~~will~~~~shall~~ serve parties with the orders ruling on challenges within ten working days of the first prehearing conference.

(3) The presiding officer ~~may~~~~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 ~~that~~~~as may~~ assist the disposition of the proceedings in a fair and efficient manner.

- (f) **Notice.** The presiding officer ~~will establish a procedural schedule~~~~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 ~~will~~~~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 ~~will~~~~shall~~ be open to the public. If any party requests it, a stenographic record ~~will~~~~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 ~~must~~~~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 ~~will~~~~shall~~ record the proceedings and maintain the official record and exhibits. Each party to the arbitration hearing ~~is~~~~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 examination 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 ~~will~~**shall** close the hearing only if there is no other practical means of protecting the confidentiality of the information.

~~(4) Each party, as applicable, must provide a copy of all exhibits or must pay the court reporter costs associated with the production of any copies the party asks the court reporter to provide.~~

~~(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 Procedural Rules~~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 ~~under~~**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 ~~provided by~~**set out in**

subsection (q) of this section.

(2) **Subpoenas.**

- (A) **Issuance of Subpoenas.** In accordance with Texas Government Code 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 ~~must~~ 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 ~~must~~ 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 ~~must~~ be made in the manner prescribed by Texas Government Code in ~~APA~~, §2001.089 and §2001.103.
- (D) **Motions to quash.** Motions to quash subpoenas ~~must~~ 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.** ~~In accordance with~~~~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) ~~must~~~~shall~~ serve as guidance for all discovery conducted under this chapter.
- (1) **Scope.** The presiding officer ~~will~~~~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~~~~e~~), and considering the desirability of making discovery effective, expeditious and cost effective. The presiding officer ~~will~~~~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 ~~must~~~~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 ~~or~~ cost studies.

(3) **Timing.** Discovery may commence upon the filing of the petition for arbitration.

Parties ~~must~~ file a proposed discovery schedule that accommodates the commission's deadlines under FTA §252(b)(4)(C)(e), 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)(e). 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)(e), all parties must agree to the extension and file a joint waiver to extend such deadlines.

(l) **Time for hearing.** The arbitration hearing ~~will~~ be conducted expeditiously and in an informal manner. The presiding officer is ~~authorized~~ empowered to impose reasonable time limits on the arbitration hearing. The presiding officer may continue an arbitration 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 ~~must~~ provide such evidence as the presiding officer deems necessary ~~may deem necessary to determination of the proceeding~~. The presiding officer ~~will~~ be the judge of the relevance and materiality of the evidence

offered.

- (2) **Conformity to rules.** The presiding officer ~~will~~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 ~~will~~shall provide notice of this decision prior to the deadline for filing direct testimony.
- (3) **Exhibits.** The offering of exhibits ~~is~~shall be governed by §22.226 of this title (relating to Exhibits).
- (4) **Offers of proof.** Offers of proof ~~are~~shall be governed by §22.227 of this title (relating to Offers of Proof).
- (5) **Stipulation of facts.** Stipulation of facts ~~are~~shall be governed by §22.228 of this title (relating to Stipulation of Facts).
- (6) **Prefiled evidence.**
 - (A) Parties to the hearing ~~must file~~shall provide their direct ~~case~~cases to the presiding officer at least 15 working days prior to the hearing unless the presiding officer establishes a different deadline. A copy of the direct case and notice of filing must be provided to each of the other parties to the hearing the same day the direct case is filed with the commission. 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 ~~must~~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 ~~mustshall~~ present the entirety of the party's direct evidence on each of the issues in controversy and ~~mustshall~~ serve as the party's complete direct case.

(C) Prefiled evidence ~~mustshall~~ include, to the extent allowed or requested by the presiding officer, prefiled rebuttal testimony and exhibits and ~~mustshall~~ 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 ~~willshall~~ 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 ~~will establishshall 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 ~~mustshall~~ file a revised DPL that is jointly populated to the extent practicable, taking into

consideration the status of discovery.

- (2) Parties ~~must~~ 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 ~~must~~ also be provided. The DPL ~~must~~ 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 ~~must~~ 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 ~~will~~ be considered public information under the TPIA, Texas Government Code, §552.001, *et. seq.*
- (p) **Cross-examination.** Each witness presenting written prefiled testimony ~~must~~ be available for cross-examination by the other parties to the arbitration. The presiding officer ~~will~~ 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 ~~will~~shall render a decision based 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 ~~will~~shall determine the filing deadline and any limitations on the length of such submissions. Reply briefs ~~are~~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 ~~will~~shall endeavor to issue a proposal for award ~~Proposal for Award~~ on the arbitration within 30 days after the filing of any post-hearing briefs.

(1) If post-hearing briefs are not filed, the presiding officer ~~will~~shall endeavor to issue the proposal for award ~~Proposal for Award~~ within 30 days after the conclusion of the hearing.

(2) The arbitration team ~~must~~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 ~~Award~~.** The proposal for award will ~~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 will~~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) ~~in accordance with~~pursuant to FTA §251;
- (D) the rates for interconnection, services, ~~and/or~~ network elements established ~~in accordance with~~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~~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~~Proposal for Award~~.** Within ten working days of the issuance of the proposal for award~~Proposal for Award~~ the parties ~~must~~shall file any exceptions to the proposal for award~~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~~Proposal for Award~~, the party's exceptions~~Exceptions~~ to the proposal for award~~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~~Award~~.** The arbitration award will~~Arbitration Award shall~~ be based upon the record of the arbitration hearing. The presiding officer ~~will~~shall endeavor to issue the arbitration award~~Arbitration Award~~ within ten working days of the receipt of parties' exceptions~~Exceptions~~ to the proposal for award~~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 will~~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 in accordance with FTA
pursuant to §251;

- (D) the rates for interconnection, services, ~~or 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 ~~a majority 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 a 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 will~~Proposal for Award and Arbitration Award shall be filed with the commission as a public record and ~~will~~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 ~~will~~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 ~~will~~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 must~~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~~Proposal for Award~~ are permitted. Motions for reconsideration of the arbitration award must be filed in accordance with~~Arbitration Award shall be filed pursuant to~~ §21.75 of this title (relating to Motions for Clarification and Motions for Reconsideration).

§21.99. Approval of Arbitrated Agreements.

(a) **Application.** Any interconnection agreement resulting from arbitration ~~must~~ 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~~ Arbitration Award, unless otherwise provided. Following the issuance of the presiding officer's ~~arbitration award~~ Arbitration Award under §21.95 of this title (relating to Compulsory Arbitration), the parties ~~must~~ shall jointly file ~~with the commission a copy of 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 ~~must~~ 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, ~~must~~shall do so within five calendar days following the filing of the application under subsection (a) of this section. Any reply comments ~~must~~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 calendar 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, ~~and will provide~~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 ~~will~~shall be deemed approved.
- (d) **Effective date.** An interconnection agreement approved by arbitration becomes effective within ten ~~calendar days from~~days after the date that the commission's order approving the interconnection agreement is signed by all ~~commissioners~~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 ~~must~~shall file a copy of the complete agreement with the commission~~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 ~~copy~~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) ~~mustshall~~ post notice of the approved interconnection agreement on its website in a manner that is in a separate, easily identifiable ~~area of the website~~. The ILEC website ~~mustshall~~ provide a complete list of commission-approved interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website ~~mustshall~~ 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 ~~must~~ 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 ~~must~~ file a copy with the commission~~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 as applicable. An application for approval of an amended agreement ~~must~~ 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 ~~will~~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 ~~will~~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 ~~will~~shall include written findings indicating any deficiencies in the agreement. Amendments to interconnection agreements ~~will~~shall be administratively reviewed by the presiding officer unless the presiding officer determines that a formal review of the amendments is appropriate in accordance ~~with 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 that is~~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 ~~must~~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 ~~in accordance with~~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 ~~underpursuant to~~ §22.202 of this title (relating to Presiding Officer) and ~~pursuant to~~ §21.95 of this title. Discovery ~~is~~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 ~~is~~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 ~~will~~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 ~~must~~shall file ~~a copy~~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 ~~filed copy musteopies 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)."

~~Within~~~~Also within~~ 15 working days of the approval of the agreement, the incumbent local exchange company (ILEC) ~~mustshall~~ post notice of the approved interconnection agreement on its website in a separate, easily identifiable area of the website. The ILEC website ~~mustshall~~ provide a complete list of approved interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website ~~mustshall~~ 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 ~~must~~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 ~~in accordance with~~pursuant to FTA §_252(i) ~~must~~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 ~~must~~shall file ~~a copy~~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 as applicable. An application for approval of an agreement adopting terms and conditions in accordance with FTA § 252(i) must~~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 ~~will~~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).

§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, electronic mail, or by facsimile to each party, including 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 ~~will~~shall notify the parties of the time, date, and location of the settlement conference; which, if held, ~~will~~shall be held no later than ten working days from the date the request was filed. The commission staff may require each party~~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 ~~will~~shall be conducted as an informal meeting ~~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. ~~If~~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 ~~will~~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, electronic mail, or by facsimile to each party, including the other party (~~respondent~~) to the interconnection agreement from which the dispute arises (respondent).

(1) The petition ~~must~~shall comply with §21.33 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission). The petition ~~must~~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, such as through an informal settlement conference in accordance with §21.123 of this title (relating to Informal Settlement Conference);
- (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 ~~will~~shall perform a sufficiency review of a petition. To the extent that a petition is determined to be insufficient, the commission ~~will~~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 ~~will~~shall be presumed sufficient.
- (4) Where a request for formal dispute resolution found insufficient, the presiding officer may consider dismissal without prejudice ~~in accordance with~~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 ~~must~~shall file a response to the petition within ten days after the filing of the petition. On the response filing date, the respondent ~~must~~shall serve a copy of the response on the petitioner. The response ~~must~~shall specifically affirm or deny each allegation in the petition. The response ~~must~~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

mustshall:

- (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 days after the filing of the response to the petition and serve a copy on respondent on the same day. The reply mustshall 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)-(i) and (k)-(r), (d), (e), (f), (g), (h), (i), (k), (l), (m), (n), (o), (p), (q), and (r), except that any discovery schedule mustshall 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 mustshall file a copy of each pleading~~ten copies of pleadings~~ subject to this subchapter with the commission.
- (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 ~~will hold~~~~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 ~~will~~~~shall~~ be conditioned upon the parties filing a joint waiver of the 50-day deadline. The presiding officer ~~will~~~~shall~~ notify the parties, not less than 15 days before the hearing, of the date, time, and location of the hearing. The hearing ~~will~~~~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 ~~in~~ ~~accordance with~~~~pursuant to~~ §22.202 of this title (relating to Presiding Officer) and ~~in~~ ~~accordance with~~~~pursuant to~~ §21.95 of this title (relating to Compulsory Arbitration). The presiding officer ~~also has~~~~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 ~~and/~~ witness list.** The arbitrator ~~must~~**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 ~~must~~**shall** require the parties to file their direct cases under the same deadline. The prepared direct case ~~must~~**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 ~~must~~**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 ~~must~~**shall** be considered public information under the Texas Public Information Act (TPIA), Texas Government Code, §552.001, *et seq.*
- (k) **Arbitration ~~award~~**Award.****
- (1) The presiding officer ~~will~~**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 ~~will~~**shall** endeavor to issue a final decision within 30 days of the close of the

hearing.

- (2) The ~~arbitration award will~~~~Arbitration Award shall~~ be filed with the commission as a public record -and ~~will~~~~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~~~~Arbitration Award~~ is issued, the presiding officer ~~will~~~~shall~~ notify the parties ~~in writing~~ by ~~electronic mail or~~ facsimile that it has been issued. If the decision involves 9-1-1 issues, the presiding officer ~~will~~~~shall~~ also notify the Commission on State Emergency Communications (~~CSEC~~) by facsimile on the same day.
- (3) The ~~arbitration award will~~~~Arbitration Award shall~~ be based upon the record of the dispute resolution hearing, and ~~will~~~~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 ~~will~~~~shall~~ be stayed until the commission affirms or modifies the decision, but such stay ~~will~~~~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 ~~mustshall~~ 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 ~~mustshall~~ file in the same docket ~~a copy number, two copies, one unbound,~~ of the complete agreement with the filing clerk within five working days of approval. The ~~copy musteopies 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) ~~mustshall~~ post notice of the approved interconnection agreement on its website in a ~~manner that is separate,~~ easily identifiable ~~area of the website.~~ The ILEC website ~~mustshall~~ provide a complete list of ~~commission-~~approved interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website ~~mustshall~~ provide a direct link to the commission's website.
- (m) **Motions for reconsideration.** Motions for reconsideration ~~are shall be~~ governed by §21.75 of this title (relating to Motions for Clarification and Motions for Reconsideration).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 23rd DAY OF MAY 2024 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA GONZALES**