

207 CMR 1.00: PROCEDURAL RULES

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1.01: Scope and Construction

- (1) Procedure Governed. 207 CMR 1.00 shall govern practice and procedure, except with respect to the adoption, amendment, or repeal of regulations pursuant to 207 CMR 2.01, before the Massachusetts Department of Telecommunications and Cable under applicable laws of the Commonwealth of Massachusetts and except where a statute provides otherwise.
- (2) Definitions. as used in 207 CMR 1.00, except as otherwise required by the context:
  - Adjudicatory Proceeding shall be as defined in M.G.L. c. 30A, § 1(1).
  - Department means the Massachusetts Department of Telecommunications and Cable.
  - Electronic Medium Any device used to transmit information electronically, including but not limited to facsimile and e-mail.
  - Presiding Officer means that person who is designated to conduct hearings pursuant to the provisions of 207 CMR 1.06(6)(a).
- (4) Waiver. Where good cause appears, not contrary to statute, the Commissioner and the Presiding Officer may permit deviation from 207 CMR 1.00.

## 1.02: General Provisions

- (1) Office. The office of the Department shall be open from 8:45 A.M. to 5:00 P.M. each weekday except Saturdays, Sundays and legal holidays.
- (2) Date of Receipt.
  - (a) By the Department. All communications, including correspondence, motions and pleading, shall be deemed to be filed or received on the date on which they are received by the Department.
  - (b) By parties and other persons. All communications, including correspondence, motions and pleading, shall be deemed to be filed or received on the date on which they are deposited in the United States mail, properly addressed and postage paid, delivered in person to a party or other person, or delivered via Electronic Medium.
- (3) Identification. Communications should embrace but one matter, should contain the name and address of the communicator and the appropriate certificate or permit number, if there be any pertaining to the subject of the communication. When the subject matter pertains to a pending docket, the title of the proceeding and the docket number should be given.
- (4) Computation of Time. Computation of any period of time referred to in 207 CMR 1.00 shall begin with the first day following that on which the act which initiates such period of time occurs. The last day of the period so computed is to be included unless it is a day on which the office of the Department is closed, in which event the period shall run until the end of the next following business day. When such period of time, with the intervening Saturdays, Sundays and legal holidays counted, is five days or less, the said Saturdays, Sundays and legal holidays shall be excluded from the computation; otherwise, such days shall be included in the computation.
- (5) Extensions of Time. In the discretion of the Commissioner or the Presiding Officer, for good cause shown, any time limit prescribed or allowed by 207 CMR 1.00 may be extended. All requests for extensions shall be made by motion in accordance with 207 CMR 1.05, and shall be made before the expiration of the period originally prescribed or as previously extended. The Secretary of the Department shall notify all parties of the Department's action upon the motion.
- (6) Signatures. Every application, notice, pleading, petition, complaint, motion, brief and memorandum shall be signed by the filing party or by one or more attorneys, in their individual names on behalf of the filing party.

- (7) Appearances. An appearance shall be made in any proceeding by filing a written notice thereof and serving a copy on all persons who have theretofore appeared. [207 CMR 1.15(1)].
- (8) Formal Requirements as to Pleading, Documents and Other Papers Filed in Proceedings.
- (a) Copies. Except as may be otherwise required by the rules or regulations of the Department, or ordered or requested by the Department, at the time pleading, documents, or other papers are filed with the Department, there shall be furnished to the Department an original of such papers.
- (b) Form. Except for the forms contained or referred to in 207 CMR 1.15, and such other forms as may from time to time be provided by the Department, which shall be used where appropriate, pleading, documents or other papers filed in proceedings shall be printed or typewritten on paper cut or folded to either letter or legal size, eight to 8<sup>1</sup>/<sub>2</sub> inches wide by 10<sup>1</sup>/<sub>2</sub> to 14 inches long, with left-hand margin not less than 1<sup>1</sup>/<sub>2</sub> inches wide and other margins not less than one inch. The impression shall be on only one side of the paper, unless printed, and shall be double spaced, except that quotations in excess of a few lines shall be single spaced and indented..
- (c) Filing. All pleading, documents or papers relating to matters requiring action by the Department shall be filed with the Secretary of the Department.
- (9) Ex Parte Communications in Adjudicatory Proceedings.
- (a) From the initial filing in an adjudicatory proceeding until the rendering of a final decision, the Presiding Officer, may not communicate with a party or interested person about any substantive issue of fact, law, or policy except upon reasonable notice and opportunity for all parties to participate.
- (b) Communications not prohibited by 220 CMR 1.02(9)(a) include:
1. Communications concerning scheduling, administrative, and other procedural matters.
- (c) If a person makes or attempts to make an *ex parte* communication prohibited by 220 CMR 1.02(9)(a), the Presiding Officer shall advise the person that the communication is prohibited and shall immediately terminate the prohibited communication.

- (d) If the Presiding Officer violates the *ex parte* rule, he or she shall, no later than two business days after determining that the communication was prohibited, serve on each party and place in the docket file the following:
  - 1. A written statement including the substance and circumstances surrounding the communication; the identity of each person who participated in the communication; the time, date, and duration of the communication; and whether, in his or her opinion, the receipt of the *ex parte* communication disqualifies him or her from further participation in the adjudicatory proceeding; and
  - 2. Any written or electronic documentation of the communication.The above documents to be placed in the docket file shall not be made a part of the evidentiary record.
- (e) The Department may, upon the motion of any party or on its own motion, accept or require the submission of additional evidence of the substance of a communication prohibited by 220 CMR 1.02(9)(a).
- (f) Upon receipt of a communication made or caused to be made by a party in violation of 220 CMR 1.02(9)(a), the Department may, to the extent consistent with the interests of justice, require the party to show cause why his or her claim or interest in the adjudicatory proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.
- (g) Where a party has violated this rule, the Department or Presiding Officer may take such action as is deemed appropriate within the circumstances.

### 1.03: Appearances; Intervention and Participation: Parties

#### (1) Intervention.

- (a) Any person who desires to participate in a proceeding shall file a written petition for leave to intervene or to participate in the proceeding.
- (b) Form and Contents of Petition. The petition shall state the name and address of the petitioner. It shall describe the manner in which the petitioner is substantially and specifically affected by the proceeding. It shall state the contention of the petitioner, the relief sought and the statutory or other authority therefor, and the nature of the evidence the petitioner will present if the petition is granted.
- (c) Filing and Service of Petition. Unless otherwise provided in the notice of hearing, the petition must be filed at least seven days prior to the date for hearing. No petition may be filed or will be acted upon during a hearing unless permitted by the Commissioner or the Presiding Officer after opportunity for all parties to object thereto. The petition must be served as required under 207 CMR 1.05(1).

- (d) Answers to Petitions. A party may file an answer to a petition within five days after the petition is filed.
  - (e) Action on Petitions. The Commissioner or the Presiding Officer shall rule on all such petitions and may grant a person leave to intervene as a party in the whole or any portion of a proceeding or may allow a person who is not a party to make limited appearance by making an oral or written statement of his position on the issue, or by such other participation as the Commissioner or the Presiding Officer may determine. Such grant may be conditioned on such terms as the Commissioner or Presiding Officer may direct. No grant of such leave to intervene or participate shall be deemed to constitute an expression by the Department that the person allowed to participate is a party in interest, who may be aggrieved by any final decision, order or ruling, unless the grant explicitly so states.
- (2) Parties. As used in 207 CMR 1.00, "party" means;
- (a) the specifically named persons whose legal rights, duties or privileges are being determined in an adjudicatory proceeding before the Department;
  - (b) any other person who as a matter of constitutional right or by any provision of the Massachusetts General Laws is entitled to participate fully in such proceeding and who enters an appearance;
  - (c) any other person allowed by the Department to intervene as a party.

#### 1.04: Pleadings

- (1) Initial Pleading.
- (a) Definition. An initial pleading, as used herein, shall refer to any paper or document by which an adjudicatory proceeding may be commenced. Such papers or documents shall include but not be limited to applications, petitions, complaints, and protests.
  - (b) Content. Every initial pleading shall be on the form provided by the Department, and if no form is provided, the pleading, as far as possible, shall contain the following:
    - 1. A title which indicates either the nature of the proceedings or the parties involved therein.
    - 2. The complete name and address of the party filing the pleading.
    - 3. If the party filing the pleading is represented by counsel, the name and address of the attorney.

4. The name and address of all other petitioners.
5. A clear and concise statement of the facts upon which the pleading is maintained.
6. In the case of appellate proceedings, a clear and concise statement of the appellant's objections to the decision or action from which the appeal was taken.
7. A reference to the statute under which relief is sought.
8. A prayer setting forth the relief sought.
9. As part of the initial petition pursuant to M.G.L. c. 159, §§ 19, 20, the company shall file a copy of the proposed notice as set forth in 207 CMR 5.06 and a list of newspapers in which it proposes to publish such notice.

(c) Application for Permission to Establish Rates on Less than Statutory Notice. Application for permission to establish rates on less than statutory notice shall have attached thereto, as an exhibit, a copy of the proposed tariff or schedule. When the tariff is to meet the existing rate of a competing common carrier, the petition shall state the name, address, and the particular rate or rates of the competing carrier to be met and shall be signed, under oath, by the carrier filing the application. A contract carrier shall not be deemed a competing carrier in the consideration of such applications.

(d) Protest of a Tariff. Petitions addressed to the Department complaining of and seeking suspension on a tariff or objecting to a contract carrier contract shall be filed with the Department at least ten days before the effective date of such tariff or contract and one copy of such petition shall simultaneously be served by the protestants upon the publishing company, freight forwarder or agent and, in case of contracts, on the contracting parties. In default of such filing and service no such application for suspension of rates or objection to contract shall be entertained. The particular tariff or contract protested shall be identified by its proper number or contract identification and attention directed to the items specifically objected to, together with the grounds in support of the protest.

(2) Answer. Except where a different period is specified, any pleading within 14 days after service of the document to which the answer is directed.

(3) Amendments to Pleadings. Leave to file amendments to any pleading will be allowed or denied as a matter of discretion. If amendment is made to an initial pleading, an answer to said amended pleading, if permitted, shall be filed within such time as may be directed by the Commissioner or the Presiding Officer.

(4) Withdrawal of Pleadings.

(a) Prior to Commencement of Hearing. A party may withdraw an initial pleading filed with the Department at any time prior to the

commencement of a hearing on such pleading. A notice of withdrawal of pleadings shall be served on the Department and each party in accordance with 207 CMR 1.05(1)

(b) After Commencement of Hearing. A party desiring to withdraw an initial pleading after the commencement of hearing on such pleading shall file a motion for withdrawal, in accordance with 207 CMR 1.04(5). If any person has an objection thereto, he shall within ten days after receipt of said motion, file a statement with the Department setting forth the reasons for his objection and serve a copy of same, in accordance with 207 CMR 1.05(1), on each person entitled thereto. Such an objecting person shall, if a party, have a hearing on the motion to withdraw if, at the time of filing, he so requests. In the absence of objections or a request for hearing, within 30 days after the filing thereof, the motion of withdrawal shall be deemed allowed, unless otherwise ordered.

(5) Motions.

(a) General. An application of the Department to take any action or to enter any order after initial pleading or after commencement of an investigation by the Department shall be by motion which, unless made during a hearing, shall be made in writing, shall state specifically the grounds therefor, and shall set forth the action or order sought. A copy of all motions made in writing, or reduced to writing at the request of the Commissioner or Presiding Officer, shall be served upon all persons entitled thereto in accordance with 207 CMR 1.05(1).

(b) Delay of Adjudicatory Proceeding. Except as otherwise directed by the Presiding Officer or the Commissioner, the filing of a motion, either prior to or during any adjudicatory proceeding, and any action thereon shall not delay the conduct of such proceeding.

(c) Motion Prior to Hearing. A motion shall be in writing and may be filed prior to hearing by any party or by a person whose petition filed pursuant to 207 CMR 1.03(1) is pending. Any party may file a written answer to such motion within five days of such filing.

(d) Motions During Hearing. With the exception of motions to withdraw pleadings filed pursuant to 207 CMR 1.04(4) and petitions filed pursuant to 207 CMR 1.03(1), upon the making of a motion in the course of a hearing, replies thereto and argument thereon shall be permitted within the time and in the manner directed by the Presiding Officer.

(e) Motion for Protection from Public Disclosure. Documents in the possession of the Department are presumed to be public records. To overcome this presumption and protect information from public disclosure, a party must file

with the Department a written motion for a protective order. If no such motion is made at the time the record is filed with the Department, the Department may make the information available to the public without further notice.

The party moving for a protective order shall substantiate its motion, which shall be treated as a public record, with the following information:

1. the time period for which confidential treatment is desired;
2. the reason the record was provided to the Department, and the date of submittal;
3. a precise description of the information to be protected;
4. the reasons for the claim of confidentiality, including proof that an exemption to public disclosure applies;
5. proof of the harm of public disclosure;
6. the extent to which the record or its contents has been disclosed to other persons or to federal, state and local agencies, including the status of any requests for confidentiality; and
7. a certification to the best of the moving party's knowledge, information and belief, that the information is not customarily available in the public domain.

In conjunction with a motion for protection from public disclosure, one unredacted copy of the materials for which protection is sought must be filed directly with the Hearing Officer. The unredacted copy should be clearly marked with the words "CONFIDENTIAL" on each page of the materials. A redacted copy of the materials, marked "REDACTED," must also be filed for the public docket.

## 1.05: Service

### (1) Service.

- (a) General Rule. Service of all papers relating to any proceeding, including complaints, orders, decisions, pleadings, motions, processes, notices, briefs, claims of appeal, and exhibits, shall be by personal delivery, by first-class mail, or by Electronic Medium.
- (b) On Whom Served. All such papers shall be served by the person filing the same on every person who has theretofore entered an appearance in the proceeding. If a person appears after the paper has been filed, a copy of all papers previously filed shall be furnished to such person, if he so requests. Proof of service shall accompany all papers when filed. If service in accordance with this rule is deemed by any person to be too burdensome, application may be made to the Department or to the Presiding Officer for relief.
- (c) Service by the Department. A copy of any paper served by the Department, showing the addressees to whom the paper was

delivered, shall be placed in the Department's files and shall be *prima facie* evidence of service and the date thereof.

### 1.06: Hearings

- (1) Grant of Hearing. Public hearing will be granted whenever required by statute, and otherwise as the Department may determine in specific cases.
- (2) Calendar. The Secretary of the Department shall maintain a docket and a hearing calendar of all proceedings set for hearing. So far as practicable, hearings shall be heard in the order in which they have been listed on the Department's docket.
- (3) Place. All hearings shall be held at Boston at the offices of the Department, unless by statute or determination of the Department a different place is designated.
- (4) Hearing List. When more than one hearing is scheduled for the same time and place, uncontested matters shall be heard before contested matters.
- (5) Notice.
  - (a) Persons Notified. Except where the Department has issued an order of notice pursuant to 207 CMR 1.06(5)(d), the Department shall give written notice of a scheduled hearing in any pending matter to all parties, to persons required by statute to be notified, to others who have made written request for notice of hearing in a particular matter and to such other persons as deemed necessary or appropriate by the Department. In addition, the Department may give notice by newspaper publication or by such other means as it may deem advisable. In any proceeding pursuant to M.G.L. c. 159, §§ 19, 20, except for carriers certified pursuant to M.G.L. c. 159, § 12B, and others upon a showing of good cause, the Company shall give notice by publication pursuant to 207 CMR 5.06.
  - (b) Contents of Notice. Such notice shall include, but need not be limited to, the time, date, place and nature of the hearing. Notice of hearings relating to the issuance or amendment of certificates, permits, or licenses shall include the name of the municipality in which the applicant maintains his principal place of business, a brief description of the type of commodity involved (if applicable) and of the area of authority sought and the name and address of applicant's attorney, if his appearance has been filed.
  - (c) Length of Notice. Unless otherwise provided by statute, or unless the Department finds that a shorter period of notice is reasonable and consistent

with the public interest, notice of a hearing shall be given at least 14 days prior thereto.

(d) Order of Notice. The Department may require any person filing an initial pleading to give notice of the hearing on such pleading by publication or other means or both, in which case such person shall receive an order of notice from the Department which shall be returned, with proof of compliance with said order, not later than the commencement of hearing on the petition. [207 CMR 1.15(2)].

(e) Continuances. For good cause shown, the Department or the Presiding Officer may grant a continuance. All requests for continuances shall be made by a motion in accordance with 207 CMR 1.04(5).

(f) Address. Unless notice to the contrary has been received by the Department, notices of hearing shall be sufficient if mailed or delivered to the following:

1. If the addressee is a holder of a certificate, permit or license, the address shown on the last application for the issuance or amendment thereof.
2. If the addressee has tariffs on file, to the address shown on any tariff in effect at the time of notice.

(6) Conduct of Hearings.

(a) Presiding Officer. The hearing shall be conducted by a Presiding Officer who shall be the Commissioner or a hearing officer designated by the Commissioner. The Presiding Officer shall administer oaths and affirmations, issue subpoenas, and make all decisions regarding the admission or exclusion of evidence or any other procedural matters which may arise in the course of the hearing.

(b) Procedural Conference.

1. The Presiding Officer may direct the parties to attend a preliminary conference to discuss procedural matters relating to the proceeding at any time before the commencement of the evidentiary hearing. The preliminary conference may be a public hearing on the record if requested by a party or ordered by the Presiding Officer.

To the extent that it is deemed necessary and practicable, the Presiding Officer shall establish a detailed schedule for the proceeding, including, but not limited to, the dates for the filing of information requests and responses, objections to discovery questions and responses to those objections, evidentiary hearings, and filing testimony, stipulations, settlement proposals, and briefs. The Presiding Officer

shall also address any other procedural matters that will aid in the orderly disposition of the case.

2. The Presiding Officer shall, through written memorandum to the parties or announcement on the record, announce any action taken at the procedural conference. Any schedule established by the Presiding Officer shall be binding on the parties unless later modified by the Presiding Officer after notice to all parties.

(c) Discovery.

1. Purpose. The purpose for discovery is to facilitate the hearing process by permitting the parties and the Department to gain access to all relevant information in an efficient and timely manner.

Discovery is intended to reduce hearing time, narrow the scope of issues, protect the rights of the parties, and ensure that a complete and accurate record is compiled.

2. Rules Governing Discovery. Because the Department's investigations involve matters with a wide range of issues, levels of complexity and statutory deadlines, the Presiding Officer shall establish discovery procedures in each case which take into account the legitimate rights of the parties in the context of the case at issue. In establishing discovery procedures, the Presiding Officer must exercise his or her discretion to balance the interests of the parties and ensure that the information necessary to complete the record is produced without unproductive delays. In exercising this discretion, the Presiding Officer shall be guided by the principles and procedures underlying the Massachusetts Rules of Civil Procedure, Rule 26 *et seq.* These rules, however, shall be instructive, rather than controlling.

3. Discovery Schedules. Discovery requests may be made at any time after the commencement of an investigation, and parties are encouraged to comply voluntarily with any such requests for information before the formal hearing process begins. Where appropriate, the Presiding Officer shall establish a formal schedule, either at the procedural conference or at some time before the commencement of evidentiary hearings. The schedule may be expedited for good cause shown.

4. Motions to Compel Discovery. A party may move for an Order to compel compliance with its discovery request. Unless otherwise permitted by the Presiding Officer for good cause shown, such motion shall be made no later than seven days after the passing of the deadline for responding to the request. If the Presiding Officer finds that a party has failed to comply in a reasonable manner with a legitimate discovery request without good cause, he or she may, after issuance of an Order compelling discovery, order whatever sanctions are deemed to be appropriate, including, but not limited to, those listed in Rule 37 of the Massachusetts Rules of Civil Procedure. A party's failure to file a

motion to compel discovery in a timely manner, absent a showing of good cause, may result in a waiver of its right to compel the response.

5. Amending Responses. A party is under a continuing duty to amend seasonably an early response if it obtains information that the response was incorrect or incomplete when made, or that the response, though correct when made, is no longer true or complete.

6. Depositions.

a. Depositions may be taken if agreed to by all parties or by Order of the Presiding Officer in the event of a dispute following a motion by the requesting party. The Presiding Officer may, in his or her discretion, impose reasonable conditions on the deposition process, including, but not limited to, placing restrictions on the scope of the depositions or on the use of the depositions in the proceeding. All depositions shall be transcribed at the expense of the deposing party or parties.

b. All motions for deposition should include the name and title of the person to be deposed, the issues which will be the subject of the deposition, and a statement of the manner in which the deposition will expedite the hearing process. The party to be deposed and parties in the proceeding shall be served with the motion for deposition and may file objections to or comments on the motion within seven days after service. The Presiding Officer shall grant a motion for deposition if it is determined that the taking of a deposition will be more efficient than other available discovery methods, and will not unduly burden the affected parties.

7. Entry upon land for inspection and other purposes.

a. Scope. Any party may serve on any entity subject to the Department's jurisdiction a request to permit entry upon or within designated land, buildings, or other property in the possession or control of such entity (or upon land and property wherever situated, belonging to some other entity in which any entity subject to the Department's jurisdiction owns an interest) upon whom the request is served for the purpose of inspection, observation, measurement, surveying, photographing, testing or sampling the property or any designated room, object, machine, storage facility, practice or operation therein or thereon.

b. Procedure. The request may be served without leave of the Presiding Officer but shall be filed with the Department. The request shall describe the property to be inspected and shall specify a reasonable time at which to make the inspection and perform the related acts. Such request shall be served no later than ten days before the date of the proposed inspection. If the entity served objects to such inspection it shall file a written objection with the Presiding Officer stating therein its basis for

objecting, within five days of the service of the request. Upon notice of such objection, the Presiding Officer shall at his or her first opportunity convene a hearing and shall order such inspection to proceed absent a showing of good cause by the entity.

(d) Rulings.

1. Presiding Officer. The Presiding Officer shall make all rulings during the course of the hearings when requested to do so by a party. The Presiding Officer may require, at his or her discretion, written memoranda on any issue or permit oral argument. The Presiding Officer may rule at the time of the request or take any matter under advisement. The Presiding Officer shall make all rulings promptly after submission, generally no later than the next hearing date.

2. Effect of Rulings and Decision by Presiding Officer. Rulings and decisions of the Presiding Officer shall remain in full force and effect unless and until set aside or modified by the Commissioner. Any ruling or other decision of the Presiding Officer may be appealed to the Commissioner.

3. Appeals to the Commissioner. If a party wishes to appeal a ruling or decision of the Presiding Officer, the party should immediately notify the Presiding Officer, on the record if possible. The Presiding Officer shall prescribe a reasonable time period for the submittal of the appeal and any response to be filed by other parties. The appeal must be filed in writing with supporting documentation, and served on all parties to the proceeding.

4. Offers of Proof. Any offer of proof made in connection with an objection taken to a ruling of the Presiding Officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which the party contends would be adduced by such testimony; and if the excluded evidence is in documentary or written form, or refers to documents or records, a copy of such evidence shall be marked for identification and shall constitute an offer of proof.

(e) Motions to Dismiss and for Summary Judgment. A party may move at any time after the submission of an initial filing for dismissal or summary judgment as to all issues or any issue in the case. The motion shall be filed in writing and served on all parties. A motion for summary judgment shall set forth in detail such supporting facts as would be admissible in evidence. The Presiding Officer shall afford other parties a reasonable time to respond in writing, and may, in his or her discretion, permit oral argument on the motion.

(f) Order of Presentation. In any hearing held upon the Department's own motion or upon petition, the person being investigated or the petitioner,

as the case may be, shall open and close. In hearings on complaints, the complainant shall open and close. Where there is more than one person being investigated or more than one petitioner or complainant or where a hearing is being held on the Department's own motion and on complaint or petition, the order of presentation shall be in the discretion of the Presiding Officer. After all the evidence and testimony of the person opening has been received, the evidence and testimony of all other parties or others who have been allowed to participate in the hearing shall be received in the order determined by the Presiding Officer. All witnesses shall be subject to cross-examination by the Commissioner, the Presiding Officer, counsel for the Department, counsel for other parties, and counsel for any other person as permitted by the Presiding Officer. A reasonable amount of time for the preparation of cross-examination may be afforded.

- (g) Conduct of Persons Present. All parties, counsel, witnesses, and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of this Commonwealth. Where such decorum is not observed, the Presiding Officer may take such action as he deems appropriate.
- (h) Additional Evidence. At any stage of the hearing the Presiding Officer may call for further evidence upon any issue, and require such evidence to be presented by the party or parties concerned or by the staff counsel, either at that hearing or adjournments thereof. At the hearing, the Presiding Officer may authorize any party to file specific documentary evidence as a part of the record within a specified time.

(7) Transcripts.

- (a) At the request of any party, made in writing at least one week before the hearing date, or of its own accord, the Department shall provide that all proceedings in a pending case be officially recorded by a reporter appointed for that purpose. The Department shall require any party requesting a copy of the transcript to pay the reasonable cost of preparing said copy before the Department makes said copy available to the party.
- (b) Corrections in the official transcript may be made only to make in conform to the evidence presented at the hearing. Transcript corrections agreed to by opposing attorneys may be incorporated into the record, if and when approved by the Presiding Officer, at any time during the hearing, or after the close of evidence, but not more than ten days from the date of receipt of the transcript. The Presiding Officer may call for

the submission of proposed corrections and may make dispositions thereof at appropriate times during the course of the proceedings.

#### 1.07: Decisions

(1) Tentative or Proposed Decisions.

- (a) In the event that the Commissioner have neither heard nor read the evidence and their decision is adverse to any party other than the Department, then if any party in advance of hearing so requests in writing, such decision shall be made only after a tentative or proposed decision by the Presiding Officer is delivered in person, delivered via Electronic Medium, or mailed to each party.
- (b) Such tentative or proposed decision shall contain a statement of reasons and a determination of each issue of fact or law necessary to such decision.
- (c) Upon the proper filing and service of objections by a person adversely affected by such decision within ten days of receipt of same, the Commissioner shall allow either oral or written arguments to be presented.
- (d) The Commissioner may affirm and adopt the tentative decision in whole or in part, and he or she may recommit the tentative decision to the Presiding Officer for further findings as he or she may direct. The same procedural provisions applicable to the initial filing of the tentative decision shall apply to any re-filed tentative decision after recommitment. If the Commissioner does not accept the whole of the tentative decision, the Commissioner shall provide an adequate reason for rejecting those portions of the tentative decision he or she does not affirm and adopt. However, the Commissioner may not reject a Presiding Officer's tentative determinations of credibility of witnesses personally appearing. The Commissioner's decision shall be on the record, including the Presiding Officer's tentative decision, and shall be the final decision of the Department not subject to further Department review..

#### 1.08: Recessing Hearing for Conference

- (1) Recessing Hearing for Conference. In any proceeding the Presiding Officer may in his discretion call all parties together for a conference prior to the taking of testimony, or may recess the hearing for such conference. The Presiding Officer shall state on the record the results of such conference.

#### 1.09: Consolidation

- (1) Consolidation. The Department upon its own motion, or upon motion by a party or other person joined in the proceeding, may order proceedings involving a common question of law or fact to be consolidated for hearing on any or all of the matters in issue in such proceedings.

#### 1.10: Evidence; Subpoenas

- (1) Evidence. The Department shall follow the rules of evidence observed by courts when practicable and shall observe the rules of privilege recognized by law, except as otherwise provided by any other law. There shall be excluded such evidence as is unduly repetitious or cumulative or such evidence as is not of the kind on which reasonable persons are accustomed to rely in the conduct of serious affairs. All unsworn statements appearing in the record shall not be considered as evidence on which a decision may be based.
- (2) Official Notice. Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of this Commonwealth and in addition, the Department may take notice of general, technical, or scientific facts within its specialized knowledge; provided, that the Presiding Officer shall notify all parties of the material so noticed, and provided further, that any party on timely request be afforded an opportunity to contest the matters so noticed.
- (3) Documentary Evidence; Incorporation by Reference. Any matter contained in any records, investigations, reports and documents in the possession of the Department of which a party or the Department desires to avail itself as evidence in making a decision, shall be offered and made a part of the record in the proceeding. Such records and other documents need not be produced or marked for identification, but may be offered in evidence by specifying the report, document or other file containing the matter so offered.
- (4) Prepared Testimony. The Presiding Officer may allow prepared direct testimony of any witness to be offered as an exhibit and may omit oral presentation of the testimony. Copies of such proposed exhibit shall be served upon all persons who have filed an appearance and on staff counsel of record, at least seven days in advance of the session of the hearing at which such exhibit is to be offered.

- (5) Copies of Exhibits to Parties and Department; Time of Service.
- (a) Direct Evidence. Except as otherwise provided in 207 CMR 1.00, when exhibits of a documentary character are to be offered in evidence, the person proposing to offer the same, in addition to the service required by 207 CMR 1.02(8)(a) and 1.05, shall serve nine copies of such exhibits on the Department, at least seven days prior to the hearing at which such exhibits are to be offered.
  - (b) Rebuttal Exhibits. All exhibits in rebuttal may be served at the time they are introduced at the hearing.
- (6) Copies of Tariffs. In any hearing held pursuant to an investigation of the proposed rates, the proponent of the rates shall introduce as an exhibit a copy of the proposed rates and of those being canceled.
- (7) Stipulations. Two or more parties to any proceeding may file with the Department and serve on all parties a written stipulation of specific facts or issues. The stipulation shall be supported by whatever evidence the parties deem relevant to assist the Department in determining whether the stipulation should be accepted. Other parties shall file any response to the stipulation within five days after service, or within such other time as may be ordered by the Presiding Officer. The Department may request additional information in support of the stipulation. If the Department approves the stipulation, it shall be incorporated into any final Department Order. The Department shall rule on the acceptability of the stipulation in a timely manner so as to minimize the administrative burden of the parties.
- (8) Subpoenas. The Department and all other parties shall have authority in accordance with M.G.L. c. 30A, § 12 to issue subpoenas requiring the attendance and testimony of witnesses and the production of any documents in question in the proceeding. [207 CMR 1.15(3)].
- (9) Production and View of Objects. A party may file a motion for the production or view of any object which relates to the subject matter of any proceeding then pending before the Department. Said motion shall be filed in accordance with 207 CMR 1.01(5) and shall be granted in the discretion of the Presiding Officer where justice requires.

#### 1.11: Rulings, Briefs, Oral Argument and Post-Hearing Procedure

- (1) Request for Rulings. Within the time designated for the filing of briefs pursuant to 207 CMR 1.11(3), any party may file requests for rulings in accordance with the provisions of M.G.L. c. 25, § 5.

- (2) Oral Argument, When Made. When, in the opinion of the Presiding Officer, time permits and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the motion or at the request of a party or staff counsel at or before the close of the taking of testimony, allow and fix a time for the presentation of oral argument, imposing such limits of time on the argument as deemed appropriate in the proceeding. Such argument shall be transcribed and bound with the transcript of testimony.
- (3) Briefs. Briefs may be filed by a party either before or during the course of a hearing, or within such time thereafter as the Presiding Officer shall designate. Failure to file a brief shall in no way prejudice the rights of any party. The order of filing briefs after the hearing, including reply briefs, will be designated by the Presiding Officer.
- (4) Contents and Scope of Brief; Proposed Findings and Order. Briefs may contain:
  - (a) A concise statement of the case,
  - (b) An abstract of the evidence relied upon by the party filing, with reference to the pages of record or exhibits where the evidence appears,
  - (c) Argument and authorities, and
  - (d) Proposed findings and conclusions and, if desired, a proposed form of order or rule.
- (5) Briefs, Form of. Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in an appendix to the brief. Any analyses of exhibits relied on should be included in the part of the brief containing the abstract of evidence under the subjects to which they pertain. Every brief of more than 20 pages shall contain a subject index, with page references, and a list of all cases cited, alphabetically arranged, with reference to the pages where the citations appear. All briefs shall be as concise as possible and shall in all other respects conform to the requirements of 207 CMR 1.02(9).
- (6) Briefs, Filing and Service. Briefs not filed and served on or before the dates fixed therefor shall not be accepted for filing. All briefs shall be accompanied by a certificate showing service upon all parties and persons who have been allowed to cross-examine and present evidence, and except where filing of a different number is permitted or directed by the Presiding Officer, nine copies of each brief shall be served on the Department in addition to the brief served on it pursuant to 207 CMR 1.02(8)(a) and 1.05. Requests for an extension of time in which to file briefs shall conform to the requirements of 207 CMR 1.02(5) and shall be filed before the time fixed for filing such briefs.
- (7) Filing of Documents Subsequent to Hearing. The Department may, for good cause shown, allow the parties to file evidentiary documents of any kind, or exhibits, at a time subsequent to the completion of hearing, such time to be

determined by the Presiding Officer. If a request for such subsequent filing is granted, the requesting party shall on or before the date set for filing, send copies of all documents or exhibits which are the subject of the request to all parties and persons who have filed appearances. If such requirement for copies is impracticable, the Department may suspend the above provision; in such cases, the Department shall allow reasonable inspection of the original by all parties.

- (8) Reopening Hearings. No person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause. Such motions shall be filed in accordance with the provisions of 207 CMR 1.04(5). The Department shall notify all parties of its action upon the motion. Notwithstanding the above, the Department may, at any time prior to the rendering of a decision, reopen the hearing on its own motion. In case of such reopening on motion of the Department, the parties shall be notified and the hearing shall not be convened less than five days after the sending of such notice.
- (9) Motion for Recalculation. Within 20 days of service of a final Department Order, a party may file a motion for recalculation based on an alleged inadvertent error in a calculation contained in a final Department Order. The motion shall set forth in detail the proposed adjustments and the basis for the changes. The Department may, in its discretion, convene a conference or hearing to discuss the motion. The Department must act upon a motion for recalculation within 60 days of receipt of such motion unless it notifies the parties in writing that a longer period of time will be required and specifies the additional length of time necessary to consider the motion.
- (10) Motion for Reconsideration. Within 20 days of service of a final Department Order, a party may file a motion for reconsideration. Parties to the proceeding shall be afforded a reasonable opportunity to respond to a motion for reconsideration.
- (11) Extension of Judicial Appeal Period. In accordance with M.G.L. c. 25, § 5, judicial appeals from final Department Orders must be filed within 20 days after service of the Order. Upon motion to the Department within the 20-day period, a party may request an extension of the appeal period. Reasonable extensions shall be granted upon a showing of good cause.

#### 1.12: Decisions

- (1) All decisions of the Department shall be in writing and shall be accompanied by a statement of reasons for the decision. A copy of the decision and such statement of reasons shall be served on all parties pursuant to 207 CMR 1.05(1).

### 1.13: Appeal from Department Decisions

- (1) The Department shall notify all parties of their right to appeal a final decision of the Department pursuant to M.G.L. c. 25, § 5, and of the time limits on their rights to appeal.

1.15: Appendices

- (1) Appendix 1 -- Appearance of counsel.

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. No. \_\_\_\_\_

Heading

---

APPEARANCE OF COUNSEL

In the above-entitled proceeding, I hereby appear for and on behalf of

---

---

Signature of Attorney

---

Address

---

Telephone Number

---

Date

(2) Appendix 2 -- Order of Notice

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Boston

The Department of Telecommunications and Cable will hold a public hearing, 1000  
Washington Street, Room \_\_\_\_\_ Boston, on \_\_\_\_\_ the  
\_\_\_\_\_ day of \_\_\_\_\_ at  
\_\_\_\_\_ o'clock in the \_\_\_\_\_ noon.

And the petitioner is required to give notice of said hearing by publication hereof  
\_\_\_\_\_ prior to said date in the \_\_\_\_\_

to serve a copy hereof at least \_\_\_\_\_ days prior to said date on  
\_\_\_\_\_

and to make return of service and publication at the time of hearing.

By order of the Department,

\_\_\_\_\_  
Secretary

(See next Page)

1.15

Appendix 2: continued

\_\_\_\_\_ Mass., \_\_\_\_\_ 20 \_\_\_\_\_

I hereby certify that publication and service of the within order of notice of hearing has been made and given as therein directed.

.

\_\_\_\_\_

\_\_\_\_\_

(3) Appendix 3 -- Summons

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

\_\_\_\_\_

To \_\_\_\_\_  
\_\_\_\_\_

YOU ARE HEREBY REQUIRED, in the name of the Commonwealth of Massachusetts, to appear at a hearing before the Commission of the Department of Public Utilities to be held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, and from day to day thereafter, until the aforesaid hearing is concluded by said Commission to give evidence of what you know relating to

\_\_\_\_\_ then and there to be heard on  
petition (application of \_\_\_\_\_

\_\_\_\_\_ and you are required to bring with you

HEREOF FAIL NOT, as you will answer your default under the pains and penalties in the law in that behalf made and provided.

DATED AT \_\_\_\_\_  
the \_\_\_\_\_ day of

\_\_\_\_\_ A.D., 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(4) Appendix 4 -- Certificate of Service

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C.. No. \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 207 CMR 1.05(1) (Department's Rules of Practice and Procedure).

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Of Counsel for

\_\_\_\_\_

REGULATORY AUTHORITY

207 CMR 1.00: M.G.L. c. 30A, § 1(1).

207 CMR 13.00: CONSUMER PROTECTION FROM THE UNAUTHORIZED CHANGING OF LOCAL OR LONG DISTANCE TELEPHONE SERVICE PROVIDERS

Section

- 13.01: Purpose and Scope
- 13.02: Definitions
- 13.03: Requirements for Third Party Verification Calls
- 13.04: Authorized Changes, Dispute Resolution Procedure for Slamming Complaints
- 13.05: Informal Dispute Resolution Procedure for Slamming Complaints
- 13.06: Procedure to Record Slamming Complaints
- 13.07: Application Form for Third Party Verification Companies
- 13.08: Exception

13.01: Purpose and Scope

- (1) Purpose. To establish rules and regulations implementing the Massachusetts "anti-slamming" statute; specifically, to govern the conduct of third party verification ("TPV"), informal dispute resolution procedures for customer complaints, and the establishment of a record of complaints.
- (2) Scope. 207 CMR 13.00 shall apply to all telephone interexchange carriers ("IXC") and local exchange carriers ("LEC"), and their agents doing business in Massachusetts or, where applicable, to companies that provide TPV services.

13.02: Definitions

For purposes of 207 CMR 13.00, the terms set forth below shall be defined as follows:

Agent means a person authorized by another (principal) to act for or in place of the principal.

Customer means a person or business who resides in Massachusetts and subscribes to local or long distance telecommunications services.

Department means the Department of Telecommunications and Cable.

Interexchange Carrier or IXC means any telecommunications common carrier engaged in the provision of long distance telephone service.

Letter of Agency or LOA means a document meeting the form and content requirements of M.G.L. c. 93, § 109 and 47 CFR 64.1160, signed by a customer to indicate that the customer has authorized a change of his or her IXC or LEC.

Local Exchange Carrier or LEC means a telecommunications common carrier registered with the Department to provide local exchange telecommunications service, not including persons engaged in the provision of commercial mobile service under section 332(e) of the Federal Communications Act of 1934, except to the extent that the Department determines such service should be included in the definition of such term.

Slamming means any unauthorized change to a customer's primary IXC or LEC.

Telecommunications Common Carrier means any entity registered with the Department to provide telecommunications services.

Third Party Verification or TPV means a customer's oral authorization to change an IXC or LEC that meets the requirements set forth in M.G.L. c. 93, § 109(c), recorded by an entity registered with the Department operating in a location physically separate from an IXC, LEC, or telemarketing representative.

### 13.03: Requirements for Third Party Verification Calls

(1) Appropriate Verification Data. Pursuant to M.G.L. c. 93, § 109(c)(2)(i), the TPV agent must confirm appropriate verification data. Appropriate verification data shall include:

- (a) the last four digits of the customer's social security number;
- (b) the customer's date of birth;
- (c) the customer's mother's maiden name; or
- (d) any other independently verifiable personal information.

Customers who do not wish to provide any of the above verification data may authorize a carrier change through a LOA.

(2) Authority to Authorize a Change in Carrier. Pursuant to M.G.L. c. 93, § 109(c)(2)(ii), to authorize a change in carrier or service, the person to whom the TPV agent spoke must be at least 18 years of age unless the IXC or LEC that initiated the change can demonstrate to the Department that a minor is authorized. For a residence, the customer of record is presumed to have this authority if the customer meets the minimum age requirement. For a business, the person designated as the contact for local or long distance telecommunications company, or an officer or the owner of the business is presumed to have this authority. The TPV agent must ask whether the person spoken to is the customer of record. If the person responds in the negative, the TPV agent must then ask whether the person is authorized to change a primary IXC or LEC. If the person responds in the affirmative, the verification may continue.

(3) Identification of the TPV Agent and Company. Unless the TPV call is automated, in addition to stating the purpose of the TPV call, the TPV agent must state his or her full name.

- (4) Written Confirmation of the Carrier Change. Unless a letter of agency is obtained from the customer, the billing entity must comply with requirements contained in 47 CFR 64.2001(a) concerning notification of any change to a customer's primary IXC or LEC.
- (5) Failure to Maintain Audio Recordings. Unless the carrier that initiated the change obtained a letter of agency from the customer or received from the Department a waiver of the recording requirement, pursuant to M.G.L. c. 93, § 109(c)(5), the failure to maintain audio recordings shall be evidence that, if unrebutted, would establish that consent from the customer was not obtained.
- (6) Minimum Standards to Receive a Waiver of the Tape Recording Requirement.
- (a) In order to receive a waiver, pursuant to M.G.L. c. 93, § 109(c)(5), of the requirement that TPV calls be tape recorded, the Department requires a requesting carrier to demonstrate, at a minimum, that its verification system complies with the following:
1. captures in written or electronic form the information required to be tape recorded under M.G.L. c. 93, § 109(c)(2);
  2. maintains, or causes to be maintained, the record described in 207 CMR13.03(6)(a)(1) for at least one year, making such record available at no cost and upon request to the Department, the Attorney General, or the customer;
  3. prohibits the TPV company from using the information gathered in 207 CMR 13.03(6)(a)(1) for any marketing purpose;
  4. requires the TPV employee to read from a script, to be provided to the Department at the time it makes its waiver request, that elicits the information required in M.G.L. c. 93, § 109(c)(2) and prohibits the TPV employee from deviating from the script;
  5. prohibits the TPV employee from modifying, or otherwise altering, the billing telephone number ("BTN") and information regarding the service to be changed;
  6. prohibits a verification from occurring if a discrepancy arises between the BTN or service information provided to the TPV employee by the carrier's agent or employee and that information given by the customer; and
  7. monitors, and causes monitoring of, the TPV employees for quality assurance.
- (b) At the time of filing its request for a waiver, the carrier shall provide the Department with its slamming history in every jurisdiction in which it operates. This slamming history shall cover the 12-month period immediately preceding the date of its waiver request and shall contain sufficient information to enable the Department to determine the number of complaints of unauthorized changes attributed to that carrier by the state authority in each jurisdiction of operation. The Department shall consider the carrier's slamming history as a factor in deciding whether to grant the waiver request.

- (c) The Department may rescind a carrier's waiver of the tape recording requirement at any time.

#### 13.04: Authorized Changes, Complaint Resolution Procedure for Slamming Complaints

- (1) Unauthorized Change. An unauthorized change of a customer's primary IXC or LEC shall occur if the IXC or LEC that initiated the change fails to provide the required evidence set forth in M.G.L. c. 93, § 109 and 47 CFR 64.1150(b) for each and every type of service sold or provides a LOA or TPV that the Department determines was obtained by a carrier's or TPV's mistake, misunderstanding, misrepresentation, false and deceptive business practices or by any other unfair or unlawful means.
- (2) Complaint Resolution Procedure. A customer, IXC or LEC may initiate a complaint that a customer's IXC or LEC has been changed without the customer's authorization. Such a complaint must be made to the Consumer Division within 90 days after the date of the notice indicating that the customer's IXC or LEC has been changed. The Department shall investigate such complaint pursuant to the procedures established by M.G.L. c. 93 §§ 108 through 113, inclusive.

#### 13.05: Informal Dispute Resolution Procedure for Slamming Complaints

- (1) Election by Customer of An Informal Procedure For The Resolution of Complaint. For any matter relating to the unauthorized change of a customer's primary IXC or LEC, a customer may file a complaint with the Consumer Division of the Department and elect an informal procedure for the resolution of the complaint.
- (2) Informal Procedure For The Resolution of Complaints. For any matter relating to the unauthorized change of a customer's primary IXC or LEC, where a customer has elected an informal procedure for the resolution of the complaint, the customer and the IXC or LEC that initiated the change may negotiate mutually acceptable terms upon which the complaint can be resolved. The terms of the customer and initiating carrier negotiated resolution to the complaint must be signed by both parties and filed with the Consumer Division of the Department. If mutually acceptable terms are not identified within 90 days from the customer's election of an informal dispute resolution procedure (or if the Department determines that the filed, negotiated resolution is unacceptable), the complaint will be processed in accordance with the procedures set forth in M.G.L. c. 93, § 110.
- (3) Civil Penalties. The Department may, in consideration of the nature, circumstances and gravity of the respondent's conduct, degree of culpability and history of prior offenses, impose a civil penalty on an IXC or LEC as a condition of an acceptable informal resolution of a complaint.

### 13.06: Procedure to Record Slamming Complaints

- (1) Carrier Identification.
  - (a) All IXC and LECs providing service to customers must inform the Consumer Division of the following:
    1. the name, address, and direct telephone number of the IXC or LEC;
    2. the names, addresses, and direct telephone numbers of any billing agents affiliated with the IXC and LEC;
    3. the names, addresses, and telephone numbers of authorized representatives designated by the IXC or LEC to serve as liaisons between the IXC or LEC and the Department for the purpose of providing customer information and resolving complaints; and
    4. the toll-free customer information number of the IXC or LEC as listed on customers' bills.
  - (b) All IXC or LECs providing service to customers in Massachusetts must notify the Department of any changes or modifications made to the information required by 207 CMR 13.06(1)(a) within ten business days of such changes.
- (2) Tracking. The Department shall track the instances in which an IXC, LEC or TPV company changed the IXC or LEC of customers without valid letters of agency or third party verification recordings.
- (3) TPV Companies. The Department shall keep a record of any TPV company or any other agent affiliated with an IXC or LEC that has engaged in the unauthorized changing of IXCs or LECs of customers.
- (4) Report to the Legislature. The Department shall keep monthly records of each unauthorized IXC or LEC change by company and prepare an annual report of each violation by company for submission to the Joint Committee on Government Regulations and the Attorney General.

### 13.07: Application Form for Third Party Verification Companies

The application form for TPV companies is incorporated herein by reference as filed with the Secretary of the Commonwealth and is available from the Department of Telecommunications and Cable.

13.08: Exception

The Department may, where appropriate, grant an exception from any provision of 207 CMR 13.00.

REGULATORY AUTHORITY:

207 CMR 13.00: M.G.L. c. 93, §§ 109(c)(4), 110(k), 113(e);  
M.G.L. c. 159, § 12E(b).

207 CMR 15.00 ACCELERATED DOCKET FOR DISPUTES INVOLVING  
COMPETING TELECOMMUNICATIONS CARRIERS

Section

- 15.01: General Provisions
- 15.02: Definitions
- 15.03: Request for Expedited Review
- 15.04: Docketing a Complaint on the Accelerated Docket
- 15.05: Complaint and Answer
- 15.06: Discovery; Automatic Disclosure
- 15.07: Initial Status Conference
- 15.08: Expedited Hearing
- 15.09: Decision
- 15.10: Exceptions

15.01: General Provisions

- (1) Purpose. To establish regulations governing an expedited dispute resolution process for complaints involving competing telecommunications carriers.
- (2) Scope. 207 CMR 15.00 shall apply to all telecommunications carriers and their agents doing business in Massachusetts.
- (3) Effective Date. The effective date of 207 CMR 15.00 *et seq.* is January 1, 2001.
- (4) To the extent that a procedural rule is not otherwise included in 207 CMR 15.00, parties to a proceeding under 207 CMR 15.01 should refer to 207 CMR 1.00.

15.02: Definitions

For purposes of 207 CMR 15.00, the terms set forth below shall be defined as follows:

Day, unless otherwise indicated, is given the meaning in 207 CMR 1.02(4).

Department means the Department of Telecommunications and Cable.

Telecommunications carrier means any entity registered with the Department to provide telecommunications services.

15.03: Request for Expedited Review

- (1) Parties to formal complaint proceedings against telecommunications carriers

within the responsibility of the Department may request inclusion on the Department's Accelerated Docket. Proceedings on the Accelerated Docket are subject to shorter pleading deadlines and certain other procedural rules that do not apply to other formal complaint proceedings before the Department.

- (2) Any party that contemplates filing a formal complaint may submit a request to the Secretary of the Department, in writing, seeking inclusion of its complaint, once filed, on the Accelerated Docket.
- (3) Within five days of receiving service of a complaint, any respondent in a formal complaint proceeding may submit by facsimile or hand delivery, to the Secretary of the Department, a request seeking inclusion of the proceeding on the Accelerated Docket. Such a respondent contemporaneously shall transmit, in the same manner, a copy of its request to all parties to the proceeding.
- (4) A request for inclusion of a proceeding on the Accelerated Docket must include:
  - (a) a detailed explanation of the alleged violation;
  - (b) legal analysis of position (attach copies of any authorities from other jurisdictions cited);
  - (c) why the action or inaction is unjust or unreasonable;
  - (d) the business issues presented by the action or inaction;
  - (e) the financial impact;
  - (f) the practical and operational effects imposed upon the requesting party;
  - (g) whether the issues presented are pending in other Department proceedings;
  - (h) the specific relief requested;
  - (i) whether the parties tried to informally resolve the dispute; and
  - (j) all documents supporting the facts alleged by the requesting party.
- (5) Following a request for inclusion of the proceeding on the Accelerated Docket, but prior to docketing, Department staff shall schedule and supervise pre-filing informal mediation between the parties to the dispute during the 20 day period following receipt of the request for expedited review. The period of informal mediation shall include the following:
  - (a) After receipt of the request for inclusion on the Accelerated Docket, Department staff shall convene a conference call with the parties to discuss the issues.
  - (b) Within three business days of the conference call, parties will produce all relevant documents to the Department and the opposing parties.
  - (c) Within six business days of the request for inclusion on the Accelerated Docket, the Department will convene a meeting with the parties to

discuss the dispute. At this meeting, the Department will, among other things, make an initial assessment whether the dispute is appropriate for expedited review.

- (6) If the parties do not resolve their dispute and the matter is accepted for handling on the Accelerated Docket, the complainant shall file a complaint with a letter stating that it has gained admission to the Accelerated Docket. When it files its complaint, such a complainant shall also serve a copy of its complaint on the Department staff that supervised the pre-filing mediation discussions.

#### 15.04: Docketing a Complaint on the Accelerated Docket

- (1) Both (or all) parties to a dispute need not agree to the expedited process; it is sufficient that only one party so elect.
- (2) In determining whether to admit a proceeding onto the Accelerated Docket, the Department may consider factors from the following, non-exclusive list:
  - (a) Whether it appears that the parties to the dispute have exhausted the reasonable opportunities for settlement.
  - (b) Whether the expedited resolution of a particular dispute or category of disputes appears likely to advance competition in the telecommunications market.
  - (c) Whether the issues in the proceeding appear suited for decision under the constraints of the Accelerated Docket. This factor may entail, *inter alia*, examination of the number of distinct issues raised in a proceeding, the likely complexity of the necessary discovery, and the likelihood that persons in addition to the complainant and respondent will be substantially and specifically affected by the proceeding.
  - (d) Whether the complainant states a claim for violation of a Department rule or order that falls within the Department's jurisdiction.
  - (e) Whether it appears that inclusion of a proceeding on the Accelerated Docket would be unfair to one party because of an overwhelming disparity in the parties' resources.
  - (f) Such other factors as the Department staff, within its substantial discretion, may deem appropriate and conducive to the prompt and fair adjudication of complaint proceedings.
- (3) In order to be eligible to file for expedited review, the complainant must certify that the complainant attempted in good faith to resolve the dispute with the respondent for a minimum period of ten days prior to petitioning the Department.
- (4) If it appears at any time that a proceeding on the Accelerated Docket is no longer appropriate for such treatment, Department staff may remove the matter from the Accelerated Docket either on its own motion or at the request of any

party.

- (5) The Department will determine whether to accept a proceeding on the Accelerated Docket within the 21 day period following the request. If a complaint is accepted onto the Accelerated Docket, notice of the acceptance will be given to the parties and posted on the Department's website.

#### 15.05: Complaint and Answer

- (1) If a matter is accepted for expedited review, the complainant must file its complaint with the Department and serve the respondent. Complaints on the Accelerated Docket shall fully set out the facts and legal theories on which the complainant premises its claims.
- (2) Complaints on the Accelerated Docket shall be accompanied, when served on respondents, by copies of all documents, within the complainant's possession, custody or control, that are likely to bear significantly on the issues raised in the complaint.
- (3) Complaints on the Accelerated Docket will bear the following notation in bold typeface above the normal caption on the first page: "Accelerated Docket Proceeding: Answer Due Within Seven Days of Service Date."
- (4) The respondent has seven days to file its answer. The answer shall respond fully to all material allegations and shall state fully the nature of any defenses. The answer shall include all documents in the respondent's control that are likely to bear significantly on the issues in the complaint proceeding.
- (5) The filing of a separate pleading to reply to affirmative defenses is not permitted in Accelerated Docket proceedings. Complainants in Accelerated Docket proceedings may include, in a pre-initial-status-conference filing, a reply to any affirmative defenses raised by the respondent.

#### 15.06: Discovery; Automatic Disclosure

- (1) Each party to an Accelerated Docket proceeding shall serve on the other parties, with its initial pleading and with any reply statements in a pre-initial-status-conference filing, copies of all documents in the possession, custody or control of the party that are likely to bear significantly on any claim or defense. Document also shall include data compilations and tangible things. A document is likely to bear significantly on a claim or defense if it:
  - (a) Appears likely to have an influence on, or affect the outcome of, a claim or defense;
  - (b) Reflects the relevant knowledge of persons who, if their potential testimony were known, might reasonably be expected to be deposed or

- called as a witness by any of the parties;
- (c) Is something that competent counsel would consider reasonably necessary to prepare, evaluate or try a claim or defense; or
  - (d) Would not support the disclosing party's contentions.
- (2) Each party to an Accelerated Docket proceeding shall also serve on the other parties, with its initial pleading and with any reply statements in a pre-initial-status-conference filing, the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information.
- (3) In its pre-initial-status conference filing, parties to Accelerated Docket proceedings may request additional discovery beyond that contained in the initial pleadings. In their pre-initial-status-conference filings, parties may request additional documents and seek leave to conduct a reasonable number of depositions, including depositions of expert witnesses, if any. When requesting additional discovery, each party shall be prepared at the status conference to justify its requests by identifying the specific issue or issues on which it expects to obtain evidence from each request. At the initial status conference, Department staff will determine whether requested additional discovery will be allowed.
- (4) Interrogatories. Interrogatories shall not be routinely granted in Accelerated Docket proceedings. A party to an Accelerated Docket proceeding that prefers interrogatories to the other forms of available discovery, for reasons of convenience or expense, may seek leave in its pre-initial-status-conference filing to propound a limited number of interrogatories.
- (5) Expert Witnesses. Any complainant or respondent in an Accelerated Docket proceeding that intends to rely on expert testimony shall identify its expert witnesses in its pre-initial-status-conference filing. Such a complainant or respondent shall also provide its expert statement. An expert statement shall include a brief statement of the opinions to be expressed by the expert, the basis and reasons therefor and any data or other information that the witness considered in forming her opinions. Expert witnesses shall be subject to deposition in Accelerated Docket proceedings under the same rules and limitations applicable to fact witnesses.

#### 15.07: Initial Status Conference

- (1) Nine days after the answer is filed, Department Staff will hold an initial status conference at which time discovery issues (including discovery disputes) can be discussed. Parties that seek additional discovery beyond that contained in the initial pleading cycle shall request such additional discovery in a filing made

with the Department two days prior to the initial status conference.

- (2) If a complainant replies to an affirmative defense in a pre-initial-status-conference filing, it shall include in that filing the information identifying individuals with firsthand knowledge of the facts alleged in the reply. An Accelerated Docket complainant that replies to an affirmative defense in its pre-status-conference filing also shall serve on the respondent, at the same time as that filing, those documents in the complainant's possession, custody or control that were not previously produced to the respondent and that are likely to bear significantly on the issues raised in the reply.
- (3) Prior to the initial status conference, the parties shall confer, either in person or by telephone, regarding:
  - (a) Discovery to which they can agree;
  - (b) Facts to which they can stipulate; and
  - (c) Factual and legal issues in dispute.
- (4) Two days before the status conference, parties shall submit to Department staff a joint statement of:
  - (a) The agreements that they have reached with respect to discovery;
  - (b) The facts to which they have agreed to stipulate; and
  - (c) The disputed facts or legal issues of which they can agree to a joint statement.
- (5) Two days before the status conference, each party also shall also submit to Department staff a separate statement which shall include, as appropriate, the party's statement of the disputed facts and legal issues of which the parties cannot agree in the proceeding and any additional discovery that the party seeks. A complainant that wishes to reply to a respondent's affirmative defense shall do so in its pre-initial-status-conference filing. A party that intends to rely on expert evidence shall include its expert statement in its pre-initial-status-conference filing.

#### 15.08: Expedited Hearing

- (1) In Accelerated Docket proceedings, the Department will conduct an expedited hearing between 31 and 34 days after the docketing of the complaint. A Department Hearing Officer will preside at the expedited hearing, administer oaths to witnesses, and time the parties' presentation of their cases. In consultation with the Department technical staff, the Hearing Officer will rule on objections or procedural issues that may arise during the course of the expedited hearing.
- (2) Before an expedited hearing, each party will receive a specific time allotment in which it may present evidence and make argument during the expedited hearing.

The Hearing Officer or other Department staff presiding at the expedited hearing will deduct from each party's time allotment any time that the party spends presenting either evidence or argument during the proceeding. The Hearing Officer shall have broad discretion in determining any time penalty or deduction for a party who appears to be intentionally delaying either the proceeding or the presentation of another party's case. Within the limits imposed by its time allotment, a party may present evidence and argument in whatever manner or format it chooses, provided, however, that the submission of written testimony shall not be permitted.

- (3) Three days before an expedited hearing, each party to a proceeding shall serve on all other parties a copy of all exhibits that the party intends to introduce during the expedited hearing and a list of all exhibits and witnesses, including expert witnesses, with a general description of the issues on which the witness(es) will offer evidence, that the party may call during the expedited hearing. Service of this material shall be accomplished either by hand, facsimile or e-mail transmission. Objections to any exhibits or proposed witness testimony will be heard at the beginning of the expedited hearing.
- (4) No party will be permitted to call as a witness in a expedited hearing, or otherwise offer any exhibit, unless the individual or exhibit appears on the party's exhibit or witness list. No party will be permitted to present expert evidence unless the party has complied fully with the expert-disclosure requirements. The Department may permit exceptions to the rules in 207 CMR 15.08(4) for good cause shown.
- (5) Two days before the beginning of the expedited hearing, parties shall file proposed findings of fact and conclusions of law. These submissions shall not exceed 20 pages per party. Within three days after the conclusion of the expedited hearing, parties may submit revised proposed findings of fact and conclusions of law to address evidence introduced or arguments raised at the expedited hearing. These submissions shall not exceed ten pages per party. Three days after the conclusion of the expedited hearing, parties may also submit short position statements in the nature of abbreviated briefs. The position statements shall not exceed two, single-spaced typewritten pages.

#### 15.09: Decision

No more than 52 days after the complaint was docketed, Department Staff will issue a written recommended decision. Parties may appeal the Staff recommended decision to the Commissioner by filing an application for appeal including supporting argument within five days from the issue of the Staff recommended decision. An opposing party may respond to the appeal within three days of the filing of the appeal. No appeal of a Staff recommended decision, or response thereto, filed outside these time limits will be valid, absent a clear and convincing showing of good cause. If no

appeal of the Staff recommended decision is filed, the Commissioner will review the Staff recommended decision and issue an order at the close of the appeal period. If an appeal is filed, the Commissioner will review the Staff recommended decision and issue an order on appeal, based on the available record, within ten days of the filing of a response to an appeal or 13 days of the filing of an appeal.

15.10: Exceptions

The Department may, where appropriate, grant exceptions from any provision of 207 CMR 15.00.

REGULATORY AUTHORITY

207 CMR 15.00: M.G.L. c. 159, § 12; 207 CMR 2.00

207 CMR 26.00 SECURITY DEPOSITS AND LATE PAYMENT CHARGES  
APPLICABLE TO NON-RESIDENTIAL CUSTOMERS

Section

- 26.01: Applicability and Definitions
- 26.02: Interest Rate Paid on Deposits
- 26.03: Late Payment Charges

26.01: Applicability and Definitions

- (1) Applicability. 207 CMR 26.02 shall apply to telephone companies, and 207 CMR 26.03 shall apply to local exchange carriers. For local exchange carriers, 207 CMR 26.03 shall not apply to billing associated with carrier access services. Excluded from 207 CMR 26.00 are residential accounts.

If any part of the terms and conditions of any company is in conflict with 207 CMR 26.00, such regulations shall be controlling.

- (2) Definitions. The following terms, as used in 207 CMR 26.00, shall have the following meanings:

Account: any agreement for service to a non-residential customer for which there is a separate bill rendered for such service whether or not such separate bill is rendered to the same location as any other bill by the same company.

Bill: a written statement from a company to a customer setting forth the amount of telephone service consumed or estimated to have been consumed for the billing period set forth in the company's tariff and charges therefor.

Company: a telephone company as defined in M.G.L. c. 159 except as provided in 207 CMR 26.01.

Customer: any non-residential user of telephone service billed on a commercial or industrial rate as filed with the Department.

Department: the Department of Telecommunications and Cable.

Late Payment Charge: surcharge assessed by a company on the unpaid past due portion of the balance of a customer bill.

#### 26.02: Interest Rate Paid on Deposits

- (1) All cash or cash-equivalent security deposits held for more than six months from the date of deposit shall be paid interest thereon, commencing from the date of payment to the date of refund. The rate of interest shall be the equivalent of the rate paid on two-year, United States Treasury notes for the preceding 12 months ending December 31 of any year.
- (2) Such rate shall be the rate published during the first week of January in the Federal Reserve Statistical Release, G.13(415) Selected Interest Rates. The company shall determine said rate and file with the Department the rate to be paid on all security deposits within 15 days after such rate is reported in the Federal Reserve Statistical Release. This rate shall be the rate paid on all deposits held during the remaining calendar year or other applicable time period regardless of when such security deposit was paid during that period.
- (3) Said interest shall be compounded annually on December 31 and the accrued interest shall be applied toward a customer's bill during the next billing cycle, provided, however, that only deposits made by cash or cash equivalent shall be paid interest thereon. Deposits made by other acceptable means shall not be paid interest.

#### 26.03: Late Payment Charges on Unpaid Balance of Bills in Arrears

- (1) A company may assess a late payment charge on the unpaid past due portion of the balance of a customer bill.
- (2) For the purpose of calculating the late payment charge, a company may consider a portion of a balance past due when payment has not been received by the company for that portion of the balance within the period specified in the company's Terms and Conditions.
- (3) The late payment charge shall be calculated at an annual rate of interest which is the equivalent of the rate paid on two-year United States Treasury notes for the preceding 12 months ending December 31 of any year, plus 10%, *i.e.* 1000 basis points.
- (4) Such two-year United States Treasury note rate shall be the rate published during the first week of January in the Federal Reserve Statistical Release, G.13(415) Selected Interest Rates, or successor publication. A company shall determine said rate and file with the Department the rate to be charged on overdue portions of balances within 15 days after such rate is reported in the Federal Reserve Statistical Release. Revisions to the annual late payment charge rate shall become effective on February first of each year.

- (5) Each company shall notify its customers of changes in the late payment charge rate in the month a new rate becomes effective.

**REGULATORY AUTHORITY:**

207 CMR 26.00: M.G.L. c. 159, § 12.

## 207 CMR 37.00: AUTOMATIC TELEPHONE DIALING SYSTEMS

### Section

37.01: Purpose and Scope

37.02: Definitions

37.03: Submission and Approval of Implementation Plan

37.04: Requirements of Implementation Plan

#### 37.01: Purpose and Scope

The purpose of 207 CMR 37.00 is to implement the requirements of M.G.L. c. 159, §§ 19B through 19D, by prescribing regulations specifying the manner in which customers of local telephone exchange service may notify common carriers providing such service that the customer does not wish to receive telephone calls from an automatic dialing system.

#### 37.02: Definitions

Automatic telephone dialing system shall mean any automatic terminal equipment which is capable of storing numbers to be called or producing numbers to be called, using a random or sequential number generator, and with the ability to call such numbers, and which is capable of delivering a prerecorded message to the number called, with or without manual assistance.

Common carrier shall mean any corporation, person, partnership or any other organization subject to the Department's jurisdiction pursuant to M.G.L. c. 159 providing local exchange service for sale to subscribers, and resellers of such service for public use.

Department shall mean the Department of Telecommunications and Cable.

Local telephone exchange service shall mean any service that provides a customer with access to a public exchange telephone network.

Reseller shall mean any corporation, partnership, person or other organization that purchases local telephone exchange service and resells such service to a subscriber of said service.

Subscriber shall mean any ultimate user of local telephone exchange service, but shall not include transient users.

Transient user shall mean any ultimate user of local telephone exchange service that does not use such service for incoming telephone calls on a regular basis, including, but not limited to, users of coin-operated telephones and those residing on a temporary

basis in hospitals, hotels and motels.

#### 37.03: Submission and Approval of Implementation Plan

- (1) Every common carrier providing local telephone exchange service on the promulgation date of 207 CMR 37.00 shall submit to the Department, no later than 30 days after such date, a proposed implementation plan consistent with the requirements of 207 CMR 37.04.
- (2) Every common carrier that begins to provide local telephone exchange service after the promulgation date of these regulations shall submit to the Department, no later than 30 days after beginning such service, a proposed implementation plan consistent with the requirements of 207 CMR 37.04.
- (3) An implementation plan proposed by a common carrier pursuant to this section shall go into effect upon approval by the Department pursuant to such terms, conditions or modifications as the Department may order.
- (4) Any implementation plan approved by the Department pursuant to 207 CMR 37.03(3) shall remain in effect until and unless modified or cancelled by Order of the Department.

#### 37.04: Requirements of Implementation Plan

The implementation plan shall have, at a minimum, the following elements:

- (1) The implementation plan shall establish a method for notifying all present subscribers of their right to request that they not receive calls from automatic telephone dialing systems and of the fact that, if they indicate that they do not wish to receive such calls, their telephone number will be placed on a list of subscribers not desiring such calls that will be provided to persons using such systems. The notification to subscribers shall include information specifying the time and manner in which a subscriber may notify the common carrier of its desire to be placed on such a list.
- (2) The implementation plan shall provide that notification to subscribers described in 207 CMR 37.04(1) shall be made within 60 days after approval of the implementation plan and not less frequently than annually thereafter. New subscribers shall be so notified within 60 days after the initiation of service and not less than annually thereafter.
- (3) The implementation plan shall specify the manner in which a subscriber may revoke notification that said subscriber does not wish to receive calls from an automatic telephone dialing system.

- (4) The implementation plan shall specify the manner in which the common carrier will make available to persons using an automatic dialing system the telephone numbers of persons who do not wish to receive such calls.
- (5) An implementation plan for a common carrier that sells local exchange service to a reseller shall provide for the coordination with the reseller of the compilation of the lists of subscribers not desiring calls placed by an automatic dialing system.

#### REGULATORY AUTHORITY

207 CMR 37.00: M.G.L. c. 159, §§ 19B through 19D