

Subpart C—Dispute Resolution Boards.

§ 301.200 Requests to resolve disputes.

(a) *Non-Federal User requests*—(1) *In general.* A Non-Federal User may submit a written request to NTIA in accordance with this section to establish a Dispute Resolution Board (hereinafter “board”) to resolve an actual, unresolved dispute that has arisen between the Non-Federal User and a Federal Entity regarding the execution, timing, or cost of the Transition Plan submitted by the Federal Entity pursuant to section 113(h)(1) of the NTIA Organization Act (47 U.S.C. 923(h)(1)).

(2) *Negotiation, mediation and arbitration.* Any dispute arising out of the execution, timing, or cost of the Transition Plan submitted by a Federal Entity must be raised, in the first instance, with the officer or employee of the Federal Entity identified in the Transition Plan as being responsible for the relocation or sharing efforts of the entity and who is authorized to meet and negotiate with Non-Federal Users regarding the transition. To the extent that the parties cannot resolve such dispute on an informal basis or through good faith negotiation, they are strongly encouraged to use expedited alternative dispute resolution procedures, such as mediation or non-binding arbitration, before submitting a written request in accordance with this section to establish a board.

(3) *Eligibility to request the establishment of a board.* To submit a request to establish a board, a Non-Federal User must satisfy the definition of such term in §301.20 of this part and the dispute must pertain to the execution, timing, or cost of the Transition Plan associated with the license or licenses subject to the winning bid or bids.

(4) *Contents of request.* In order to be considered by a board under this subpart, a request must include:

(i) Specific allegations of fact regarding the Federal Entity’s deviation from the Transition Plan sufficient to support the requested resolution of the dispute. Such allegations of fact, except for those of which official notice may be taken by the board, shall be supported by affidavits of a person or

persons having personal knowledge thereof;

(ii) A summary of the parties’ prior efforts and attempts to resolve the dispute, including negotiation, mediation, or non-binding arbitration efforts pursuant to paragraph (a)(2) of this section;

(iii) A detailed description of each of the claims upon which a resolution is sought by and available to the Non-Federal User;

(iv) A detailed description of the requested resolution of the dispute;

(v) The requestor’s contact information and a certificate of service showing to whom and when an identical copy of the request was provided to the Federal Entity; and

(vi) A meeting proposal setting forth the proposed date, time, and place (including suggested alternatives) for a meeting with the Federal Entity and the board, the date for which shall be no later than fifteen (15) days from the date the request is sent to NTIA.

(vii) A self-certification that the Non-Federal User is a licensee authorized to use Eligible Frequencies or winning bidder in an FCC auction for the Eligible Frequencies.

(5) *Federal Entity response.* A Federal Entity has the right to submit a response to the board prior to the date of the scheduled meeting. If so directed by the Chair of the board, the Federal Entity shall submit a written response to the Non-Federal User’s request.

(b) *Federal Entity requests*—(1) *In general.* An Eligible Federal Entity may submit a written request in accordance with this section to establish a Dispute Resolution Board to resolve an actual dispute that has arisen between the Federal Entity and a Non-Federal User regarding the execution, timing, or cost of the Transition Plan submitted by the Federal Entity pursuant to section 113(h)(1) of the NTIA Organization Act (47 U.S.C. 923(h)(1)).

(2) *Eligibility to request the establishment of a board.* To submit a request to establish a board, a Federal Entity, as such term is defined in §301.20 of this part, must have submitted a Transition Plan pursuant to section 113(h)(1) of the NTIA Organization Act (47 U.S.C. 923(h)(1)) and the dispute must pertain to the execution, timing, or cost of

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such plan in connection with that Non-Federal User's license or licenses to use the Eligible Frequencies.

(3) *Contents of request.* In order to be considered by a board under this subpart, a request must include:

(i) Specific allegations of fact regarding the factors hindering or affecting the plan's execution, timing, or cost sufficient to support the requested resolution of the dispute. Such allegations of fact, except for those for which official notice may be taken by the board, shall be supported by affidavits of a person or persons having personal knowledge thereof;

(ii) A summary of the parties' prior efforts and attempts to resolve the dispute;

(iii) A detailed description of each of the claims upon which a resolution is sought by and available to the Federal Entity;

(iv) A detailed description of the requested resolution of the dispute;

(v) The requestor's contact information and a certificate of service showing to whom and when an identical copy of the request was provided to the Non-Federal User; and

(vi) A meeting proposal setting forth the proposed date, time, and place (including suggested alternatives) for a meeting with the Non-Federal User and the board, the date for which shall be no later than fifteen (15) days from the date the request is sent to NTIA.

(4) *Non-Federal User response.* A Non-Federal User has the right to submit a response to the board prior to the date of the scheduled meeting. If so directed by the Chair of the board, the Non-Federal User shall submit a written response to the Federal Entity's request.

§ 301.210 Establishment and operation of a Dispute Resolution Board.

(a) *In general.* If NTIA receives a written request under § 301.200, it shall establish a Dispute Resolution Board in accordance with this section.

(b) *Board membership.* A board established under this section shall be composed of three (3) members, to be appointed as follows:

(1) A representative of OMB, to be appointed by the Director of OMB;

(2) A representative of NTIA, to be appointed by the Assistant Secretary; and

(3) A representative of the Commission, to be appointed by the Chairman of the Commission.

(c) *Qualifications.* The Assistant Secretary, in consultation with the Director of OMB and the Chairman of the Commission, may impose qualifications for one or more members of a board established under this section as are necessary pursuant to section 113(g)(6) of the NTIA Organization Act (47 U.S.C. 923(g)(6)), including, but not limited to, the following:

(1) The member has the appropriate and current security clearances to enable access to any classified or other sensitive information that may be associated with or relevant to the Transition Plan subject to dispute;

(2) The member must be an employee of the appointing agency;

(3) The member must be from a predetermined slate of not less than three (3) qualified candidates from NTIA, OMB, and the Commission and able to serve on a board immediately upon the notification of the establishment of a board under this section until it rules on the dispute that it was established to resolve; and

(4) The member may not simultaneously be a member of the Technical Panel governed by subpart B of this part or a former member of the Technical Panel that reviewed the Transition Plan subject to dispute.

(d) *Chair.* (1) The representative of OMB shall be the Chair of any board established under paragraph (a) of this section.

(2) The Chair may designate a Vice-Chair who may act as Chair in the absence of the Chair.

(e) *Term.* The term of a member of a board shall be until such board is terminated pursuant to paragraph (j) of this section or until a successor or replacement member is appointed under paragraph (b) of this section.

(f) *Vacancies.* Any vacancy on a board shall be filled in the manner in which the original appointment was made under paragraph (b) of this section.

(g) *Compensation.* (1) No member of a board shall receive any compensation for service on such board.