

CHAPTER 21. INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter E. POST-INTERCONNECTION AGREEMENT DISPUTE RESOLUTION.

§21.129. Request for Interim Ruling Pending Dispute Resolution.

- (a) **Purpose.**
- (1) This section establishes procedures pursuant to which a party who files a petition to initiate a dispute resolution under either §21.125 of this title (relating to Formal Dispute Resolution Proceeding) or §21.127 of this title (relating to Request for Expedited Ruling) may also request an interim ruling on whether the party is entitled to relief pending the resolution of the merits of the dispute.
 - (2) This section is intended to provide an interim remedy when the dispute compromises the ability of a party to provide uninterrupted service or precludes the provisioning of any service, functionality or network element (including issues of pricing and/or payment for any service functionality, or network element when such pricing and/or payment issues effect provisioning).
 - (3) However, in no event may a party obtain interim relief to avoid payment of undisputed amounts. The party seeking an interim ruling on payment issues bears the burden of proof to demonstrate what amounts are not disputed and what payments have been made pursuant to applicable contract provisions.
- (b) **Filing a request.** Any request for an interim ruling shall be filed at the same time and in the same document as the petition filed pursuant to §21.125 or §21.127 of this title. The heading of the petition shall include the phrase "Request for Interim Ruling." The petition shall set forth the specific grounds supporting the request for interim relief pending the resolution of the dispute, as well as a statement of the potential harm that may result if interim relief is not provided. A petition that includes a request for interim ruling shall be verified by affidavit. Such petition must list the contact person, address, telephone number, facsimile number, and email address for both the petitioner and respondent.
- (c) **Service.** The petitioner shall serve a copy of the petition and request for an interim ruling on the respondent by hand-delivery or facsimile on the same day as the pleading is filed with the commission. The petitioner shall certify on the pleading filed with the commission that service has been accomplished in compliance with this section.
- (d) **Response.** The respondent shall file a response to the petition within three working days of the filing of the request for an interim ruling.
- (e) **Hearing.** Within six working days of the filing of a petition and request for interim ruling, the presiding officer selected under this subchapter shall conduct a hearing to determine whether interim relief should be granted during the pendency of the dispute resolution process. The presiding officer will notify the parties of the date and time of the hearing by facsimile within three working days of the filing of a petition and request for interim ruling. The parties should be prepared to present their positions and evidence on factors including but not limited to: the type of service requested; the economic and technical feasibilities of providing that service; and the potential harm in providing the service.
- (f) **Evidence.** The presiding officer will issue an interim ruling on the request based on the evidence provided at the hearing. Evidence to support a request for interim ruling shall be provided by affidavit or shall be verified.

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§21.129 continued

- (g) **Consideration.** The presiding officer may, after notice and opportunity for hearing, grant a request for interim relief only on a showing of good cause. In determining whether good cause exists, the presiding officer shall consider:
- (1) whether there is a substantial likelihood of success on the merits of the movant's claims;
 - (2) whether there is a substantial threat that the movant will suffer irreparable injury if interim relief is not granted;
 - (3) whether the threatened injury to the movant outweighs any harm that the other party might suffer if interim relief is granted, including consideration of both parties' ability to compete;
 - (4) the need for relief prior to the reasonably anticipated date of a final decision in the proceeding; and
 - (5) any other relevant factors as determined by the presiding officer.
- (h) **Ruling.** The presiding officer shall issue a written ruling on the request for interim relief within five working days of the close of the hearing and will notify the parties by facsimile of the ruling. If the decision involves 9-1-1 issues, the presiding officer shall also notify the Commission on State Emergency Communications (CSEC) by facsimile on the same day. The interim ruling will be effective throughout the dispute resolution proceeding until a final decision is issued pursuant to this subchapter, unless overturned by the presiding officer or otherwise determined by the commission upon appeal.