

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 a presiding officer determines to be of such significance to the proceeding that these issues should be addressed prior to the other issues in the proceeding. Threshold issues include, but are not limited to, issues to be certified to the commission.
- (1) Threshold issues may be identified by the presiding officer or by motion of a party to the proceeding. Parties shall raise any threshold issues as well as challenges to the arbitrability of any issue at the first prehearing conference. If such challenges are not raised at the first prehearing conference, they shall be deemed waived by the parties. Parties shall be given an opportunity to brief the question of threshold issues. At the discretion of the presiding officer, reply briefs may be permitted. Any determination on threshold issues shall be made in a written order.
 - (2) Once a presiding officer has determined that there is a threshold issue(s) in a proceeding, the presiding officer shall take up the threshold issue(s) prior to proceeding with the other issues or certify the issue(s) to the commission pursuant to subsection (b) of this section. A decision on a threshold issue is not subject to motion for reconsideration.
- (b) **Certification.** Certified issues shall be addressed prior to proceeding with the other issues in the proceeding.
- (1) **Issues for certification.** The presiding officer may certify to the commission a significant issue that involves an ultimate finding in the proceeding. Issues appropriate for certification are:
 - (A) the commission's interpretation of its rules and applicable statutes;
 - (B) which rules or statutes are applicable to a proceeding; or
 - (C) whether commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.
 - (2) **Procedure for certification.** The presiding officer shall submit the certified issue to the Policy Development Division, with notice to the parties when the issue is so submitted. The Policy Development Division shall place the certified issue on the commission's agenda to be considered at the earliest time practicable. Parties may file briefs on the certified issue within five working days of its submission.
 - (3) **Abatement.**
 - (A) In a compulsory arbitration, the presiding officer may abate all or a part of the proceeding while a certified issue is pending only if agreed to by the parties.
 - (B) In a post-interconnection dispute proceeding, the presiding officer may abate all or a part of the proceeding while a certified issue is pending at the presiding officer's discretion.
 - (4) **Commission action.** The commission shall issue a written decision on the certified issue no later than six working days after the open meeting at which the issue is decided by the commission, unless extended for good cause. A commission decision on a certified issue is not subject to motion for reconsideration.