

**CHAPTER 21. INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS**

**Subchapter C. PRELIMINARY ISSUES, ORDERS, AND PROCEEDINGS.**

**§21.67. Dismissal of a Proceeding.**

**(a) Motions for dismissal.**

- (1) Upon the motion of the presiding officer or the motion of any party, the presiding officer may dismiss, with or without prejudice, any proceeding, or claim within a proceeding, without an evidentiary hearing, for any of the following reasons:
  - (A) lack of jurisdiction;
  - (B) moot questions or obsolete petitions;
  - (C) res judicata;
  - (D) collateral estoppel;
  - (E) unnecessary duplication of proceedings;
  - (F) failure to prosecute;
  - (G) failure to state a claim for which relief can be granted; or
  - (H) other good cause shown.
- (2) The party that initiated the proceeding shall have five working days from the date of receipt to respond to a motion to dismiss. If a hearing on the motion to dismiss is held, that hearing shall be confined to the issues raised by the motion to dismiss.
- (3) If the presiding officer determines that the proceeding, or any claim within the proceeding, should be dismissed, the presiding officer shall issue an order dismissing the proceeding or claim within the proceeding.
- (4) An order dismissing a proceeding, or claim within a proceeding, under paragraph (3) of this subsection may be appealed pursuant to §21.75 of this title (relating to Motions for Clarification and Motions for Reconsideration).

**(b) Withdrawal of application.**

- (1) A party that initiated a proceeding may withdraw its application, petition, or complaint, without prejudice to refiling of same, at any time before that party has filed its direct testimony.
- (2) After the filing of its direct testimony, a party may withdraw its application, petition, or complaint, without prejudice to refiling of same, only upon a finding of good cause by the presiding officer.
- (3) In the absence of a finding of good cause, a party, after the filing of its direct testimony, may withdraw its application, petition, or complaint, with prejudice to refiling of same.
- (4) Alternatively, in the absence of a finding of good cause, a party, after the filing of its direct testimony, may withdraw its application, petition, or complaint without prejudice if all parties agree. If parties do not agree, the withdrawing party may be allowed to withdraw without prejudice only upon the payment of the other parties' reasonable attorneys' fees and costs.
- (5) If withdrawal of an application is approved, the presiding officer shall issue an order of dismissal with or without prejudice, as appropriate.