



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

January 14, 2013

Regulations Governing the Advertising, Marketing, Billing, Provision, and Termination of Telephone and Cable Television Services to Residential Customers of the Commonwealth of Massachusetts.

OVERVIEW OF THE DEPARTMENT'S PROPOSED 207 CMR 10.00

INTRODUCTION

On December 21, 2012, the Department of Telecommunications and Cable ("Department") released a draft of a proposed revision to 207 CMR 10.00. On January 4, 2013, the Secretary of the Commonwealth published a notice of public hearing, which will occur on January 30, 2013. The notice also permits filing of written comments by 5:00 p.m. on February 5, 2013. The draft regulations, as well as the notice, were also distributed to the Department's interested parties e-mail distribution list¹ and posted on the Department's website (<http://www.mass.gov/ocabr/docs/dtc/proposed-regulations-notice-of-hearing.pdf>), and will be published in the Boston Globe and Springfield Republican newspapers in a timely fashion.

Although Massachusetts law does not require the Department to issue a Notice of Proposed Rulemaking or any other statement of reasons in support of proposed regulations at the time they are published, the Department does believe that a brief explanation of the proposed 207 CMR 10.00 is warranted, and therefore the Department issues this overview. This document

¹ Those not currently on this list who wish to be included on it should contact the Department's secretary at (617) 305-3580.

should not, however, be construed as an indication that the Department has pre-determined the merits of its proposed regulations. The Department looks forward to receiving both written and oral comments on the proposed regulations, and will take all such comments into consideration as it finalizes its revised 207 CMR 10.00. The Department may consider other means, such as technical sessions, reply comments, or additional public hearings, to gather input prior to adopting final regulations.

DISCUSSION AND ANALYSIS OF PROPOSED RULES

I. GENERAL OVERVIEW OF RULES

The Department's existing telephone rules were adopted in 1977, at the conclusion of an adjudicatory proceeding involving a single, then monopoly telephone provider (New England Telephone Company, a predecessor to Verizon). *See Rules and Practices Relating to Telephone Service to Residential Customers* (the "Existing B&T Rules"), D.P.U. 18448. In the 36 years that have passed since D.P.U. 18448 was issued, the telephone service industry has seen substantial changes, and while the Existing B&T Rules continue to serve as an important backstop for Massachusetts residential telephone customers, some modification and reconsideration of the rules is warranted.

Similarly, the existing 207 CMR 10.00, which is applicable only to cable television service, was adopted in the 1980s, and was last revisited and amended in 1996. *See In re Billing and Termination of Service Regulations*, Report and Order, Community Antenna Television Commission Docket No. R-16 (June 11, 1986); *In re Amendment of 207 CMR 2.00-10.00*, Report and Order, Cable Television Commission Docket No. R-25 (Dec. 27, 1996). Like the telephone services market, the cable television services market has undergone considerable change since 1996, and thus a revisitation of the cable regulations in 2013 is necessary.

The Department drafted proposed 207 CMR 10.00 with the following principles in mind:

- The Department should remove legacy requirements that are no longer necessary to protect consumers in light of changes in the telephone and cable marketplaces.
- The Department should remove illogical discrepancies between telephone and cable rules that are the product of the fact that the existing rules were adopted by separate agencies, and not necessitated by differences in the nature of telephone and cable service. However, the Department is mindful that it should retain rule differences that are justified based upon inherent differences in each type of service.
- The Department should include obligations with respect to consumer disclosures given the increased complexity of telephone and cable service offerings.
- The Department should simplify complexities in the existing requirements which are less likely to protect consumers and more likely to create confusion for consumers and providers.

Keeping the foregoing principles in mind, the Department next provides an explanation of the specific sections of the proposed regulations. The Department reiterates that by setting forth its rationale for the proposed regulations that it published for comment, the Department does not mean to suggest it has foreclosed consideration of modifications or wholesale changes to the proposed rules.

II. OVERVIEW OF SPECIFIC RULES AND SUMMARY OF KEY CHANGES

A. Section 10.01: Purpose and Scope

This section is introductory, and designed to accomplish two purposes: (1) establish that these regulations supersede existing rules and concern the advertising, marketing, billing, provision, and termination of both telephone and cable services, and (2) make clear that the rules apply both to telephone and cable companies, not just cable companies as is the case with the existing 207 CMR 10.00.

B. Section 10.02: Definitions

The definitions section has been expanded and updated to reflect statutory changes and differences in industry practice from existing rules. The Department notes that the definition of “Cable television service” is taken from the definition of “cable service” found in 47 U.S.C. § 522(6). In defining “Telephone service,” the Department relies upon G. L. c. 159, § 12(d).

Notwithstanding the definitional language in the proposed 207 CMR 10.00, the Department notes that the proposed regulations would, if adopted, apply only to traditional wireline telephone providers and cable television service, due to two important considerations. First, in construing the definition of “Telephone service,” the Department is cognizant that “no department, agency, commission or political subdivision of the commonwealth, shall enact, adopt or enforce, either directly or indirectly, any law, rule, regulation, ordinance, standard, order or other provision having the force or effect of law that regulates or has the effect of regulating, the entry, rates, terms or conditions of VoIP Service or IP enabled service.” G. L. c 25C, § 6A. Second, nothing in the proposed 207 CMR 10.00 seeks to alter or amend the Department’s predecessor’s determination that the Department will not regulate the rates, terms or conditions of wireless service. *Investigation by the Department of Public Utilities upon its own motion on Regulation of Commercial Mobile Radio Services*, D.P.U. 94-73 (Aug. 5, 1994). The Department will continue to monitor the wireless service market to ensure the assumptions underpinning the decision in D.P.U. 94-73 are still present.

C. Section 10.03: General Provisions

In this section, the Department sets forth the general ground rules applicable to cable and telephone service providers. This section is designed to accomplish five primary goals, discussed below.

1. The Proposed Rules Create Disclosure Requirements

Telephone and cable service offerings today are considerably more complex, and many Massachusetts residents have competitive choices for these services, which did not exist at the time existing rules were adopted. Proposed 207 CMR 10.03(1) and (2) set forth certain minimum disclosure requirements for advertising, marketing, and at the point of sale. Inclusion of this language in the Department's proposed rules is consistent with concerns that the Attorney General expressed to the Department. Specifically, the Attorney General states that enforcing the Attorney General's consumer protection rules on a case-by-case basis is difficult, and thus Massachusetts consumers would be better served if the Department were to resolve such complaints.²

2. The Proposed Rules Clarify Provider Obligations With Respect To Written Communication With Customers

As the Department believes existing written communication processes work well, the proposed 207 CMR 10.03(3) mostly retains existing requirements, with two exceptions. First, it makes clear that it is appropriate for customers to be able to choose to receive notifications by e-mail instead of first class mail. Second, in proposed 207 CMR 10.03(3)(d), the Department eliminates the current obligation (*see* current 207 CMR 10.01(2)) to provide copies of written customer communications to the Department annually, replacing it with an obligation to provide such communications only when they are changed from previous such communications.

3. The Proposed Rules Establish Baseline Acceptable Billing Practices

The proposed language concerning billing practices seeks to remove legacy discrepancies between billing practices under the Existing B&T Rules and existing 207 CMR 10.00, as well as

² See Reply Comments of the Attorney General in response to DTC's July 7, 2011 *Notice of Informational Forums*, at 10 (Sep. 16, 2011). This comment, as well as all others provided in response to the DTC's July 7, 2011 notice, are available at <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/b-and-t-public-comments.html>.

streamline some of the more complex obligations under existing rules. One particular discrepancy is the difference between the amount of time a customer has to pay a telephone bill versus a cable bill (30 days from bill's receipt for telephone, but only five business days from bill's receipt for cable). In light of concerns raised about the short time period for cable bills,³ under proposed 207 CMR 10.03(4)(c), all bills may not be due less than 30 days from the date of issuance. In addition, in response to concerns the Department has about the promptness of issuance of bill credits by companies, the proposed rules adopt a new requirement that once a company determines a bill credit is owed, it must apply that credit within two billing cycles. *See* Proposed 207 CMR 10.03(4)(k).

4. The Proposed Rules Establish Baseline Acceptable Practices Concerning Termination of Service

The Department recognizes that the service termination rules (i.e., the circumstances under which a provider may terminate service to a customer without the customer's consent) in the Existing B&T Rules and existing 207 CMR 10.00 are unduly complex and contain conflicting requirements in terms of the timing of the notices of termination. Rather than maintaining these disparate, complex requirements, the Department now proposes a single, 30-day notice of termination requirement. *See* Proposed 207 CMR 10.03(5)(b)(1). Otherwise, the proposed 207 CMR 10.00 adopts what the Department believes are best practices from the Existing B&T Rules and existing 207 CMR 10.00, but eliminates some of the discrepancies between the two sets of rules. For example, under current telephone rules the contents of a termination notice are clearly stated, while under cable regulations they are not. The proposed

³ *See* Town of Weymouth Mayor Susan Kay Petition for Rulemaking to Require Reasonable Notice of Cable Bill Payment Due Date, which was included as part of the comments in response to the DTC's July 7, 2011 *Notice of Informational Forums*.

regulations now clearly delineate the type of information that both telephone and cable providers must use to notify consumers of a potential termination. *See* Proposed 207 CMR 10.03(5)(b)(2).

5. The Proposed Rules Establish Customer Service and Complaint Resolution Practices

The proposed rules retain existing practices with respect to consumer complaints and complaint resolution, with a few notable changes. First, the Department has eliminated the provision found in existing 207 CMR 10.07(5) that permits cable providers to refuse, unilaterally, to participate in dispute resolution between consumers and the provider before the Department. Although most cable operators in the Commonwealth work cooperatively with the Department in resolving disputes, the proposed new rules reflect the Department's belief that it should be consumers who determine whether or not to involve the Department, not cable operators.

Second, the Department has proposed to shorten the time period under which consumers must appeal decisions by companies that they do not agree with from 90 to 30 days. *See* Proposed 207 CMR 10.03(6)(d). This change reflects the observations by the Department's Consumer Division that very few consumers wait more than 30 days to pursue appeals, and that appeals that do arise after 30 days are extremely difficult to resolve because of the passage of too much time.

Finally, the Department proposed to add a new requirement that providers cannot report disputed amounts of bills to credit agencies pending the resolution of the dispute by either the company or the Department. *See* Proposed 207 CMR 10.03(6)(f). The rationale for this additional rule should be self-explanatory; no consumer should face negative consequences on their credit report for non-payment of amounts that have not yet been determined to be actually due and owing.

D. 207 CMR 10.04: Provisions Related Specifically to Telephone Services

Recognizing that telephone service is an essential, “lifeline” service that many persons, including in particular senior citizens and persons with serious illness, rely upon as a primary (if not exclusive) means of accessing emergency services and care providers, the Department’s draft 207 CMR 10.04 proposes to retain certain existing protections concerning the termination of such service, but not cable television service. Specifically, proposed 207 C.M.R. 10.04(1)(a)(1)-(5) retain existing requirements that companies adopt special procedures to protect households where all adult residents are senior citizens and give seniors longer periods of time (90 days) to pay past due bills. In addition, persons able to establish the existence of a serious illness in the household or a personal emergency necessitating access to telephone service will have 90 days to pay for telephone service before disconnection, rather than the 30 days given to most consumers.

E. 207 CMR 10.05: Provisions Related Specifically to Cable Television Services

The purpose of this section is to retain existing requirements that cable television service providers maintain certain records, such as rate cards and billing practices, at places where the Department and members of the public can easily inspect them.

F. 207 CMR 10.06: Miscellaneous Provisions and Effective Date

This section of the proposed 207 CMR 10.00 constitutes basic “housekeeping,” ensuring that the rules are severable (i.e., invalidation of a particular rule does not invalidate all other rules), clarifying that the rules do not supersede existing federal or state law (which, of course, they cannot) and setting forth the effective date of the rules.

III. SUMMARY OF EXISTING RULES ELIMINATED FROM PROPOSED 207 CMR 10.00

Cognizant of the changed nature of the telephone and cable industries since the enactment of existing rules, the Department proposes to eliminate a number of existing

requirements in its proposed 207 CMR 10.00. Based upon its assessment of existing market conditions and trends in consumer complaints, the Department proposes to eliminate existing security deposit requirements, mandated payment plans, bilingual notice requirements, and removal of account procedures. The Department welcomes comments in support or opposition to its proposal to eliminate these requirements to assist it in making a final determination as to whether or not 207 CMR 10.00 should or should not include requirements with respect to the four areas discussed below.

A. Security Deposit Requirements

In proposed 207 CMR 10.00, the Department proposes to eliminate existing requirements concerning security deposits. Historically, companies used security deposits as a means to guarantee the return of their equipment once a customer discontinues service. Presently, the Department receives virtually no complaints concerning security deposits required by telephone service providers, and *de minimis* levels of complaints about security deposit requirements imposed by cable operators. Although the Department will continue to monitor this issue and constantly evaluate the need to re-establish rules concerning security deposits, it does not propose to continue existing requirements at this time.

B. Mandated Payment Plans

The Department's proposed rules eliminate telephone rules that set forth circumstances under which companies and customers may enter into deferred payment plans. (There is no comparable provision under existing cable regulations). These rules also establish circumstances under which the Department can mandate that parties enter into a payment plan. The Department established these requirements when a customer had only a single option for telephone service, and could not receive any alternative service if the service was disconnected.

Given the availability of competitive voice service offerings to most Massachusetts residents, including Lifeline wireless service that is available to low-income residents at no out-of-pocket cost, the Department believes continued requirements obligating telephone providers to offer payment plans is not necessary. Companies will, of course, remain free to enter into deferred payment plans with customers.

C. Bilingual Notices

The Department has observed in recent years that operators not only meet, but in many respects far exceed the existing requirement that telephone bills contain a statement in Spanish, Portuguese and any other language deemed “to be the primary language of a substantial number of customers” that the bill is important and should be translated. *See* Existing B&T Rule 3.6(b). Indeed, some companies offer entire bills in other languages, and/or retain customer service staff members capable of speaking a number of languages, including those that may not meet the “substantial number” standard. Recognizing these efforts, the Department proposes to eliminate existing translation rules, although it will continue to monitor the issue, particularly as it relates to low-income subscribers to Lifeline service.

D. Removal of Accounts

The Department’s existing telephone rules provide for separate procedures, applicable only to telephone companies, for removal of a customer’s account from the provider’s records. *See* Existing B&T Rules 5.11-5.5.14. This procedure is above and beyond the requirements for terminating a customer’s service. The removal of accounts process is a legacy of a time when *all* consumers in the Commonwealth had only one provider option for phone service, and the opening of an account with that provider was a time-consuming and potentially expensive task. Moreover, consumers assigned greater importance to maintaining a particular telephone number.

In light of the current environment, where consumers often have multiple phone numbers to their name and can initiate an account with a telephone provider with a phone call or click of a mouse, the Department believes the removal of account procedure is outdated, and need not continue to be separated from the termination of service procedure.

IV. CONCLUSION

In drafting proposed 207 CMR 10.00, the Department has tried to strike the proper balance between protecting Massachusetts consumers with a baseline set of protections concerning telephone and cable service, while at the same time eliminating rules and regulations that are no longer necessary or which offer little benefit to consumers. However, the Department's efforts do not stop here. The Department welcomes and eagerly anticipates comments from telephone and cable service providers, other interested industry members, consumer advocacy groups, other state agencies, municipalities, and telephone and cable service customers themselves concerning these rules. All comments will be given due consideration as the Department endeavors to draft final rules that best reflect not only the current state of the telephone and cable industries, but also the state of the industries in the years to come.