

CHAPTER 21. INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter C. PRELIMINARY ISSUES, ORDERS, AND PROCEEDINGS.

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

- (a) **Threshold issues.** Threshold issues are legal or policy issues that the presiding officer determines to be of such significance that the issues must be addressed prior to proceeding with the other issues in the docket. Threshold issues include 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 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 be deemed waived by the parties.
 - (C) The presiding officer will provide the parties 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 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.
- (b) **Certification.** Certified issues will be addressed by the commission.
- (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:
 - (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 the certified issue and issue notice to the parties. 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.
 - (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 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.