

**From:** "Charles Welch" <CWelch@farrismathews.com>  
**To:** <jean.a.stone@tn.gov>  
**CC:** <Eddie.Roberson@tn.gov>  
**Date:** 9/16/2011 4:20 PM  
**Subject:** Dispute Resolution  
**Attachments:** Dispute Resolution Template 7-27-11.docx

Jean:

As you probably recall during Monday's workshop, I explained we had examined other state statutes and rules regarding an expedited process for contested cases. To the best of my recollection, we found about a half-dozen states with some form of expedited review. From these various states, we extracted and, in some instances, revised language we felt would best fit the current environment in Tennessee. As I promised during the workshop discussion, attached, you will find the work product of our endeavor.

If I can be of further assistance, please do not hesitate to contact me. I hope you have a wonderful weekend.

Best Regards,

Chuck

Charles B. Welch, Jr.

Farris Mathews Bobango, PLC

The Historic Castner-Knott Building

618 Church Street, Suite 300

Nashville, Tennessee 37219

(615) 726-1200 telephone

(615) 726-1776 facsimile

<http://www.farrismathews.com>

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**RULE: Procedure for resolution of disputes between telecommunications service providers.**

**Section 1.**

- (a) This rule is intended to establish a procedure for the timely resolution of disputes between telecommunications carriers over which the Commission has appropriate jurisdiction.
- (b) Any binding dispute resolution made pursuant to a commission approved interconnection agreement cannot be challenged under this rule. The dispute process detailed in this Section 1 is neither mandatory nor a prerequisite to the formal complaint process; provided, however, no party shall proceed to a contested hearing pursuant to this rule without first initiating the process for non-adversarial review as provided for herein.
- (c) To the extent this rule does not address procedural issues, existing rules shall apply.
- (d) The party requesting dispute resolution shall provide a full, but brief, documentation of the issue or issues in dispute as well as all relevant facts in writing to the commission staff member designated by the chairman as the appropriate contact for the request contemporaneously with delivery to the other party. The other party shall respond to allegations of the dispute within 3 business days, and the chairman's designee shall confer with other commission staff, as appropriate to consider the issues relevant to the dispute.
- (e) Within 5 business days following receipt of the request, the chairman's designee shall contact and arrange for a conference call or a meeting for the purpose of conducting an informal non-adversarial mediation to resolve the dispute. Unless otherwise agreed, each party shall have in attendance a person authorized to resolve the dispute.
- (f) If the dispute has not been resolved within 10 days of the filing of the request, either party may proceed to further review and dispute resolution pursuant to this rule.

**Section 2.**

- (a) If the procedure provided in **Section 1** fails to resolve the dispute, either party may request the commission to participate in negotiations and to mediate any remaining differences. The commission shall schedule a time and place for the mediation within 15 days of receiving the request.
- (b) The commission may schedule one or more days for mediation but, if the dispute is not resolved within 30 days of receipt of the request for mediation, neither party shall be required to continue to participate in the mediation process.
- (c) Either party may elect to avoid or terminate the negotiations provided for in this Section 2 at any time prior to the request or during the negotiations by electing to initiate the procedure for a full evidentiary hearing provided for in Section 3.

### Section 3.

- (a) If the procedure provided in **Sections 1 or 2** fail to resolve the dispute, either party may file a complaint and a full evidentiary hearing will be conducted by the commission.
- (b) The complaint shall contain the following:
  - (1) A detailed statement of the facts supporting the position of the complaining party and demonstrating that despite good faith efforts, the parties have been unable to resolve the dispute. The statement of facts must be supported by pre-filed testimony or affidavits of persons with personal knowledge of the relevant facts.
  - (2) A statement of fact and law which would entitle the complainant to relief.
  - (3) The name, address, and telephone number of the complainant's attorney, including local counsel.
- (c) The complainant may amend its complaint upon discovery of facts or circumstances unknown or unavailable to the complainant at the time the complaint was filed. Upon amendment of a complaint, the procedural schedule shall be adjusted at the discretion of the hearing officer consistent with the intent of this rule to provide for resolution.
- (d) Within 2 business days following the filing of the complaint, the presiding officer shall issue a procedural schedule that includes, without limitation, the following:
  - (1) Deadlines for the filing of all pleadings and briefs.
  - (2) The date for a settlement conference.
  - (3) The date for an evidentiary hearing.
  - (4) The deadline for the issuance of a commission order.
- (e) A party may file a request for discovery with a complaint, answer, or motion to intervene. Discovery requests shall be reasonable and limited to matters directly at issue. Parties shall respond to discovery requests within forty-eight (48) hours, unless another time, not to exceed 4 business days, is set by the presiding officer.
- (f) The complainant shall serve a copy of the complaint to the respondent, the respondent's authorized representative, attorney of record, or designated agent for service of process on the same day the complaint is filed with the commission.
- (g) An answer to the complaint shall be filed within 10 business days after service of the complaint.
- (h) The answer shall contain the following:
  - (1) A response to each allegation of the complaint, setting forth any affirmative defenses.
  - (2) A statement of the facts supporting the respondent's position supported by pre-filed testimony or affidavits made by persons with personal knowledge of the relevant facts.
  - (3) A statement of applicable law, supported by applicable citations.
  - (4) The name, address, telephone number of the respondent's attorney, including local counsel.
  - (5) A response to any motion filed by the complainant shall be filed as a separate document.
  - (6) The respondent may also file motions seeking affirmative relief.

- (7) The respondent may file a motion subsequent to the filing of the answer based upon facts or circumstances unknown or unavailable to the respondent at the time the answer was filed.
  - (8) The respondent shall serve a copy of the answer and any other motions or responses on the complainant's attorney, as listed in the complaint, or the person who signed the complaint, if the complainant has not attorney. Service may be made by hand delivery or overnight mail.
  - (9) Service to all parties must be made on the same day the answer is filed with the commission.
  - (10) Any allegations raised in the complaint but not addressed in a responsive filing shall be deemed admitted.
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- (i) The complainant must reply to an answer containing affirmative defenses within 10 days after the answer is filed and served and must be served upon all parties on the same day the reply is filed with the commission. If the reply contains new facts or legal issues not raised in the complaint, the reply must comply with the requirements of the original complaint and the presiding officer may amend the procedural schedule.
  - (j) A status conference shall be held with representatives of all parties in attendance within 10 days of the date of the filing of the final pleading. Participation of commission staff and representatives of any intervening parties shall be in the discretion of the presiding officer. The status conference shall be conducted as an informal meeting.
  - (k) If an agreement is reached at any time during the proceeding, the agreement shall be memorialized in writing within 5 business days following the announcement an agreement has been reached. If either party to the agreement desires a commission order approving the agreement, the parties shall jointly file a request for approval along with the written settlement agreement with the commission within 7 business days following the announcement an agreement has been reached.
  - (l) If the dispute remains unresolved following the settlement conference, an evidentiary hearing will begin no later than 45 days after the complaint is filed with the commission. The presiding officer shall have the sole discretion to conduct the proceeding in accordance with this rule, including without limitation, the authority to: limit the number of exhibits and witnesses and time for presentation and cross-examination; require the parties to submit a joint statement of stipulated facts; require a joint statement of facts and legal issues which remain in dispute; bifurcate the proceeding for more efficient consideration of the issues; consolidate 2 or more review proceedings for more efficient consideration of the issues; and continue the evidentiary hearing for good cause shown.
  - (m) The commission shall render a disposition on any complaint filed pursuant to this rule within 60 business days after the complaint is filed. The commission may extend this deadline for a period of 15 days for good cause, or longer with the consent of both parties.