

D.T.E. 98-36-A

Order Establishing Complaint and Enforcement Procedures to Ensure That Telecommunications Carriers and Cable System Operators Have Non-Discriminatory Access to Utility Poles, Ducts, Conduits, and Rights-Of-Way and to Enhance Consumer Access to Telecommunications Services.

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ORDER PROMULGATING FINAL REGULATIONS

D.T.E. 98-36-A

ORDER

Be it ordered that the attached two changed pages be substituted for the corresponding pages in the Order in this docket dated July 24, 2000. The change pages correct drafting errors.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr. Commissioner

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Deirdre K. Manning, Commissioner

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defined in G.L. c. 183A, and homeowners' associations, because these organizations are operated through a decision-making process whereby each owner has a vote in business dealings (*id.*). Finally, all tenancies of less than 12 months in duration and transient facilities, such as hotels, rooming houses, nursing homes and serviced by payphones are exempted from the regulations because the potential for changes in tenancies of such short duration may disturb other tenants and cause unnecessary expense to property owners (*id.*). As noted earlier, these restrictions on the regulations' definition are also driven by pragmatic concern for the limits of the Department's adjudication and enforcement resources. A day may come, as the telecommunications market develops, when regulation may profit from a less restrictive definition of CB and MDU. The statute's breadth admits of such future change.

- Right-of-way

#### 1. Comments

The Department sought comments on whether nondiscriminatory access should be applicable to all utilities' rights-of-way, including those rights-of-way located in MDUs. The Department was specifically interested in the issue of whether the regulations should provide competitive telecommunications and cable companies with nondiscriminatory access to poles, ducts, conduits and rights-of-way inside and on commercial and residential buildings.<sup>(1)</sup>

220 CMR 45.00 Revised Final Regulations Page 2

Complainant means a licensee or a utility who files a complaint.

Complaint means a filing by either a licensee or a utility alleging that it has been denied access to a pole, duct, conduit, or rights-of-way owned or controlled, in whole or in part, by one or more utilities in violation of this regulation, and/or alleging that a rate, term or

condition for an attachment is not just and reasonable. A complaint shall constitute an initial pleading within the meaning of 220 CMR 1.04(1).

Department means the Department of Telecommunications and Energy.

Licensee means any person, firm or corporation other than a utility, which is authorized to construct lines or cables upon, along, under and across the public ways. For the purposes of this section, the term shall also include a municipal lighting plant or cooperative that operates a telecommunications system outside the limits of its service

territory pursuant to section 47E of chapter 164, but only for those attachments that are outside its service territory.

Respondent means a licensee or a utility against whom a complaint has been filed.

Usable Space means the total space which would be available for attachments, without regard to attachments previously made,

(a) upon a pole above the lowest permissible point of attachment of a wire or cable upon such pole which will result in compliance with any applicable law, regulation or electrical safety code, or

(b) within any telegraph or telephone duct or conduit.

Utility means any person, firm, corporation or municipal lighting plant that owns or controls or shares ownership or control of poles, ducts, conduits or rights-of-way used or useful, in whole or in part, for supporting or enclosing wires or cables for the transmission of

intelligence by telegraph, telephone or television or for the transmission of electricity for light, heat or power.

Effective July 1, 2001, utility, for purposes of 220 CMR 45.00, shall include but not be limited to a building that is rented, leased, let or hired out, for office or other commercial purposes and a multiple dwelling unit building that is rented, leased, let or hired out for office or other commercial purposes and a multiple dwelling unit building that is rented, leased, let or hired out for occupation as the residence of four or more residential tenants or lessees living independently of each other. This definition exempts buildings that house fewer than four families living independently of one another and exempts 4-unit buildings where one of the four units is owner occupied.

Condominiums, homeowners' associations, tenancies of

less than 12 months in duration and transient facilities such as hotels, rooming houses, continuing care retirement communities, including assisted living apartments, and nursing homes shall also be exempted from this section.

1. Notice of Request for Further Written Comments on Proposed Amendments to  
220 C.M.R. §§ 45.00 et seq. (August 20, 1999).