

§ 301.210

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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.

(2) Compensation in the member's capacity as an employee of the agency of the official that appointed such member to a board pursuant to paragraph (b) of this section shall not be considered compensation under paragraph (g)(1) of this section.

(h) *Procedures of and actions by a board.* (1) Except with respect to meetings with the parties pursuant to § 301.220(a), a board shall meet at the call of the Chair either in person or by some mutually agreeable electronic means to deliberate or rule on the dispute that it was established to resolve under paragraph (a) of this section or to receive technical assistance from the Technical Panel pursuant to § 301.130 of this part.

(2) A board shall endeavour to rule on the dispute that it was established to resolve under paragraph (a) of this section unanimously. Absent unanimous consent of all three members of a board, a concurring vote of a majority of the total board membership constitutes an action of such board.

(3) A majority of board members constitutes a quorum for any purpose.

(4) The Chair of a board, in consultation with the other members, may adopt additional policies and procedures to facilitate the efficient and timely resolution of the dispute that it was established to resolve under paragraph (a) of this section.

(i) *Administrative support.* NTIA shall provide any board established pursuant to paragraph (a) of this section with the administrative support services necessary to carry out its duties under this subpart.

(j) *Termination of a board.* (1) A board established pursuant to paragraph (a) of this section shall terminate after it rules on the dispute that it was established to resolve and the time for appeal of its decision under section 113(i)(7) of the NTIA Organization Act (47 U.S.C. 923(i)(7)) has expired, unless such an appeal has been taken.

(2) If such an appeal has been taken, the board shall continue to exist until the appeal process has been exhausted and the board has completed any action required by a court hearing the appeal.

§ 301.220 Dispute Resolution.

(a) *Meeting with parties.* In consideration of the proposal set forth in a request pursuant to either § 301.200(a)(4)(vi) or (b)(3)(vi) of or at another mutually convenient date, time, and place (including via teleconference or other electronics means), the Chair of the board established under this subpart shall call a meeting of the board to be held simultaneously with representatives of the parties to the dispute to discuss the dispute.

(b) *Additional written submissions.* The parties to the dispute shall provide the board with any additional written materials and documents as it may request. In cases where the dispute or an element thereof relates to the impact on the Federal Entity's national security, law enforcement, or public safety operations or functions, the board may request, and the Federal entity shall provide, additional written submissions concerning such impact.

(c) *Assistance from Technical Panel.* A board established under this subpart may request technical assistance, as necessary, from the Technical Panel governed by subpart B of this part.

(d) *Deadline for decision.* The board shall rule on the dispute not later than thirty (30) days from the date the request was received by the NTIA, unless the parties and the board all agree in writing, and subject to the approval of the Assistant Secretary, to extend this period for a specified number of days.

(e) *Board decision.* The decision of a board established under this subpart shall:

- (1) Be in writing;
- (2) Be limited to determinations related to the execution, timing, or cost of the Transition Plan submitted by the Federal entity;
- (3) Be based only on the record before it, including the request; meeting(s) with the parties all at the same time; any additional written submissions requested by the board and served on the other party, including submissions from the Federal entity concerning the potential impact on its national security, law enforcement, or public safety operations or functions; input from the Technical Panel, and other matters and material for which it may take official notice;