

220 CMR 15.00: ACCELERATED DOCKET FOR DISPUTES INVOLVING COMPETING TELECOMMUNICATIONS CARRIERS

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15.01: General Provisions

- (1) Purpose. The purpose of 220 CMR 15.00 is to establish regulations governing an expedited dispute resolution process for complaints involving competing telecommunications carriers.
- (2) Scope. 220 CMR 15.00 shall apply to all telecommunications carriers and their agents doing business in Massachusetts.
- (3) Effective Date. The effective date of 220 CMR 15.00 *et seq.* is January 1, 2001.
- (4) To the extent that a procedural rule is not otherwise included in 220 CMR 15.00, parties to a proceeding under 220 CMR 15.01 should refer to 220 CMR 1.00.

15.02: Definitions

For purposes of 220 CMR 15.00, the terms set forth below shall be defined as follows:

Day, unless otherwise indicated, is given the meaning in 220 CMR 1.02(4).

Department means the Department of Telecommunications and Energy.

Telecommunications Carrier means any entity registered with the Department to provide telecommunications services.

15.03: Request for Expedited Review

- (1) Parties to formal complaint proceedings against telecommunications carriers within the responsibility of the Department may request inclusion on the Department's Accelerated Docket. Proceedings on the Accelerated Docket are subject to shorter pleading deadlines and certain other procedural rules that do not apply to other formal complaint proceedings before the Department.
- (2) Any party that contemplates filing a formal complaint may submit a request to the Director of the Telecommunications Division, in writing, seeking inclusion of its complaint, once filed, on the Accelerated Docket.
- (3) Within five days of receiving service of a complaint, any respondent in a formal complaint proceeding may submit by facsimile or hand delivery, to the Director of the Telecommunications Division, a request seeking inclusion of the proceeding on the Accelerated Docket. Such a respondent contemporaneously shall transmit, in the same manner, a copy of its request to all parties to the proceeding.
- (4) A request for inclusion of a proceeding on the Accelerated Docket must include:
  - (a) a detailed explanation of the alleged violation;
  - (b) legal analysis of position (attach copies of any authorities from other jurisdictions cited);
  - (c) why the action or inaction is unjust or unreasonable;

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- (d) the business issues presented by the action or inaction;
  - (e) the financial impact;
  - (f) the practical and operational effects imposed upon the requesting party;
  - (g) whether the issues presented are pending in other Department proceedings;
  - (h) the specific relief requested;
  - (i) whether the parties tried to informally resolve the dispute; and
  - (j) all documents supporting the facts alleged by the requesting party.
- (5) Following a request for inclusion of the proceeding on the Accelerated Docket, but prior to docketing, Department staff shall schedule and supervise pre-filing informal mediation between the parties to the dispute during the 20 day period following receipt of the request for expedited review. The period of informal mediation shall include the following:
- (a) After receipt of the request for inclusion on the Accelerated Docket, Department staff shall convene a conference call with the parties to discuss the issues.
  - (b) Within three business days of the conference call, parties will produce all relevant documents to the Department and the opposing parties.
  - (c) Within six business days of the request for inclusion on the Accelerated Docket, the Department will convene a meeting with the parties to discuss the dispute. At this meeting, the Department will, among other things, make an initial assessment whether the dispute is appropriate for expedited review.
- (6) If the parties do not resolve their dispute and the matter is accepted for handling on the Accelerated Docket, the complainant shall file a complaint with a letter stating that it has gained admission to the Accelerated Docket. When it files its complaint, such a complainant shall also serve a copy of its complaint on the Department staff that supervised the pre-filing mediation discussions.

15.04: Docketing a Complaint on the Accelerated Docket

- (1) Both (or all) parties to a dispute need not agree to the expedited process; it is sufficient that only one party so elect.
- (2) In determining whether to admit a proceeding onto the Accelerated Docket, the Department may consider factors from the following, non-exclusive list:
- (a) Whether it appears that the parties to the dispute have exhausted the reasonable opportunities for settlement.
  - (b) Whether the expedited resolution of a particular dispute or category of disputes appears likely to advance competition in the telecommunications market.
  - (c) Whether the issues in the proceeding appear suited for decision under the constraints of the Accelerated Docket. This factor may entail, *inter alia*, examination of the number of distinct issues raised in a proceeding, the likely complexity of the necessary discovery, and the likelihood that persons in addition to the complainant and respondent will be substantially and specifically affected by the proceeding.
  - (d) Whether the complainant states a claim for violation of a Department rule or order that falls within the Department's jurisdiction.
  - (e) Whether it appears that inclusion of a proceeding on the Accelerated Docket would be unfair to one party because of an overwhelming disparity in the parties' resources.
  - (f) Such other factors as the Department staff, within its substantial discretion, may deem appropriate and conducive to the prompt and fair adjudication of complaint proceedings.
- (3) In order to be eligible to file for expedited review, the complainant must certify that the complainant attempted in good faith to resolve the dispute with the respondent for a minimum period of ten days prior to petitioning the Department.
- (4) If it appears at any time that a proceeding on the Accelerated Docket is no longer appropriate for such treatment, Department staff may remove the matter from the Accelerated Docket either on its own motion or at the request of any party.

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(5) The Department will determine whether to accept a proceeding on the Accelerated Docket within the 21 day period following the request. If a complaint is accepted onto the Accelerated Docket, notice of the acceptance will be given to the parties and posted on the Department's website.

15.05: Complaint and Answer

(1) If a matter is accepted for expedited review, the complainant must file its complaint with the Department and serve the respondent. Complaints on the Accelerated Docket shall fully set out the facts and legal theories on which the complainant premises its claims.

(2) Complaints on the Accelerated Docket shall be accompanied, when served on respondents, by copies of all documents, within the complainant's possession, custody or control, that are likely to bear significantly on the issues raised in the complaint.

(3) Complaints on the Accelerated Docket will bear the following notation in bold typeface above the normal caption on the first page: "Accelerated Docket Proceeding: Answer Due Within Seven Days of Service Date."

(4) The respondent has seven days to file its answer. The answer shall respond fully to all material allegations and shall state fully the nature of any defenses. The answer shall include all documents in the respondent's control that are likely to bear significantly on the issues in the complaint proceeding.

(5) The filing of a separate pleading to reply to affirmative defenses is not permitted in Accelerated Docket proceedings. Complainants in Accelerated Docket proceedings may include, in a pre-initial-status-conference filing, a reply to any affirmative defenses raised by the respondent.

15.06: Discovery; Automatic Disclosure

(1) Each party to an Accelerated Docket proceeding shall serve on the other parties, with its initial pleading and with any reply statements in a pre-initial-status-conference filing, copies of all documents in the possession, custody or control of the party that are likely to bear significantly on any claim or defense. Document also shall include data compilations and tangible things. A document is likely to bear significantly on a claim or defense if it:

- (a) Appears likely to have an influence on, or affect the outcome of, a claim or defense;
- (b) Reflects the relevant knowledge of persons who, if their potential testimony were known, might reasonably be expected to be deposed or called as a witness by any of the parties;
- (c) Is something that competent counsel would consider reasonably necessary to prepare, evaluate or try a claim or defense; or
- (d) Would not support the disclosing party's contentions.

(2) Each party to an Accelerated Docket proceeding shall also serve on the other parties, with its initial pleading and with any reply statements in a pre-initial-status-conference filing, the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information.

(3) In its pre-initial-status conference filing, parties to Accelerated Docket proceedings may request additional discovery beyond that contained in the initial pleadings. In their pre-initial-status-conference filings, parties may request additional documents and seek leave to conduct a reasonable number of depositions, including depositions of expert witnesses, if any. When requesting additional discovery, each party shall be prepared at the status conference to justify its requests by identifying the specific issue or issues on which it expects to obtain evidence from each request. At the initial status conference, Department staff will determine whether requested additional discovery will be allowed.

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(4) Interrogatories. Interrogatories shall not be routinely granted in Accelerated Docket proceedings. A party to an Accelerated Docket proceeding that prefers interrogatories to the other forms of available discovery, for reasons of convenience or expense, may seek leave in its pre-initial-status-conference filing to propound a limited number of interrogatories.

(5) Expert Witnesses. Any complainant or respondent in an Accelerated Docket proceeding that intends to rely on expert testimony shall identify its expert witnesses in its pre-initial-status-conference filing. Such a complainant or respondent shall also provide its expert statement. An expert statement shall include a brief statement of the opinions to be expressed by the expert, the basis and reasons therefor and any data or other information that the witness considered in forming her opinions. Expert witnesses shall be subject to deposition in Accelerated Docket proceedings under the same rules and limitations applicable to fact witnesses.

15.07: Initial Status Conference

(1) Nine days after the answer is filed, Department Staff will hold an initial status conference at which time discovery issues (including discovery disputes) can be discussed. Parties that seek additional discovery beyond that contained in the initial pleading cycle shall request such additional discovery in a filing made with the Department two days prior to the initial status conference.

(2) If a complainant replies to an affirmative defense in a pre-initial-status-conference filing, it shall include in that filing the information identifying individuals with firsthand knowledge of the facts alleged in the reply. An Accelerated Docket complainant that replies to an affirmative defense in its pre-status-conference filing also shall serve on the respondent, at the same time as that filing, those documents in the complainant's possession, custody or control that were not previously produced to the respondent and that are likely to bear significantly on the issues raised in the reply.

(3) Prior to the initial status conference, the parties shall confer, either in person or by telephone, regarding:

- (a) Discovery to which they can agree;
- (b) Facts to which they can stipulate; and
- (c) Factual and legal issues in dispute.

(4) Two days before the status conference, parties shall submit to Department staff a joint statement of:

- (a) The agreements that they have reached with respect to discovery;
- (b) The facts to which they have agreed to stipulate; and
- (c) The disputed facts or legal issues of which they can agree to a joint statement.

(5) Two days before the status conference, each party also shall also submit to Department staff a separate statement which shall include, as appropriate, the party's statement of the disputed facts and legal issues of which the parties cannot agree in the proceeding and any additional discovery that the party seeks. A complainant that wishes to reply to a respondent's affirmative defense shall do so in its pre-initial-status-conference filing. A party that intends to rely on expert evidence shall include its expert statement in its pre-initial-status-conference filing.

15.08: Expedited Hearing

(1) In Accelerated Docket proceedings, the Department will conduct an expedited hearing between 31 and 34 days after the docketing of the complaint. A Department Hearing Officer will preside at the expedited hearing, administer oaths to witnesses, and time the parties' presentation of their cases. In consultation with the Department technical staff, the Hearing Officer will rule on objections or procedural issues that may arise during the course of the expedited hearing.

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(2) Before an expedited hearing, each party will receive a specific time allotment in which it may present evidence and make argument during the expedited hearing. The Hearing Officer or other Department staff presiding at the expedited hearing will deduct from each party's time allotment any time that the party spends presenting either evidence or argument during the proceeding. The Hearing Officer shall have broad discretion in determining any time penalty or deduction for a party who appears to be intentionally delaying either the proceeding or the presentation of another party's case. Within the limits imposed by its time allotment, a party may present evidence and argument in whatever manner or format it chooses, provided, however, that the submission of written testimony shall not be permitted.

(3) Three days before an expedited hearing, each party to a proceeding shall serve on all other parties a copy of all exhibits that the party intends to introduce during the expedited hearing and a list of all exhibits and witnesses, including expert witnesses, with a general description of the issues on which the witness(es) will offer evidence, that the party may call during the expedited hearing. Service of this material shall be accomplished either by hand, facsimile or e-mail transmission. Objections to any exhibits or proposed witness testimony will be heard at the beginning of the expedited hearing.

(4) No party will be permitted to call as a witness in a expedited hearing, or otherwise offer any exhibit, unless the individual or exhibit appears on the party's exhibit or witness list. No party will be permitted to present expert evidence unless the party has complied fully with the expert-disclosure requirements. The Department may permit exceptions to the rules in 220 CMR 15.08(4) for good cause shown.

(5) Two days before the beginning of the expedited hearing, parties shall file proposed findings of fact and conclusions of law. These submissions shall not exceed 20 pages per party. Within three days after the conclusion of the expedited hearing, parties may submit revised proposed findings of fact and conclusions of law to address evidence introduced or arguments raised at the expedited hearing. These submissions shall not exceed ten pages per party. Three days after the conclusion of the expedited hearing, parties may also submit short position statements in the nature of abbreviated briefs. The position statements shall not exceed two, single-spaced typewritten pages.

15.09: Decision

No more than 52 days after the complaint was docketed, Department Staff will issue a written recommended decision. Parties may appeal the Staff recommended decision to the Commission by filing an application for appeal including supporting argument within five days from the issue of the Staff recommended decision. An opposing party may respond to the appeal within three days of the appeal. No appeal of a Staff recommended decision, or response thereto, filed outside these time limits will be valid, absent a clear and convincing showing of good cause. If no appeal of the Staff recommended decision is filed, the Commission will review the Staff recommended decision and issue a Commission order at the close of the appeal period. If an appeal is filed, the Commission will review the Staff recommended decision and issue a Commission order on appeal, based on the available record, within ten days of the filing of a response to an appeal or within 13 days of the filing of an appeal.

15.10: Exceptions

The Department may, where appropriate, grant exceptions from any provision of 220 CMR 15.00.

REGULATORY AUTHORITY

220 CMR 15.00: M.G.L. c. 159, § 12; 220 CMR 2.00.

NON-TEXT PAGE