



# **Procedures for the Resolution of Disputes in the Telecommunications and Broadcasting Sectors of Trinidad and Tobago (Revised)**

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## **1 Introduction**

### **1.1 Rationale**

In January 2006, the Telecommunications Authority of Trinidad and Tobago (“the Authority”), as part of its mandate to liberalize and regulate the sector, published the Procedures for the Resolution of Disputes in the Telecommunications and Broadcasting Sectors of Trinidad and Tobago (“the Procedures”).

Section 82 of the Telecommunications Act, 2001 as amended by the Telecommunications Amendment Act, 2004 (hereinafter jointly referred to as the Act), requires that the Authority establish a dispute resolution process to be utilised in the event of a complaint or dispute arising between parties in respect of the following:

- Complaints by users operators of telecommunications networks, providers of telecommunications and broadcasting services or other persons arising out of the operation of a public telecommunications network, or the provision of a telecommunications or broadcasting service, in respect of rates, billings and services provided generally (Section 18(1)(m) of the Act);
- Disputes arising between concessionaires relating to any aspect of interconnection, including the failure to conclude an agreement made pursuant to paragraph (e), or disputes as to price and any technical or other term and condition for any element of interconnection (Section 25(2)(h) of the Act);
- Where a negotiated settlement as required under Section 26 of the Act cannot be achieved; or
- Any other matter that the Authority considers appropriate.

The liberalization of telecommunications markets is often marked by various disputes among operators in relation to competition issues including interconnection, pricing and traffic agreements. In the Caribbean, disputes in relation to interconnection agreements have been a major challenge to regulators. Trinidad and Tobago is no exception.

In March 2006, the first dispute was filed with the Authority under the Procedures, which related to a failure of the incumbent and a new market entrant to arrive at an agreement as to mobile termination rates during interconnection negotiations. Since then, three other disputes pertaining to interconnection rates have been filed with the Authority between 2006 and 2008. In addition, in 2007 and 2008 two disputes between radio broadcasters have been submitted to the Authority to award and assess compensation for harmful interference.

Although the Procedures make reference to conciliation and mediation as possible methods of dispute resolution, arbitration has been the single dispute resolution process employed by the Authority, on consultation with the parties, to treat with all of the above disputes.

Observations made by disputants, arbitration panel members and other industry participants as to the effectiveness of the Procedures in the resolution of disputes include:

- That the Authority should take steps to ensure that the dispute resolution process is only initiated after reasonable endeavours have been made to resolve the dispute in the course of commercial negotiations;
- That in light of the public interest element in all disputes filed with the Authority thus far, the process is allowed to extend for too long before a decision is rendered.

The Authority considers that a dispute resolution procedure in which the Authority is allowed more control over the conduct of the proceedings including the setting of timelines and the choice of persons to comprise the dispute resolution panel would serve to address the concern in relation to the lengthy duration of proceedings.

The Authority also notes that the option to pursue alternative forms of dispute resolution e.g. conciliation and mediation should be exhausted by the parties before accessing the Authority's dispute resolution proceedings.

Therefore, these revised procedures contemplate a dispute resolution procedure:

- i. which should be initiated only after the parties' reasonable endeavours to resolve the dispute by a process of negotiation at least have proven unsuccessful; and
- ii. in which the dispute resolution panel, in accordance with its Terms of Reference, determines the directions for the conduct of the proceedings and all attendant timelines.

Regardless of the approach adopted in resolving any dispute, the Authority seeks to ensure that standard practices and principles continue to feature in its dispute resolution procedure. These include:

- Timelines for each stage in the process to ensure efficiency;
- Publication of the process, determinations or recommendations, to provide certainty and transparency;
- Independence and objectivity of persons appointed to the dispute resolution panel;
- Confidentiality of sensitive information;
- Bearing of all dispute resolution costs by disputing parties as an incentive to expedite the process; and
- Enforcement of determinations.

## **1.2 Scope**

The Procedures is an evolving document and currently addresses procedures to deal with matters in respect of Sections 25(2) (h) and 26. A later draft of this document will also include procedures for handling complaints in respect of Section 18(1) (m) of the Act.

## **1.3 Modification to Document**

This document will be modified periodically to meet changing and unforeseen circumstances as the Authority deems appropriate. The maintenance history at the beginning of the document will be modified accordingly.

Procedures for the Resolution of Disputes in the Telecommunications and Broadcasting Sectors of Trinidad and Tobago

Questions or concerns regarding this document may be directed to the Legal and Regulatory Division of the Authority at [legal@tatt.org.tt](mailto:legal@tatt.org.tt) or may be written to:

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## 2 Definitions

In this document the following words shall have the meanings given:

Complainant	means the person who has submitted a Notice of Dispute to the Authority and who is identified as the Complainant in the Authority's Notice of Confirmation of Dispute under Clause 2.4.5
Complaint	means that document setting out the Complainant's submissions and submitted to the Authority under Clause 2.5.1
Decision	means the final decision of a dispute resolution panel rendered under Clause 2.12.10
Dispute resolution panel	means the panel of persons appointed by the Authority under Clause 2.10.1 to conduct dispute resolution proceedings
Notice of Confirmation of Dispute	means the notice issued under Clause 2.4.2 confirming the Authority's decision to commence dispute resolution proceedings
Notice of Dispute	means the initial notification of a dispute submitted to the Authority in accordance with Clause 2.3.2
Parties	means the persons who are party to a dispute submitted to the Authority by Notice of Dispute and or those who may be identified as the Complainant or as Respondent in the Notice of Confirmation of Dispute subsequently issued by the Authority
Reply	means a reply to a Response which the Complainant has been allowed by the Authority to submit to the Authority and serve on the Respondent under Clause 2.5.7
Respondent	means a person who is identified by the Complainant as the opposing party in a Notice of Dispute and who is identified as the Respondent in the Authority's Notice of Confirmation of Dispute under Clause 2.4.5
Response	means the document setting out a Respondent's submissions in response to a Complaint
Terms of	means the points of reference determined by the Authority for the instruction

Reference and guidance of the dispute resolution panel under Clause 2.10.6

### **3 Negotiation in Good Faith**

3.1 In respect of any conflict or disagreement arising out of the operation of any telecommunications network or the provision of any telecommunications service or any broadcasting service authorised by the Telecommunications Act, 2001 (“the Act”), or of any matter otherwise arising under the Act, any regulations made under the Act, any concession or licence granted under the Act, the parties shall, at all times, negotiate in good faith to arrive at an amicable resolution of any such conflict or disagreement.

3.2 Where the parties have failed to resolve by negotiation any matter referred to in Clause 3.1 above or where one party has or more than one party jointly have unsuccessfully attempted to resolve the dispute by negotiation with the other party or parties, the matter may be referred to the Authority for resolution as a dispute in accordance with these Procedures.

### **4 Referral of a Matter as a Dispute**

4.1 A conflict or disagreement may be referred to the Authority for resolution as a dispute:

- i. jointly by mutual agreement of the parties; or
- ii. *ex parte* by one party or by more than one party jointly as a complainant.

4.2 A conflict or disagreement may be referred to the Authority for resolution as a dispute by filing with the Authority a Notice of Dispute which must contain at minimum the following:

- i. A complete list of the issues in dispute; and
- ii. A full explanation of the issues including the reasons for the conflict or disagreement; and
- iii. If the Notice of Dispute is filed jointly by mutual agreement of the parties, evidence that the parties have failed to resolve the conflict or

disagreement by negotiation or if the Notice of Dispute is filed by one party or by more than one party jointly as complainant, evidence that all attempts to resolve the conflict by negotiation with the other party or parties have been unsuccessful e.g. copies of all relevant correspondence, notes of meetings; and

- iv. Any other supporting documents e.g. legal authorities and extracts of all agreements relating to the issues.

4.3 A copy of any Notice of Dispute filed with the Authority must be served on the other party or parties on the same day.

4.4 The Authority may reject the Notice of Dispute if it is not filed in accordance with Clause 4.2 above or if it is not served on the other party or parties in accordance with Clause 4.3 above.

4.5 Within five (5) days of the date on which a Notice of Dispute is served on the Authority, the other party or parties may make representation to the Authority as to why the Authority should not commence dispute resolution proceedings in accordance with the Notice of Dispute.

## **5 Confirmation of a Dispute**

5.1 Upon receipt of a Notice of Dispute and any representation made pursuant to Clause 4.5 above, the Authority shall consider whether it should commence dispute resolution proceedings and shall notify the parties of its decision within seven (7) days of receipt of the Notice of Dispute or if representations are made, within seven (7) days of receipt of such representations.

- 5.2 Where the Authority decides to commence dispute resolution proceedings, the Authority shall issue a Notice of Confirmation of Dispute to the parties which shall include:
- i. the Authority's reference number assigned to the dispute; and
  - ii. the address for service of each party to the dispute
- 5.3 Dispute resolution proceedings shall be deemed to have commenced from the date of the Notice of Confirmation of Dispute.
- 5.4 The Authority may in its discretion determine that any additional entity shall be included in the dispute resolution proceedings and shall identify such additional party or parties in the Notice of Confirmation of Dispute.
- 5.5 The Notice of Confirmation of Dispute shall note that from the date of the Notice of Confirmation of Dispute the party who filed the Notice of Dispute will hereafter be referred to as "the Complainant" and the other parties will be referred to as "the Respondent/s".
- 5.6 At any time prior to the issuing of the Terms of Reference of the dispute resolution panel the Authority may determine that a dispute referred to the Authority under these Procedures is frivolous or vexatious and may issue a Notice terminating all proceedings.

## **6 Service of Submissions**

- 6.1 The Complainant shall, within seven (7) days of the date of the Notice of Confirmation of Dispute, submit a Complaint to the Authority, which shall be in the form of Schedule A hereto and shall contain at a minimum:-
- i. Details of the dispute, describing in detail each issue on which the parties are in agreement and each issue on which the parties are not in agreement and the Complainant's position each of the issues in dispute; and

- ii. The provisions of any law, regulation, or regulatory instrument on which the Complainant intends to rely; and
- iii. A statement as to what remedies or decision is being sought.

6.2 The Complainant shall attach to the Complaint, copies of all relevant documents on which the Complainant intends to rely e.g. correspondence, notes, and technical documents.

6.3 The Complainant shall serve a copy of the Complaint on each Respondent on the same day that the Complaint is submitted to the Authority. The Authority will not consider a Complaint until it has been served on each Respondent.

6.4 Each Respondent shall, within fourteen (14) days of receipt of the Complaint, submit a Response to the Authority, which shall be in the form of Schedule A, and shall include:

- i. The Respondent's submissions as to:
  - a. whether the Respondent agrees or disagrees with each point in the Complaint on which the Complainant claims that the parties are in agreement; and
  - b. a statement as to the way in which the Respondent's position differs from that of the Complainant for each point in the Complaint on which the Complainant claims that there is disagreement.
- ii. The provisions of any law, regulation, or regulatory instrument on which the Respondent intends to rely; and
- iii. The details of any matters which are necessarily linked to the matters in complaint which the Respondent wishes to have taken into account.

- 6.5 Each Respondent shall attach to the Response, copies of all relevant documents on which the Respondent intends to rely e.g. correspondence, notes, and technical documents.
- 6.6 Each Respondent shall serve a copy of the Response on the Complainant on the same day that the Response is submitted on the Authority. The Authority will not consider a Response until it has been served on the Complainant.
- 6.7 Upon application of the Complainant, the Authority may allow the Complainant to submit a Reply to the Response within a time-frame specified by the Authority.
- 6.8 A Reply shall only address matters raised in the Response and shall not include any additional claims or allegations.
- 6.9 A copy of the Reply must be served on each Respondent on the same day that the Reply is submitted to the Authority. The Authority will not consider a Reply until it has been served on each Respondent.
- 6.10 The Respondent may also submit a Cross-Complaint, which may include any new but related allegation or complaint against the Complainant which the Respondent is seeking to have determined in the dispute resolution proceedings.
- 6.11 The Respondent shall include and serve the Cross-Complaint together with its Response. The Respondent may serve the Cross-Complaint separately from the Response only with the approval of the Authority and on such terms as may be specified by the Authority provided that the Respondent makes the appropriate request no later than the due date of service of the Response.

6.12 The Authority may determine that matters which the Respondent seeks to include as a Cross-Complaint may more appropriately be heard as a new Complaint, in which case the Authority shall notify the Respondent and the Respondent shall withdraw the Cross-Complaint.

6.13 Provided that the Authority does not make a determination in accordance with Clause 6.12 above, the Complainant must submit its response to the Cross-Complaint within fourteen (14) days of receipt of the Cross-Complaint.

6.14 A copy of the response to the Cross-Complaint must be served on the Respondent which filed the Cross-Complaint on the same day that the response to the Cross-Complaint is served on the Authority. The Authority will not consider a response to a Cross-Complaint until it has been served on the Respondent which filed the Cross-Complaint.

#### **6.15 Binding Effect of Submissions**

6.15.1 Any party which makes a submission to the Authority must, in its initial submission, raise all relevant issues in dispute and submit all such information as is necessary to support its position.

6.15.2 Except as provided for in these Procedures, the Authority will reject the relevant portion of any subsequent submission made by a party during the proceeding which:

- i. raises any new issue in dispute not previously disclosed in its initial submission; or
- ii. contains information which could have been submitted in the initial submission; or
- iii. takes any position that is inconsistent with its initial submission.

## **6.16 Extension of Time**

- 6.16.1 A party may request in writing, no later than three (3) days before the last date on which the submission should be filed under these Procedures, an extension of time to submit and serve his submission.
- 6.16.2 If a party requesting an extension of time shows good cause, the Authority may grant an extension of time, for such period not exceeding seven (7) days, for the service of any submission under these Procedures.
- 6.16.3 The Authority shall inform all parties of its decision within (2) days of the date of receipt of a request for an extension of time.
- 6.16.4 Notwithstanding the above, the Authority may in its own discretion grant a reasonable extension of time as it sees fit to any deadline or period prescribed in these Procedures.

## **6.17 Submission of Additional Information**

- 6.17.1 The Authority may request either or both parties to submit additional information at any time during the course of the dispute resolution proceeding.
- 6.17.2 Unless a party requests such information to be treated confidentially, any information submitted to the Authority by a party under Clause 6.17.1 above must be made available to the other party at the time that it is submitted to the Authority.

## **7 Commencement of Dispute Resolution Proceedings**

7.1 Within fourteen (14) days after the date on which the last submission was due, the Authority shall issue to the parties notice as to:

- i. the Authority's choice of a person or persons to be appointed to the dispute resolution panel under Clause 7.4 below; and
- ii. draft directions for the conduct of the dispute resolution proceedings; and
- iii. the proposed date and time of the first hearing

7.2 Within ten (10) days of the date of the notice issued by the Authority under Clause 7.1 above, any party may make representation as to:

- i. why the Authority should not appoint a specific person to the dispute resolution panel as identified under Clause 7.1(i) above;
- ii. any aspect of the draft directions issued under Clause 7.1(ii) above to which there is objection.

7.3 Within seven (7) days of the expiration of the period of time referred to in Clause 7.2 above, the Authority shall inform the parties as to whether it accepted any of the submissions made by any party under Clause 7.2 above.

### **7.4 Appointment of Dispute Resolution Panel**

7.4.1 The Authority shall appoint a dispute resolution panel which shall be responsible for the conduct of the dispute resolution proceedings and for the resolution of the dispute in accordance with these Procedures.

7.4.2 The dispute resolution panel shall be comprised of either one (1), or three (3), members, who shall be independent of all parties to the dispute. Where more than one member is

appointed, the Authority shall appoint one member of the dispute resolution panel as its Chairman.

7.4.3 In appointing the dispute resolution panel, the Authority shall, *inter alia*:

- i. Ensure that the qualification, training and experience of each member of the dispute resolution panel are relevant to the dispute process or the matters in dispute.
- ii. Provide to the parties upon request, information regarding the qualification of any or all members of the dispute resolution panel.

7.4.4 Before commencement of the dispute resolution proceedings, each member of the dispute resolution panel shall sign a statement of independence and shall disclose to the Authority any facts or circumstances which are of such nature as to call into question his or her independence. A member shall also immediately disclose to the Authority and to the parties any facts or circumstances of such nature which may arise during the dispute resolution proceedings.

7.4.5 Where a conflict of interest arises or where a member of a dispute resolution panel is no longer able to act in that capacity, the Authority shall be entitled to appoint a replacement member or, where the circumstances permit, to determine that the dispute resolution proceedings shall continue without a replacement.

7.4.6 The Authority shall determine the Terms of Reference of the dispute resolution panel, and shall serve a copy on each party. The Terms of Reference shall include, as a minimum, the submissions of the parties made under Clause 6 above and the draft directions for the conduct of dispute resolution proceedings referred to in Clause 7.1(ii) above.

7.4.7 The dispute resolution panel shall act in a manner which is:

- ◆ Fair;
- ◆ Transparent;

- ◆ Objective;
- ◆ Non-discriminatory;
- ◆ Consistent with the Terms of Reference under which it was appointed;
- ◆ Based on all the relevant facts as disclosed within the course of the dispute resolution procedure, the provisions of the Act, any regulations made under the Act, any concession or licence issued under the Act, the provisions of any other relevant law of Trinidad and Tobago, and any relevant existing agreements between the parties.

7.4.8 In the course of the dispute resolution process, the dispute resolution panel may seek:-

- ◆ evidence from any relevant source, whether connected to the parties or not; and;
- ◆ scientific, technical or legal opinion from experts.

## **7.5 General Conditions for Dispute Resolution Proceedings**

7.5.1 The proceedings shall take place at such place within Trinidad and Tobago as the Authority considers appropriate having regard to all the circumstances, ensuring however, that there are adequate accommodations for the parties and all their respective representatives.

7.5.2 The proceedings shall be conducted in the English language.

## **8 Procedure for Dispute Resolution**

### **8.1 Directions and Timetabling**

8.1.1 The date of commencement of the dispute resolution proceedings shall be the date on which the Authority issues Terms of Reference to the dispute resolution panel.

8.1.2 The dispute resolution panel shall, at the onset:

- i. adopt a procedural timetable which it intends to follow and shall provide copies of such timetable to the parties and to the Authority; and
- ii. make directions for the conduct of the dispute resolution proceedings. Such directions must take into account the draft directions which are included in its Terms of Reference pursuant to Clause 7.1(ii) above and may include any other matter related to the conduct of the proceedings as the dispute resolution panel considers appropriate.

8.1.3 The dispute resolution panel shall have the sole discretion to modify the timetable and or any direction issued under Clause 8.1.2(ii) above, whether upon application by one or more of the parties or otherwise.

8.1.4 The timetable and the directions for the conduct of the dispute resolution proceedings shall seek to ensure that the proceedings are completed as expeditiously as is practicable, having regard to the overriding need to ensure that the parties are afforded adequate opportunity to present their position in a fair, objective and non-discriminatory manner, observing due process.

8.1.5 The parties shall use their best endeavours to ensure that the dispute resolution proceedings are conducted as quickly as possible, having regard to all the circumstances of the dispute.

## **8.2 Determination of Issues**

8.2.1 Subject to any applicable law, the dispute resolution panel shall have jurisdiction to determine any and all matters pertaining to the arbitration.

8.2.2 Subject to any applicable law, the dispute resolution panel shall have the power to make any interim or conservatory order as it deems appropriate in the circumstances in accordance with the Act, any regulation or instrument made pursuant to the Act, or any

other applicable law and shall give reasons in writing for the making of any such order, which shall be binding on the parties.

- 8.2.3 Unless otherwise determined by the dispute resolution panel in its sole discretion, all hearings of the dispute resolution proceedings shall be public and the panel shall be entitled to invite or accept any submission by any entity in relation to the dispute.

### **8.3 Decision-Making**

- 8.3.1 All decisions of the dispute resolution panel, where the panel consists of more than one member, shall be made by a majority of the members of the panel.
- 8.3.2 The dispute resolution panel must render the Decision within three (3) months of the date of issuance of its Terms of Reference by the Authority. The dispute resolution panel may apply to the Authority at any time prior to the expiry of this period for an extension of time. The Board of the Authority (but excluding any Director who is a member of the dispute resolution panel) shall determine any such application and shall have discretion to extend the period as it considers appropriate having regard to all the relevant circumstances.
- 8.3.3 The dispute resolution panel may render the Decision orally in the first instance, at a hearing called for that purpose, of which no less than three (3) days notice was given to all parties and to the Authority. However, within fourteen (14) days of the date on which the Decision was rendered orally, the dispute resolution panel shall give the Decision in writing to all parties and to the Authority which shall contain reasons for the conclusions reached therein and which shall be signed by all members of the dispute resolution panel.
- 8.3.4 The Decision shall be binding on the parties and shall take effect within fourteen (14) days after the date of the written Decision, or otherwise as expressly stated in the Decision, provided that no appeal has been lodged by any party under Section 83 of the Act or otherwise.

- 8.3.5 If the Decision involves a monetary award, the dispute resolution panel may, on the application of any party, order the payment of interest on the award from such time as the panel considers reasonable under the circumstances.
- 8.3.6 The dispute resolution panel may as part of the Decision or otherwise at its discretion, recommend to the Authority any action within the provisions of the Act.
- 8.3.7 In the event that the parties should arrive at a settlement during the proceedings, the settlement may, upon application by the parties to the dispute resolution panel and at the sole discretion of the panel, constitute the Decision.
- 8.3.8 A clerical, computational or typographical error, or any other error of similar nature contained in the written Decision may be corrected by the dispute resolution panel:
- i. on its own initiative, provided that such correction is submitted for approval to the Authority within twenty-eight (28) days of the date of the written Decision; or
  - ii. on application by any party to the Authority within twenty-eight (28) days of the date of the written Decision and upon the expiration of a reasonable period of time not exceeding fourteen (14) days during which the other party or parties may submit comments in relation to such application or the issue to which the application relates.
- 8.3.9 The dispute resolution panel may provide an interpretation of the Decision upon application by any party to the Authority within twenty-eight (28) days of the date of the written Decision and upon the expiration of a reasonable period of time not exceeding fourteen (14) days during which the other party or parties may submit comments in relation to such application or the issue to which the application relates.
- 8.3.10 If the dispute resolution panel decides to correct the Decision under Clause 8.3.8 or to interpret the Decision under Clause 8.3.9 above, it shall submit its correction or interpretation to the Authority no later than fourteen (14) days of the expiration of the

period of time for the receipt of any comments from the other party or within such other period as the Authority may decide.

8.3.11 Any correction or interpretation of the Decision shall take the form of an addendum and shall constitute part of the Decision.

8.3.12 The Decision shall be registered at and filed by the Authority and may be published by the Authority in such manner as it may deem appropriate.

8.3.13 Any party to the dispute resolution proceedings or the Authority shall have the right and power to take any action to enforce the Decision or any other order of the dispute resolution panel.

#### **8.4 Costs of the Dispute Resolution Proceedings**

8.4.1 The costs of the proceedings shall include all costs reasonably incurred in connection with the proceedings, and without limitation to the foregoing shall include the fees and expenses of the dispute resolution panel, the fees and expenses of any experts appointed by the dispute resolution panel, and the reasonable legal and other costs incurred by the parties throughout the proceedings.

8.4.2 Before commencement of the dispute resolution proceedings, the Authority shall submit to the parties the estimated total cost of the proceedings which shall be paid to the Authority in equal parts by the parties before commencement of the dispute resolution proceedings.

8.4.3 In the event that any party should fail to make the payments referred to in Clause 8.4.2 above, the Authority shall take such steps to ensure that the dispute resolution proceedings shall continue and shall take such action against any party in default as the Authority considers appropriate under the circumstances.

- 8.4.4 The dispute resolution panel may, at any time during the proceedings, make an order as to costs in relation to particular parts of the proceedings, which shall be binding on the parties.
- 8.4.5 At the conclusion of the dispute resolution process (either as part of the final decision or otherwise) the dispute resolution panel shall make a final order as to costs and shall decide which of the parties shall bear the costs or in what proportion such costs shall be borne by the parties. The order shall be binding on the parties.

## **8.5 Confidentiality of Information**

Save as disclosed during any public hearing or in any decision, or as otherwise expressly determined by the dispute resolution panel, all matters, documents or other information disclosed during or in connection with dispute resolution proceedings shall be held confidential by all parties.

**SCHEDULE A**

**HEADING FOR DOCUMENTS IN DISPUTE RESOLUTION PROCEEDINGS**

[REFERENCE NO.]

IN THE MATTER OF AN ARBITRATION  
TELECOMMUNICATIONS AUTHORITY OF TRINIDAD AND TOBAGO  
SECTION 82 OF THE TELECOMMUNICATIONS ACT 2001

BETWEEN:

PARTY A

Complainant

and

PARTY B

Respondent

---

DOCUMENT TITLE

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Name and address  
of party serving document