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Chapter ATCP 123

ELECTRONIC COMMUNICATIONS SERVICES

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Subchapter I — Definitions and General Provisions

ATCP 123.01 Definitions. In this chapter:

(1) “Appointed provider of long distance telecommunications services” means a provider of long distance telecommunications services selected for a consumer according to procedures prescribed by the federal communications commission after the consumer fails to select a provider.

(2) “Bill” means to represent to a consumer, directly or by implication, that the consumer is obligated to pay a stated amount for electronic communications service pursuant to an existing contract with the provider of that service.

(3) “Consumer” means any individual to whom a provider sells, leases, or offers to sell or lease an electronic communications service primarily for personal, family or household purposes.

(4) “Disclose” means to make a clear and conspicuous statement that is designed to be readily noticed and understood by the consumer and, if the disclosure is made in writing, which is designed to be retained by the consumer.

(5) “Electronic communications service” means a service, such as telecommunications service, video service, cable service as defined under 47 USC 522(6), service provided by a multichannel video programming distributor as defined under 47 USC 522(13), and internet access service as defined in 47 USC 231(e)(4), which involves the conveyance of voice, data, video programming or other information at any frequency over any part of the electromagnetic spectrum. “Electronic communications service” includes the collection, storage, forwarding, switching and delivery of information incidental to the electronic communications service. “Electronic communications service” does not include broadcast service as defined in s. 196.01 (1m), Stats., or the transmission of information by means of non-electronic media such as hard-copy newspapers or magazines.

(6) “Individual” means a human being.

(7) “Long distance telecommunications service” means a long distance toll service provided on a direct-dialed, single message, dial-1 basis between local exchanges.

(8) “Person” means an individual, corporation, cooperative, partnership, limited liability company, business trust, or business association or entity.

(9) “Provider” means a person that sells, resells, leases, or offers to sell, resell or lease an electronic communications service to consumers. “Provider” includes an employee or agent that is authorized to act on behalf of and in the name of a provider.

Note: For example, “provider” includes a telemarketer or other person who sells electronic communications service on behalf of and in the name of a provider.

(10) “Service offering” means an electronic communications service that is offered under a single name or at a single price. A “service offering” includes a category of electronic communications service for which a separate rate is charged by the provider.

(11) “Subscribe” means to enter into a subscription.

(12) “Subscription” means a contract between a provider and a consumer for an electronic communications service that is provided or billed to the consumer on a continuing or periodic basis. “Subscription” includes an oral, written or electronically recorded contract, and includes any material amendment to an existing contract.

(13) “Telecommunications service” has the meaning given in s. 196.01 (9m), Stats.

(14) “Video programming” has the meaning given in s. 66.0420 (2) (x), Stats.

(15) “Video service” has the meaning given in s. 66.0420 (2) (y), Stats.

(16) “Written” or “in writing” means legibly printed on a tangible non-electronic medium, such as paper, which is delivered to a consumer, or legibly printed in electronic form on a television screen or computer monitor if the consumer can readily retrieve, store or print the video image for future reference. “Written” or “in writing” does not include presentation on a medium, such as a billboard, which cannot be conveniently retained by a consumer.

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97; correction in (3) made under s. 13.93 (2m) (b) 7., Register November 2002 No. 563; CR 08-027: r. and recr. Register December 2008 No. 636, eff. 1-1-09; corrections in (14) and (15) made under s. 13.92 (4) (b) 7., Stats., Register April 2009 No. 640.

Subchapter II — Subscription and Billing Practices

Note: This subchapter regulates subscription and billing practices related to telecommunications services and cable television services provided to consumers.

This subchapter is adopted under authority of ss. 100.20 (2) and 100.207 (6) (e), Stats. Violations of this chapter may be subject to prosecution under ss. 100.20 (6), 100.26 (3) and (6) and, in the case of telecommunications services, s. 100.207 (6) (b) and (c), Stats. Persons damaged by violations of this subchapter may bring private actions against the violators under ss. 100.20 (5) and 100.207 (6) (a), Stats.

State administrative rules may, under certain circumstances, be preempted by federal law or administrative action. A provision of this subchapter that conflicts with federal law may be preempted.

ATCP 123.02 Disclosure to subscriber. (1) SUBSCRIPTION TERMS. Except as provided under sub. (4) or (5), a provider shall disclose to a consumer the material terms of a proposed subscription at or before the time that the consumer subscribes. The disclosure shall include all of the following:

(a) A clear identification of each service offering included in the subscription, including the material consumer features, functions or capabilities which comprise that service offering.

Note: For example, the identification of a video service offering should identify the channels that comprise the offering.

(b) The price which the consumer must pay for each service offering. Prices may be disclosed as price schedules, rates or formulas, provided that the consumer can readily determine the total amount which he or she must pay. The price shall include the price for all goods and services which the provider bills to the consumer in connection with the service offering.

(c) All incidental charges that may affect the total amount payable by the consumer, including charges for connecting, changing or disconnecting service. This paragraph does not apply to

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finance charges or late payment charges if the provider discloses all of the following in writing when the provider first bills the consumer for the principal amount to which those finance charges or late payment charges apply:

1. The circumstances under which the finance charges or late payment charges will apply.

2. The amount of the finance charges or late payment charges, or the method for computing those charges if their amount is not yet known.

(d) The effective date of the subscription unless all of the following apply:

1. The effective date depends on the action of a third party outside the provider's control.

2. The provider discloses a good faith estimate of the effective date and a means by which the consumer may verify the effective date.

(e) The expiration date of the subscription, if any.

(f) Any limitations on the consumer's right to cancel the subscription at any time.

(2) DISCLOSURE IN WRITING. Except as provided under sub. (3), a provider shall make the disclosures under sub. (1) in writing. The provider shall disclose the material terms of the subscription in context with each other, and shall not separate those material terms by promotional information.

(3) ORAL OR ELECTRONIC DISCLOSURE; WRITTEN CONFIRMATION. If a consumer subscribes orally or electronically, the provider may make the disclosure under sub. (1) orally or electronically, provided that both of the following apply:

(a) The provider confirms the disclosure in writing on or before the 15th day after the consumer subscribes, or on or before the day that the provider first bills the consumer under the subscription, whichever is later. The provider may confirm the disclosure as part of a regular billing statement to the consumer.

Note: A provider may incorporate by reference, in its written confirmation under par. (a), information contained in a telephone book or other periodic reference document provided to the subscriber.

(b) The provider does one of the following:

1. Notifies the consumer that the consumer may cancel the subscription at any time without incurring any cancellation charge or disconnect fee.

2. Notifies the consumer that the consumer may cancel the subscription, without incurring any cancellation charge or disconnect fee, prior to a specified cancellation deadline which is not less than 3 days after the consumer receives the written confirmation under par. (a).

(4) LONG DISTANCE TELECOMMUNICATIONS RATES; EXEMPTION. A provider of long distance telecommunications services need not disclose specific long distance rates under sub. (1) if the provider discloses all of the following under sub. (1):

(a) A method by which the consumer may readily determine, without cost to the consumer, the specific rate for long distance telecommunications service between two points. Rates disclosures under this paragraph need not include discounts under par. (b) that will apply.

(b) Any discounts that will apply to long distance rates disclosed to the consumer under par. (a).

(5) PAY-PER-VIEW VIDEO PROGRAMMING CHARGES; EXEMPTION. A provider of pay-per-view video programming is not required to disclose per-view charges under sub. (1) if all of the following apply:

(a) The consumer does not incur the per-view charges unless the consumer specifically orders the services to which those charges pertain.

(b) The provider discloses the per-view charges at or before the time that the consumer orders the services to which those charges pertain.

(c) The provider discloses under sub. (1) any subscription charges which the consumer must pay for the right to order pay-per-view services under par. (a).

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97; CR 08-027: am. (5) (title and intro.) Register December 2008 No. 636, eff. 1-1-09.

ATCP 123.04 Subscription changes. (1) DISCLOSURE REQUIRED. Except as provided under sub. (2), no provider may initiate any price increase or other subscription change without giving the consumer prior notice of that price increase or subscription change. The provider shall give the notice at least 25 days, but not more than 90 days, prior to the subscription change. The provider may give the notice as part of a regular billing statement to the consumer.

Note: Section 100.209 (2), Stats., requires a multichannel video programming distributor, as defined in 47 USC 522 (13), to give a consumer at least 30 days advance written notice before deleting a service or instituting a rate increase.

(2) EXEMPTIONS. Subsection (1) does not apply if any of the following apply:

(a) The consumer orders the subscription change, and the provider complies with s. ATCP 123.02 in connection with that order.

(b) The subscription change does not alter the price of the service offering or the total amount billed to the consumer, and does not materially alter the consumer features, functions or capabilities which comprise the service offering.

(c) The subscription change merely expands a service offering currently billed to the consumer without doing any of the following:

1. Increasing the price of that service offering or increasing the total amount billed to the consumer.

2. Combining that service offering with another service offering which the consumer can order separately, but which the consumer has not affirmatively ordered.

3. Making other material changes to the consumer features, functions or capabilities which comprise that service offering.

(d) The subscription change results from the expiration of terms granted to the consumer under an introductory or other promotional offer, provided that the provider disclosed both of the following to the consumer at or before the time that the consumer subscribed:

1. The duration of the promotional offer.

2. The terms that would apply after the promotional offer expired.

(e) The subscription change is limited to a change in long distance rates that are exempt from disclosure under s. ATCP 123.02 (4).

(f) The subscription change is limited to a change in pay-per-view video programming charges that are exempt from disclosure under s. ATCP 123.02 (5).

(g) Section ATCP 123.12 exempts the subscription change from coverage under this chapter.

(3) DISCLOSURE FORM AND CONTENTS. A provider shall make the disclosure under sub. (1) in writing. The disclosure shall do all of the following:

(a) Clearly describe the proposed subscription change, including any change in price, and any material change in consumer features, functions or capabilities.

Note: See s. ATCP 123.06 related to negative option billing.

(b) Specify the effective date of the proposed change.

(c) Disclose that the consumer may cancel any service offering directly or indirectly affected by the change, without incurring a cancellation charge or disconnect fee, effective not later than the effective date of the subscription change. This disclosure is not required if, under the terms of the subscription, the consumer may cancel service offerings at any time without incurring a cancellation charge or disconnect fee.

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97; CR 08-027: am. (2) (f) Register December 2008 No. 636, eff. 1-1-09.

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ATCP 123.06 Negative option billing. (1) PROHIBITION. Except as provided under subs. (2) or (3), no provider may bill a consumer for a service offering that the consumer has not affirmatively ordered. A consumer's failure to reject a service offering is not an affirmative order for service. A consumer's affirmative order for service may be made orally, electronically or in writing, subject to s. ATCP 123.02.

(2) EXPANDED SERVICE OFFERING; EXEMPTION. A provider need not obtain an affirmative order from a consumer before expanding a service offering currently billed to that consumer unless the expansion has the effect of combining that service offering with another service offering which the consumer can order separately but has not affirmatively ordered.

Note: See s. ATCP 123.04 related to advance notice of price increases and other subscription changes, including expansions of service offerings.

(3) LONG DISTANCE TELECOMMUNICATIONS SERVICES; EXEMPTIONS. (a) Subsection (1) does not prohibit a provider of telecommunications services from billing a consumer for services which that provider is required by law to deliver to that consumer.

(b) Subsection (1) does not prohibit a consumer's appointed provider of long distance telecommunications services, merely because that consumer did not affirmatively select that provider, from billing that consumer for services used by that consumer.

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97.

ATCP 123.08 Automatic renewal or extension. No subscription for a definite period of time may be renewed or extended beyond its scheduled termination date, pursuant to an automatic renewal or extension provision in the contract, unless one of the following applies:

(1) The consumer is free to cancel the contract at any time.

(2) The provider gives the consumer a written notice reminding the consumer of the scheduled automatic renewal or extension. The reminder notice shall be designed to be readily noticed and understood by the consumer. The notice shall be given at least 30 days but not more than 60 days prior to the scheduled effective date of the automatic renewal or extension.

Note: A written notice under this section may be included as part of any billing statement given to the consumer at least 30 days but not more than 60 days prior to the effective date of the automatic renewal.

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97.

ATCP 123.10 Prohibited practices. No provider may do any of the following:

(1) Offer to a consumer any prize, prize opportunity, or free or reduced price goods or services whose receipt is conditioned upon an agreement to purchase or lease an electronic communications service unless the provider discloses that purchase or lease requirement in connection with every public announcement or advertisement of the prize, prize opportunity, or free or reduced price goods or services.

Note: See also s. 134.74, Stats., and s. ATCP 123.02.

(2) Misrepresent the provider's identity to a consumer.

(3) Misrepresent that a consumer has subscribed to or received an electronic communications service.

(4) Misrepresent the terms of a subscription.

(5) Fail to identify, in each bill presented to a consumer, the service offerings for which the provider is billing the consumer.

(6) Fail to honor, on a timely basis, a consumer's request to cancel an electronic communications service according to this chapter and the terms of the subscription for that service.

(7) Charge a consumer a fee for canceling a subscription or service offering unless the fee is disclosed to the consumer according to ss. ATCP 123.02 and 123.04.

Note: Section ATCP 123.04 (2) limits cancellation charges and disconnect fees in some cases, regardless of whether those fees are disclosed.

(8) Bill a consumer for an electronic communications service in violation of this chapter.

(9) Propose or enter into any contract with a consumer that purports to waive a consumer's rights under this chapter, or that purports to authorize any violation of this chapter.

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97; CR 08-027: am. (1), (3), (6) and (8) Register December 2008 No. 636, eff. 1-1-09.

ATCP 123.12 Activities regulated by public service commission. (1) This subchapter does not apply to any of the following:

(a) Any activity, including any notice to a consumer of a subscription change, that is specifically authorized under ss. 196.194 (1), 196.207, 196.20, or 196.499 (4), Stats., or under a rule or order issued by the state of Wisconsin public service commission.

Note: For example, s. PSC 165.043 (5) requires a telecommunications utility to disclose specific information before providing a new non-basic service. Therefore, the more extensive disclosure requirements under s. ATCP 123.02 (1) do not apply. However, if the disclosures required by the PSC are made orally, the disclosures must be confirmed in writing pursuant to s. ATCP 123.02 (3).

(b) A subscription change that a provider of telecommunications service implements by means of a tariff under ch. 196, Stats., other than a tariff change under s. 196.196 (3) or 196.499 (2), Stats.

(2) This subchapter does not authorize any activity prohibited by ch. 196, Stats., or by the state of Wisconsin public service commission under ch. 196, Stats.

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97; CR 08-027: am. (1) (b) Register December 2008 No. 636, eff. 1-1-09; CR 08-067: am. (1) (intro.) and (2) Register July 2009 No. 643, eff. 8-1-09.

Subchapter III — Customer Access to Video Services

Note: Pursuant to 2007 Wisconsin Act 42, this subchapter interprets s. 66.0420 (8), Stats., which regulates customer access to video services and prohibits discriminatory practices by video service providers. Act 42 does not authorize the department to take enforcement action against video service providers who violate s. 66.0420 (8), Stats., or this subchapter. However, affected individuals, municipalities, interim cable operators, or video service providers adversely affected by violations of s. 66.0420 (8), Stats., or this subchapter may initiate legal action against the violator to the extent authorized by law.

ATCP 123.20 Definitions. In this subchapter:

(1) "Alternative technology" means a technology, other than satellite service, that is not part of the provider's normal video service network but that does all of the following:

(a) Offers service, functionality, and content demonstrably similar to the service, functionality, and content provided through the provider's normal video service network.

(b) Provides access to PEG channels, as defined in s. 66.0420, Stats., and messages broadcast over the emergency alert system.

(2) "Basic local exchange service area" has the meaning given in s. 66.0420 (2) (b), Stats.

(3) "Cable service" has the meaning given in s. 66.0420 (2) (e), Stats.

(4) "Franchise area" means the geographic area covered by a state franchise.

(5) "Group" means 2 or more households.

(6) "Household" has the meaning given in s. 66.0420 (2) (k), Stats.

(7) "Incumbent cable operator" has the meaning given in s. 66.0420 (2) (L), Stats.

(8) "Large telecommunications video service provider" has the meaning given in s. 66.0420 (2) (p), Stats.

(9) "Low-income household" means a household with a combined annual income that is not more than 200% of the poverty level for a family of 3 as defined by 42 USC 9902(2).

(10) "State franchise" means a video service franchise issued by the Wisconsin department of financial institutions under s. 66.0420, Stats.

(11) "Telecommunications video service provider" has the meaning given in s. 66.0420 (2) (v), Stats.

(12) "Video service access" means the availability of video service to a household at the household address which the video

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service provider is able to provide using the video service provider's video service network or an alternate technology, regardless of whether any customer has ordered the service.

(13) "Video service network" has the meaning given in s. 66.0420 (2) (zb), Stats.

(14) "Video service provider" has the meaning given in s. 66.0420 (2) (zg), Stats.

History: CR 08-067: cr. Register July 2009 No. 643, eff. 8-1-09; correction in (11) made under s. 13.92 (4) (b) 7., Stats., Register July 2009 No. 643.

ATCP 123.22 Discrimination prohibited. (1) No video service provider that offers a video service under a state franchise may fail to provide video service access to any group of potential residential customers in the franchise area because of the race or income of residents in any local area in which all of the potential residential customers comprising the group are located.

(2) In an action alleging discrimination based on income under sub. (1), it is a defense for the video service provider to prove any of the following:

(a) The video service provider has provided the video service under the state franchise for less than 3 years, or for less than an extended time period specified by the department under s. ATCP 123.26.

(b) At least 30 percent of the households with access to the video service in the franchise area are low-income households.

History: CR 08-067: cr. Register July 2009 No. 643, eff. 8-1-09.

ATCP 123.24 Large telecommunications video service provider; customer access to video service.

(1) ACCESS REQUIREMENTS. A large telecommunications video service provider that offers a video service under a state franchise shall do all of the following:

(a) Provide video service access to at least 35 percent of the households within the large telecommunications video service provider's basic local exchange service area included in the franchise area, beginning within 3 years after the date on which the large telecommunications video service provider first provides video service in that basic local exchange service area under the state franchise.

(b) Provide video service access to at least 50 percent of the households within the large telecommunications video service provider's basic local exchange service area included in the franchise area, beginning by the later of the following dates:

1. The 5th anniversary of the date on which the provider first provides video service in that basic local exchange service area under the state franchise.

2. The 2nd anniversary of the first date on which at least 30 percent of the households having access to the video service in its basic local exchange service area have subscribed to that service for at least 6 consecutive months.

(2) ANNUAL PROGRESS REPORT. A large telecommunications video service provider shall file an annual written report with the department, documenting the provider's progress in complying with sub. (1). The provider shall file the report on or before January 31 of each year, beginning with the first calendar year after the provider first provides video service under a state franchise. The

provider shall file an annual report until the department makes a written determination that the provider has fully complied with sub. (1).

History: CR 08-067: cr. Register July 2009 No. 643, eff. 8-1-09.

ATCP 123.26 Extension or waiver. (1) DEPARTMENT MAY GRANT EXTENSION OR WAIVER. In response to a request from a video service provider under sub. (2), the department may by order do any of the following:

(a) Extend the applicable time period under s. ATCP 123.22 (2) (a).

(b) Extend the deadline for compliance with an access requirement under s. ATCP 123.24 (1).

(c) Waive an access requirement under s. ATCP 123.24 (1).

(2) REQUEST FOR EXTENSION OR WAIVER. A video service provider may request an extension or waiver under sub. (1) by filing a written request with the department. The video service provider shall file the request and supporting information with the department in hard copy form, and in an electronic form that is acceptable to the department. The request shall include all of the following information:

(a) The nature and scope of the requested extension or waiver.

(b) The justification for the extension or waiver under s. 66.0420 (8) (c), Stats., the facts supporting that justification, and relevant evidence documenting the facts.

(c) The names and addresses of individuals, including expert witnesses if any, who are available to testify regarding the facts or justification under par. (b).

(d) Relevant supplementary information, if any, requested by the department.

(3) PROPOSED ORDER. Within 30 business days after the department receives a complete request under sub. (2), the department shall issue a proposed order granting the request, denying the request, or granting the request with modifications. The department shall issue a news release announcing the proposed order, and soliciting public comment on the proposed order. The department may schedule one or more public hearings on the proposed order.

(4) FINAL ORDER. Within 60 business days after the department issues a proposed order under sub. (3), the department shall issue a final order. If the final order differs from the proposed order, the department shall explain the reason for the modification.

History: CR 08-067: cr. Register July 2009 No. 643, eff. 8-1-09; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register July 2009 No. 643.

ATCP 123.28 Video service access requirements; limitations. (1) This subchapter does not require a telecommunications video service provider to provide video service outside the provider's basic local exchange service area.

(2) This subchapter does not require an incumbent cable operator to provide video service outside the area in which the incumbent cable operator provided cable service when the Wisconsin department of financial institutions first issued a state franchise to the incumbent cable operator.

History: CR 08-067: cr. Register July 2009 No. 643, eff. 8-1-09.