

CHAPTER 21. INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter C. PRELIMINARY ISSUES, ORDERS, AND PROCEEDINGS.

§21.77. Confidential Material.

- (a) **General.** If any party believes that any material it files with the commission or provides to the presiding officer during any proceeding under this chapter should be exempt from disclosure under the Texas Public Information Act (TPIA), it may designate such material as confidential information and submit the information under seal, pursuant to the requirements of §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials). Material is presumed to be subject to disclosure under the TPIA unless designated as confidential.
- (b) **Disputes.** In the event that a presiding officer believes that the material is not confidential, the presiding officer shall, unless waived by the party challenging the declassification, hold a hearing regarding declassification of the material. In the event a party disputes another party's designation of material as confidential, such party shall file a motion challenging the designation at least 15 working days before the hearing on the merits. The challenge shall include a statement as to why the material should not be held to be confidential under current legal standards, or that the party asserting confidentiality did not allow counsel to review such materials. The presiding officer shall notify the party of his belief that the material is not confidential at least ten days before the hearing on the merits. The party asserting confidentiality has three working days after the presiding officer notifies the party of his belief that the material is not confidential, or after another party's challenge is filed, to respond and bears the burden of proof on confidentiality. In determining whether material is exempt from disclosure, the presiding officer shall consider whether the material is considered to be confidential under the TPIA. Any presiding officer's decision relating to whether or not material is confidential is subject to motion for reconsideration to the commission. A party shall have three working days from the date of the presiding officer's decision to file a motion for reconsideration. The commission's decision shall be deemed a final administrative decision.
- (c) **Exemption from disclosure.** Material received by the commission or by a presiding officer in accordance with this procedure shall be treated as exempt from public disclosure until and unless such confidential information is determined to be public information pursuant to a specific provision in the TPIA, an Open Records Decision by the Attorney General, an order of the presiding officer entered after notice to the parties and hearing, or an order of a court having jurisdiction.
- (d) **Material provided to parties.** Material claimed to be confidential information must be provided to the other parties to the arbitration hearing provided they agree in writing to treat the material as confidential information. One copy of the material shall be provided to each party. The receiving party shall keep the confidential information properly secured during all times when the documents are not being reviewed by a person authorized to do so. The receiving party shall only make copies of the confidential information as permitted by the protective order in place in the proceeding.
- (e) **Review by parties.** Unless otherwise agreed to by the parties or ordered by the presiding officer, each receiving party may designate no more than eight individuals associated with the party who will be allowed access to the confidential information. The individuals who may have access to the confidential information shall be limited to the receiving party's counsel of record, regulatory personnel acting at the direction of counsel, and subject matter experts and outside consultants employed by the receiving party. These individuals may use the confidential information only for the purpose of presenting or responding to matters raised in the arbitration hearing during the course of that proceeding. These individuals shall not disclose the confidential information to any person who is not authorized under this section, or the protective order in effect for that proceeding, to view this information.

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§21.77 continued

- (f) **Acknowledgment.** Each individual who is provided access to the confidential information shall sign a notarized statement affirmatively stating that the individual has personally reviewed this section and the protective order in the proceeding and understands and will observe the limitations upon the use and disclosure of confidential information. By signing such statements a party may not be deemed to have acquiesced in the designation of the material as confidential information or to have waived any rights to contest such designation or to seek further disclosure of the confidential information.
- (g) **Disposition of confidential information.** Upon the completion of commission proceedings to review the arbitration agreement pursuant to FTA §252 and any appeals thereof, confidential information received by the parties shall be returned to the producing party. Any notes or work product prepared by the receiving party which were derived in whole or in part from the confidential information shall be destroyed at that time. Material filed with the commission will remain under seal at the commission and will continue to be treated as confidential information under this chapter. The commission may destroy confidential information in accordance with its records retention schedule.
- (h) **Use in other proceedings.** Any confidential information produced pursuant to this section may not be used in any other proceedings before the commission. However, this section does not prevent the discovery or admissibility of any material otherwise discoverable, merely because the material was presented in the course of an arbitration hearing under this section.