

207 CMR 3.00: CABLE LICENSING

Section

- 3.01: General Provisions
- 3.02: Initiation of Licensing Process
- 3.03: Formal Licensing Procedures
- 3.04: Grant of Final License
- 3.05: License Renewal Procedures
- 3.06: License Renewal Grant or Denial
- 3.07: Request for Amendment
- 3.08: Complaint Provisions
- 3.09: Rights of Appeal

3.01: General Provisions

- (1) All applications, reports, written statements, and amendments filed with or prepared by the issuing authority pursuant to 207 CMR 3.00 that are public records under Massachusetts law shall be made available for public inspection in the city or town clerk's office of the issuing authority during regular business hours and for reproduction at a reasonable fee. The applicant shall also file copies of any application(s) and amendments with the Department.
- (2) For the purposes of 207 CMR 3.00, the number of residents of each city or town shall be determined from the most recent official federal census figures.
- (3) The issuing authority may appoint a cable advisory committee and define its duties. In carrying out their duties, cable advisory committee members shall not participate in any matters in a way which would violate the Massachusetts conflict of interest law, M.G.L. c. 268A.
- (4) Public notice in accordance with 207 CMR 1.06(5)(g): *Notice of Public Hearings on Cable Licensing and Transfers* shall be provided for any public hearing required to be held by the issuing authority under 207 CMR 3.00.
- (5) With respect to all public hearings held by the issuing authority under 207 CMR 3.00, the issuing authority shall provide for a stenographic, video, or other tape record of the hearing(s). The issuing authority may choose the recording methodology. The applicant shall bear the cost of the recording.

3.02: Initiation of Licensing Process

- (1) The cable licensing process may be initiated by any of the following actions:
 - (a) A decision by the issuing authority to begin the licensing process.
 - (b) The filing with the issuing authority of an application form prescribed by the Department pursuant to M.G.L. c. 166A, § 4.
 - (c) The filing with the issuing authority of a petition signed by registered voters of the issuing authority requesting that it begin the licensing process. A petition shall be valid when signed by as many registered voters as equals $\frac{1}{2}$ of 1% of the residents of the issuing authority, except that the number of required signatures shall not be more than 500.
- (2) No later than 60 days after an application or a voter's petition is filed, the issuing authority shall decide whether the licensing process shall be undertaken. Before making such decision and after notice as required by 207 CMR 1.06(5)(g): *Notice of Public Hearings on Cable Licensing and Transfers*, the issuing authority shall hold a public hearing. The issuing authority shall afford any applicant, petitioner, resident, or other interested party a full and fair opportunity to be heard. If more than one initiative is filed before the hearing, such additional initiative shall be considered during the scheduled hearing.

3.02: continued

(3) If, after the hearing described in 207 CMR 3.02(2), the issuing authority declines to undertake the licensing process, it shall promptly issue a written report containing the specific reasons for its decision. Within seven days of the issuance of the report, the issuing authority shall forward copies of the report to the Department, to each license applicant of record, and to the incumbent cable licensee(s), if any. For the purposes of M.G.L. c. 166A, § 14, the report shall be considered a denial of any applications pending before the issuing authority.

(4) If the issuing authority elects to proceed with the licensing process, it shall approve or deny each application within 12 months from the date it decides to do so under 207 CMR 3.02(2).

3.03: Formal Licensing Procedures

(1) If the issuing authority elects to undertake the licensing process under 207 CMR 3.02(2) it shall promptly:

- (a) Notify the Department of the date that the licensing process was initiated; and
- (b) Specify a filing deadline for applications for a cable license or licenses.

(2) Within 90 days of the application filing deadline under 207 CMR 3.03(1)(b), the issuing authority shall issue a written report that includes specifications for the cable license as it deems appropriate. Within seven days after its issuance, the issuing authority shall forward copies of the report to each applicant of record and to the Department and shall set a deadline for receipt of amendments to applications. No applicant shall materially amend its application after the deadline for receipt of amendments.

(3) After issuing its report under 207 CMR 3.03(2), and after notice as required by 207 CMR 1.06(5)(g): *Notice of Public Hearings on Cable Licensing and Transfers*, the issuing authority shall hold a public hearing to assess the qualifications of each applicant. Assessment of applicant qualifications shall be limited to the information provided in the applications on file, any amendments to such applications, the issuing authority report on license specifications, oral testimony given during the hearing, and other relevant information included in the hearing record.

(4) Within 60 days following the close of the hearing the issuing authority shall approve or deny each application. The issuing authority shall grant a provisional license to any successful applicant and shall issue a written public statement containing in detail the reasons for the approval or denial of each application. The issuing authority shall send a copy of such statement to each applicant of record.

(5) The provisional license shall be executed within three months of the issuing authority's vote to award the provisional license. It shall be valid for a period no longer than one year, by which time the provisional licensee must have met the requirements set forth in 207 CMR 3.04(1). The provisional license shall expire upon the issuance of a final license or 12 months from the date of execution of the provisional license, whichever occurs first.

(6) Within seven days of the issuance of the public statement regarding the approval or denial of license applications the issuing authority shall file copies of the following documents with the Department:

- (a) The issuing authority statement prepared pursuant to 207 CMR 3.03(4); and
- (b) The provisional license, if one has been granted.

(7) No provisional license or any rights thereunder shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, either directly, indirectly, or by transfer or assignment of control by any entity holding such provisional license. "Transfer or assignment of control" shall be defined in accordance with 207 CMR 4.00: *Transfer or Assignment of Control of a Final Cable License*.

(8) Actual construction of physical facilities for a cable system may not commence prior to the grant of a final license pursuant to 207 CMR 3.04.

3.04: Grant of Final License

- (1) A final license to construct and operate a cable system shall be granted by the issuing authority following substantial compliance with each of the following requirements:
 - (a) The submission requirements contained in the application form prescribed by the Department, pursuant to M.G.L. c. 166A, § 4; and
 - (b) The terms and conditions of M.G.L. c. 166A, §§ 3, 4, and 5.
- (2) A final license shall contain terms substantially identical with the terms contained in the provisional license. Notwithstanding the foregoing, a final license may contain terms differing from those in the provisional license, if the issuing authority, in the public statement required by 207 CMR 3.04(4), sets forth in detail its reasons for accepting an alteration of those terms.
- (3) In the event the issuing authority finds that there has been a failure to comply with the provisions of 207 CMR 3.04(1), the issuing authority shall deny a final license to the provisional licensee and shall issue a written statement setting forth in detail the basis for such finding and denial. A copy of the statement shall be sent to the provisional licensee and to the Department.
- (4) The issuing authority shall grant a final license to an approved applicant and shall issue a written public statement containing in detail the reasons for granting the approval, including, where applicable, the reasons for accepting an alteration of the terms of the provisional license. A copy of the statement shall be sent to the licensee.
- (5) Within seven days of the grant of a final license, the issuing authority shall file copies of the following documents with the Department. The issuing authority may file such documents electronically:
 - (a) the final license;
 - (b) the written statement issued pursuant to 207 CMR 3.04(4); and
 - (c) the completed application form prescribed by the Department pursuant to M.G.L. c. 166A, § 4.
- (6) If the issuing authority denies the final license, it may recommence the licensing process at any time. If this occurs within a reasonable time after the issuance of the public statement under 207 CMR 3.04(3), the issuing authority may request a waiver for an abbreviated licensing process in accordance with 207 CMR 2.03: *Waiver*.

3.05: License Renewal Procedures

- (1) The renewal of a license to operate a cable television system shall be in accordance with the federal license renewal statute, 47 U.S.C. § 546. 207 CMR 3.05, 3.06, and 3.09 shall supplement the federal license renewal statute.
- (2) All license renewal applicants shall complete the application form prescribed by the Department pursuant to M.G.L. c. 166A, § 4.
- (3) No license renewal may be granted or denied without a prior public hearing with prior public notice pursuant to 207 CMR 1.06(5)(g): *Notice of Public Hearings on Cable Licensing and Transfers*.
- (4) The issuing authority shall notify the license applicant in writing of the date of the completion of ascertainment proceedings conducted pursuant to 47 U.S.C. § 546(a).
- (5) The issuing authority's preliminary decision to deny renewal shall be made in writing and shall include the basis of the denial.

3.06: License Renewal Grant or Denial

- (1) Concurrent with the grant of a renewal license, the issuing authority shall issue a written public statement reporting the license grant and detailing the reasons for it, including but not limited to: the applicant's substantial compliance with provisions set forth in 47 U.S.C. § 546(c)(1)(A) through (D).

207 CMR: DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Those provisions are as follows:

3.06: continued

- (a) The cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
 - (b) The quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;
 - (c) The operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
 - (d) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
- (2) Within seven days of the grant of a renewal license, the issuing authority shall file copies of the following documents with the Department. The issuing authority may file such documents electronically:
- (a) The issuing authority statement prepared pursuant to 207 CMR 3.06(1); and
 - (b) The renewal license.
- (3) Should the issuing authority deny a renewal application, within 14 days of its decision to deny, it shall issue a written statement detailing the reasons for its denial, specifically addressing the criteria set forth in 207 CMR 3.06(1)(a) through (d). The issuing authority shall file a copy of this statement with the license renewal applicant and with the Department upon issuance.

3.07: Request for Amendment

- (1) Notice. When an issuing authority and a licensee propose to amend a final cable license, the issuing authority shall cause notice of the same to be published in a newspaper of general circulation in the city or town to be affected by any amendment. The notice shall include a concise summary of each amendment sufficient to identify its subject matter. Publication shall be made not less than 14 days before the commencement of the public comment period pursuant to 207 CMR 3.07(3). If there is no newspaper in such city or town, notice shall be posted in a conspicuous place in the city or town hall for a period not less than 30 days preceding the commencement of the public comment period. The costs of publishing this notice shall be borne equally by the issuing authority and the licensee.
- (2) Report on Request for Amendment. Coincident with publication of notice of any proposed amendment, the issuing authority shall make available to the public in the city or town clerk's office a written report, prepared by the issuing authority and cable licensee, which shall:
- (a) Identify the licensee, the full text of the proposed amendment, and the purpose for which the requested amendment is being made;
 - (b) State the date the request for amendment was received by the issuing authority;
 - (c) Describe the probable effect(s) of the proposed amendment on consumers and any other concerned parties.
- (3) The public shall be afforded a reasonable opportunity to provide input on the requested amendment during a public comment period of at least 21 days in duration held prior to the issuing authority's final decision on the adoption of the requested amendment.
- (4) The proposed amendment shall be adopted if the issuing authority and the licensee so determine within a reasonable period following the close of the public comment period.
- (5) Within ten days of adopting a license amendment, the issuing authority shall issue a written public report specifying the reasons for its decision. Upon issuance of its report, the issuing authority shall forward copies of the report and the amended license to the Department.

3.07: continued

(6) Nothing shall prevent an issuing authority and a licensee from requesting or adopting more than one amendment at a time pursuant to the provisions of 207 CMR 3.07.

3.08: Complaint Provisions

Any person aggrieved by the action of the issuing authority in amending a final license pursuant to 207 CMR 3.07 may file a complaint in writing with the Department within 30 days of the adoption of the amendment. The Department may, at its direction, initiate an investigation of the issuing authority's action and hold hearings thereon, giving due notice to all parties.

If, after investigation and hearing, the Department approves the issuing authority's action, it shall issue notice to the issuing authority to that effect. If the Department disapproves, it shall issue a decision in writing advising said issuing authority of the reasons for its decision and the issuing authority shall abide by the decision.

3.09: Rights of Appeal

(1) Appeals to the Department by aggrieved parties seeking an initial or renewal license pursuant to 207 CMR 3.00 shall be initiated in accordance with the provisions of M.G.L. c. 166A, § 14. The following parties shall have standing to appeal to the Department:

- (a) An applicant for an initial license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 3.02(3) or 3.03(4) or by the failure of an issuing authority to make a decision within 60 days of the hearing provided for in 207 CMR 3.03(4); or
- (b) An applicant for a license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 3.04(3); or
- (c) An applicant for a renewal license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 3.06(3).

(2) The Department may, after a hearing conducted pursuant to M.G.L. c. 166A, § 14, issue such order as it deems appropriate to carry out the purpose of 207 CMR 3.00.

REGULATORY AUTHORITY

207 CMR 3.00: M.G.L. c. 166A, §§ 4, 13, and 16.