

PROJECT NO. 55293

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

ORDER ADOPTING AMENDMENTS TO CHAPTER 21 INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS PURSUANT TO TEXAS GOVERNMENT CODE §2001.039

The Public Utility Commission of Texas (commission) adopts 13 amendments in Chapter 21 Substantive Rules, Applicable to Interconnection Agreements for Telecommunications Service Providers as part of the statutorily required four-year rule review under Texas Government Code §2001.039.

The commission adopts the following rules with no changes to the proposed text as published in the April 26 , 2024 , issue of the Texas Register (49 TexReg 2595): 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 commission received no comments on the proposed rules.

The amended rules are adopted under the following provisions of PURA: §14.001, which provides 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 PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and § 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 statutes: 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 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 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 for each affected proceeding and must 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 the party's representatives. 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 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 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 be filed with the commission's Central Records Division and must state the control number in the heading, if known.
- (c) **Receipt by the commission.** Pleadings and any other documents are deemed filed when received by the commission's Central Records Division. Central Records will 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.**

- (1) For the purpose of filing documents, 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) may file items related to the open meeting on behalf of the commission or an individual commissioner. The presiding officer or OPDM will provide the parties of record a copy of each document filed under this paragraph as soon as possible after filing. To the extent practicable, the existence of a document filed under this paragraph will 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.

- (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 under commission rules or requested by 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 must 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 must 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) must 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 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:
 - (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 be provided.

- (f) **Page limits.** Unless otherwise authorized by the presiding officer, page limits must be in accordance with the following standards:
- (1) With the exception of DPLs and discovery responses, no pleading or brief relating to interconnection agreements may exceed 50 pages, excluding exhibits.
 - (2) Prefiled direct testimony must not exceed 75 pages in length per witness, excluding exhibits or attachments. A party may request the presiding officer to establish a larger page limit and must provide support on relevant factors pursuant to paragraph (4) of this subsection.
 - (3) The page limitation does not apply to copies of legal authorities provided 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 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 be filed with the commission in accordance with the requirements set forth in paragraphs (1)-(4) of this subsection.
- (1) Each document must 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 be filed as separate referenced attachments. Except for responses to discovery, each document must consist of the same paper size.

- (2) A copy of each document must be filed without bindings, staples, tabs, or separators.
 - (A) This copy must 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 be single sided.
 - (B) All pages of the copy filed under this paragraph, starting with the first page of the table of contents, must 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 be filed as referenced attachments. Non-native figures, illustrations, or objects must not 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, this section, or the applicable commission rule under this title, all documents and copies must 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, and, as applicable, the submission of the required number of copies to the commission 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 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 a text file.
- (5) The table of contents and list of file names must be placed at the beginning of the document.
- (6) Each external storage device for digital media must 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.
- (j) **File format standards.**
- (1) Electronic filings must be made in accordance with the current list of preferred file formats published by the commission's Central Records Division on the commission's 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 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 that the party submitting documents for in camera inspection must 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 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; 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 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 must 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) 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 evidence of the facts 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 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 be in writing, unless the motion is made on the record at a prehearing conference or hearing. It must 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 be supported by an affidavit. Written motions must 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 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 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 set forth the specific grounds for which the moving party seeks a continuance or an extension and must reference all other motions for continuance or extension filed by the moving party in the proceeding.

- (2) **Standard of Review.** The moving party must show good cause with respect to the need for the continuance or extension.
- (A) **Motions for Continuance.** The moving party must show good cause with respect to the need for a continuance. Motions for continuance 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 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

must be in writing and must 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 must be in writing and must be filed not less than three working days prior to the hearing. In addition to the requirements in paragraph (1) of this subsection, motions for continuance must state proposed dates for a rescheduled hearing.
- (3) Untimely motions for continuance will be presumed to be denied. The moving party has the burden to show good cause for untimely filing.

(f) **Modification of deadlines.**

- (1) Notwithstanding the requirements of subsections (b), (d), and (e) of this section, 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 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 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.

§21.75. Motions for Clarification and Motions for Reconsideration.

- (a) **Motions for clarification.** This subsection only applies to motions for clarification of arbitration awards. Motions for clarification of an 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 be filed within ten working days of the issuance of the presiding officer's decision or order. The motion for clarification must be served on all parties by hand delivery, facsimile transmission, electronic mail, or by overnight courier delivery. Responses to a motion for clarification must be filed within five working days of the filing of the motion.
 - (2) **Content.** A motion for clarification must specify the alleged ambiguity or error and, as appropriate, include proposed language that corrects the alleged ambiguity or error.
 - (3) **Denial or granting of motion.** The presiding officer will grant or deny the motion within ten working days of the filing of the motion. If the motion is granted, the presiding officer will issue a decision or revised order within 15 working days of the filing of the motion.
- (b) **Motions for reconsideration.** Motions for reconsideration, appeals, or motions for rehearing must be styled accordingly and will be presented directly to the commission. For purposes of dispute resolution and approval proceedings the terms "motion for reconsideration," "appeal," and "motion for rehearing," are interchangeable.

(1) **Limitations.**

- (A) Only parties to the negotiation in a compulsory arbitration under §21.95 of this title (relating to Compulsory Arbitration) may file motions for reconsideration.
- (B) In a proceeding under §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 under §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 under §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 under §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) 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 must be filed within 20 days of the issuance of the order under consideration. The motion for reconsideration must 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 must be filed within ten days of the filing of the motion.
- (3) **Content.** A motion for reconsideration must 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 must contain alternative contract language along with an explanation of why the alternative language is appropriate.
- (4) **Commission Agenda.** Upon filing a motion for reconsideration, the commission will determine whether the motion will be placed on an open meeting agenda and considered at an open meeting. The commission will notify the parties by facsimile or electronic mail whether any commissioner, by individual ballot, has added the motion to an open meeting agenda, but will not identify the requesting commissioner.
- (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.
 - (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.

§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 the Federal Telecommunications Act of 1996 (FTA) §251 may request arbitration by the commission by filing with the commission a petition for arbitration. The petitioner must 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.
- (2) The petition must be received by the commission during the period from the 135th to the 160th day after the date the negotiating party received the request for negotiation. The commission will perform a sufficiency review of the petition. To the extent that a petition is determined to be insufficient, the commission will 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 be presumed sufficient.
- (3) Where a petition for arbitration is found insufficient, the presiding officer may consider dismissal without prejudice in accordance with §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 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 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 on each issue;
 - (D) the proposed contract language from each party, as applicable, for each unresolved issue;
 - (E) all 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 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 and serving a copy on each party to the negotiation. In accordance with 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 additional information 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 to hear the arbitration. 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. The presiding officer and 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 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 after selection, the presiding officer will schedule a prehearing conference with the parties to the arbitration. At the prehearing conference, parties may 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.
 - (2) The presiding officer will serve parties with the orders ruling on challenges within ten working days of the first prehearing conference.
 - (3) The presiding officer may 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 assist the disposition of the proceedings in a fair and efficient manner.
- (f) **Notice.** The presiding officer will establish a procedural schedule 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 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 be open to the public. If any party requests it, a stenographic record will 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 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 record the proceedings and maintain the official record and exhibits. Each party to the arbitration hearing is 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 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.

- (i) **Applicable rules.** The rules of privilege and exemption recognized by Texas law 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) 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 §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 subsection (q) of this section.
- (2) **Subpoenas.**
- (A) **Issuance of Subpoenas.** In accordance with Texas Government Code §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 §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 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 serve as guidance for all discovery conducted under this chapter.

(1) **Scope.** The presiding officer will 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), and considering the desirability of making discovery effective, expeditious and cost effective. The presiding officer will 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 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 include: 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), 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). 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), all parties must agree to the extension and file a joint waiver to extend such deadlines.
- (1) **Time for hearing.** The arbitration hearing will be conducted expeditiously and in an informal manner. The presiding officer is authorized 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. The presiding officer will be the judge of the relevance and materiality of the evidence offered.
- (2) **Conformity to rules.** The presiding officer will have the authority to decide whether 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 provide notice of this decision prior to the deadline for filing direct testimony.
- (3) **Exhibits.** The offering of exhibits is governed by §22.226 of this title (relating to Exhibits).
- (4) **Offers of proof.** Offers of proof are governed by §22.227 of this title (relating to Offers of Proof).
- (5) **Stipulation of facts.** Stipulation of facts are governed by §22.228 of this title (relating to Stipulation of Facts).
- (6) **Prefiled evidence.**

- (A) Parties to the hearing must file their direct case 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.
 - (B) The prepared direct case must 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 must present the entirety of the party's direct evidence on each of the issues in controversy and must serve as the party's complete direct case.
 - (C) Prefiled evidence must include, to the extent allowed or requested by the presiding officer, prefiled rebuttal testimony and exhibits and must 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 will 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 establish 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 must 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 render a decision based on the best information available. 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 determine the filing deadline and any limitations on the length of such submissions. Reply briefs are not 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 endeavor to issue a 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 endeavor to issue the proposal for award within 30 days after the conclusion of the hearing.

- (2) The arbitration team must 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.** The proposal for award will 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 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 FTA §251;
 - (D) the rates for interconnection, services, or network elements established in accordance with 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, 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.** Within ten working days of the issuance of the proposal for award the parties must file any 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, the party's exceptions to the 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.** The arbitration award will be based upon the record of the arbitration hearing. The presiding officer will endeavor to issue the arbitration award within ten working days of the receipt of parties' exceptions to the 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 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 §251;
 - (D) the rates for interconnection, services, 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 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 be filed with the commission as a public record and will 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 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 also notify the Commission on State Emergency Communications by facsimile or electronic mail on the same day.

- (v) **Implementation.** Unless modified, implementation of the terms and conditions of the arbitration award must 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 are permitted. Motions for reconsideration of the arbitration award must be filed in accordance with §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 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, unless otherwise provided. Following the issuance of the presiding officer's arbitration award under §21.95 of this title (relating to Compulsory Arbitration), the parties must jointly file with the commission a copy of the final interconnection agreement, 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 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 do so within five calendar days following the filing of the application under subsection (a) of this section. Any reply comments must 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 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 be deemed approved.
- (d) **Effective date.** An interconnection agreement approved by arbitration becomes effective within ten calendar days from the date that the commission's order approving the interconnection agreement is signed by all 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 file a copy of the complete agreement with the commission within ten working days of the commission's decision. The copy 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) must post notice of the approved interconnection agreement on its website in a manner that is easily identifiable. The ILEC website must provide a complete list of commission-approved interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website must 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 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 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 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 include written findings indicating any deficiencies in the agreement. Amendments to interconnection agreements will be administratively reviewed by the presiding officer unless the presiding officer determines that a formal review of the amendments is appropriate in accordance with 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 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 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 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 under §22.202 of this title (relating to Presiding Officer) and §21.95 of this title. Discovery is 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 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 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 file a copy 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 must 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 15 working days of the approval of the agreement, the incumbent local exchange company (ILEC) must post notice of the approved interconnection agreement on its website in a separate, easily identifiable area of the website. The ILEC website must provide a complete list of approved interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website must 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 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 FTA § 252(i) must 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 file a copy of the application with the commission's filing clerk and 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 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 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 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 party 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 notify the parties of the time, date, and location of the settlement conference which, if held, will be held no later than ten working days from the date the request was filed. The commission staff may require each party 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 be conducted as an informal meeting 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 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 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 to the interconnection agreement from which the dispute arises (respondent).
- (1) The petition must comply with §21.33 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission). The petition must 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 perform a sufficiency review of a petition. To the extent that a petition is determined to be insufficient, the commission will 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 be presumed sufficient.
- (4) Where a request for formal dispute resolution found insufficient, the presiding officer may consider dismissal without prejudice in accordance with §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 file a response to the petition within ten days after the filing of the petition. On the response filing date, the respondent must serve a copy of the response on the petitioner. The response must specifically affirm or deny each allegation in the petition. The response must 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 must:

- (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 must 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), except that any discovery schedule must 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 must file a copy of each pleading 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 the hearing to address the petition 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 be conditioned upon the parties filing a joint waiver of the 50-day deadline. The presiding officer will notify the parties, not less than 15 days before the hearing, of the date, time, and location of the hearing. The hearing will 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 §22.202 of this title (relating to Presiding Officer) and in accordance with §21.95 of this title (relating to Compulsory Arbitration). The presiding officer also has 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 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 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 require the parties to file their direct cases under the same deadline. The prepared direct case must 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 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 be considered public information under the Texas Public Information Act (TPIA), Texas Government Code, §552.001, *et seq.*
- (k) **Arbitration award.**
- (1) The presiding officer will 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 endeavor to issue a final decision within 30 days of the close of the hearing.
 - (2) The arbitration award will be filed with the commission as a public record and will be mailed by first-class mail to all parties of record in the dispute resolution proceeding. On the same day that the arbitration award is issued, the presiding officer will 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 also notify the Commission on State Emergency Communications by facsimile on the same day.

- (3) The arbitration award will be based upon the record of the dispute resolution hearing, and will 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 be stayed until the commission affirms or modifies the decision, but such stay will 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 must 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 must file in the same docket a copy of the complete agreement with the filing clerk within five working days of approval. The copy must 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) must post notice of the approved interconnection agreement on its website in a manner that is easily identifiable. The ILEC website must provide a complete list of commission-approved interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website must provide a direct link to the commission's website.
- (m) **Motions for reconsideration.** Motions for reconsideration are governed by §21.75 of this title (relating to Motions for Clarification and Motions for Reconsideration).

This agency certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §§21.5, 21.31, 21.33, 21.35, 21.41, 21.61, 21.75, 21.95, 21.99, 21.101, 21.103, 21.123, 21.125 are hereby adopted with no changes to the text as proposed.

Signed at Austin, Texas the ____ day of JULY 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

THOMAS GLEESON, CHAIRMAN

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER

COURTNEY K. HJALTMAN, COMMISSIONER