

Clearinghouse Rule 08-027

DATCP Docket No. 08-R-04
Rules Clearinghouse No. ____

Proposed Hearing Draft
March 19, 2008

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection hereby adopts
2 the following rule *to repeal and recreate* ATCP 123 (title) and 123.01; *to repeal* ATCP
3 123.14; *to amend* ch. ATCP 123(note), 123.02(1)(a)(note) and (5)(title) and (intro.),
4 123.04(1)(note) and (2)(f), 123.10(1), (3), (6) and (8), and 123.12(1)(b); *relating to*
5 electronic communication services offered to consumers.

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers rules to protect consumers against unfair sales and billing practices related to telecommunications services, cable television services and satellite television services. Current rules are contained in ch. ATCP 123, Wis. Adm. Code.

This rule updates current rule coverage to reflect new service delivery methods and “bundling” practices, and to conform to law changes enacted in 2007 Wis. Act 42. This rule maintains current protection for video service subscribers, regardless of the method used to deliver the video service.

Statutes Interpreted

Statutes Interpreted: ss. 100.20 and 100.207, Wis. Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 100.20(2), 100.207(6)(e) and 100.209(3), Wis. Stats.

Explanation of Statutory Authority

DATCP has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has authority, under s. 100.207, Stats., to regulate sales and billing practices related to telecommunications. DATCP also has broad authority, under s. 100.20, Stats., to regulate methods of competition and trade practices in business.

Related Rules or Statutes

The Wisconsin public service commission (PSC) regulates telecommunications service providers to the extent provided under chapter 196, Stats. The department of financial institutions (DFI) and local municipalities regulate video service providers to the extent provided in ch. 66, Stats.

2007 Wisconsin Act 42 changed the way that Wisconsin regulates cable television and other video services. The act provided for state, rather than local, franchising of video service providers. The act also changed prior definitions, and added a new definition of “video services.” This rule incorporates new statutory definitions, in order to maintain the coverage of current rules.

Rule Background

Current DATCP rules regulate unfair sales and billing practices related to telecommunications, cable television and satellite television provided to consumers on a subscription basis. The current rules do all of the following:

- Require providers to disclose subscription terms and conditions.
- Prohibit billing for unordered services.
- Prohibit the imposition of price increases without prior notice and opportunity to cancel.
- Prohibit unfair “negative option” billing practices.

Since DATCP adopted the current rules, business practices and technology have changed. For example, video services can now be delivered over telephone lines. Providers now offer “bundled” service packages that may include local telephone, long-distance telephone, wireless telephone, video, internet and other services. Consumers may receive a number of these services on one electronic device, and may receive one bill for all of the “bundled” services.

This rule updates current rule coverage to ensure that protection is afforded to video service consumers on an equal basis, regardless of the technology or method used to deliver the service. This rule does not make major changes in rule content, but does make minor content adjustments to address new service delivery methods and “bundling” practices.

Rule Content

This rule does all of the following:

- Retitles ch. ATCP 123 from “Telecommunications and Cable Television Services” to “Electronic Communication Services.”
- Defines “electronic communication service” to include telecommunications service, video service, broadband internet service and satellite television service provided on to consumers on a subscription basis. “Electronic communication service” also includes any good or service that a subscriber is required to purchase from the service provider in order to obtain the electronic communication service.
- Defines “video programming” and “video service,” consistent with current statutes.
- Changes “telecommunications service or cable television service” where it appears in the main body of the rule to “electronic communication service.”
- Changes other words in the rule text to reflect recent statutory definition changes (2007 Wisconsin Act 42).

Fiscal Impact

This rule will have no significant fiscal impact on DATCP or local units of government. A complete fiscal estimate is attached.

Business Impact

This rule will have few, if any, negative impacts on business. This rule simply updates the definitions and coverage of current rules to prevent the erosion of current consumer protection regulations. Some video service providers now use new electronic delivery methods that are not covered by current rules. This rule applies existing consumer protection standards to those new delivery methods, so that consumers will continue to enjoy protection. This rule will help maintain fair competition between video service providers, regardless of the delivery method used. None of the video service providers using the new electronic delivery methods are small businesses.

Federal and Surrounding State Regulations

Federal Regulations

Congress and the federal communications commission have significantly reduced federal regulation of telecommunications service and video services. The federal government has left, to state governments, much of the responsibility for regulating the business

1 and 100.207(6)(a), Stats.

2
3 Federal law recognizes that state administrative rules may under certain
4 circumstances be preempted by federal law or administrative action. It is
5 the position of the department that any provision of this rule which
6 specifically conflicts with any federal law which now exists, or is later
7 enacted or amended, would be superseded by the federal law.
8

9 **SECTION 3.** ATCP 123.01 is repealed and recreated to read:

10 **ATCP 123.01 Definitions.** In this chapter:

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

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

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

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

23 (5) “Electronic communication service” means telecommunications service,
24 video service, broadband internet service, service provided by a multichannel video
25 programming distributor as defined under 47 USC 522(13), or other service that allows a
26 subscriber to send or receive voice, data, video programming or other information over
27 the electromagnetic spectrum. “Electronic communication service” includes the

1 collection, storage, forwarding, switching and delivery of information incidental to the
2 electronic communication service, and includes final stage receiving devices, equipment,
3 goods or services provided for any of those purposes as part of the electronic
4 communication service. “Electronic communication service” also includes goods or
5 services of any kind that a subscriber is required to purchase or lease from the electronic
6 communication service provider in order to receive the electronic communication service.

7 “Electronic communication service” does not include any of the following:

8 (a) Broadcast service as defined in s. 196.01(1m), Stats.

9 (b) An internet service, such as a dial-up internet service, that includes collection,
10 storage, forwarding or switching services but does not include electronic transmission of
11 information.

12 (c) Transmission of information by means of non-electronic media such as hard-
13 copy newspapers or magazines.

14 (6) “Final stage receiving device” means a device that transforms an electronic
15 signal into a user-recognizable service used by a consumer. “Final stage receiving
16 device” includes a telephone, cellular phone, computer, television, and any combination
17 of these devices, regardless of size or shape.

18 (7) “Individual” means a human being.

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

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

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

4 *NOTE:* For example, “provider” includes a telemarketer or other person who sells
5 electronic communication service on behalf of and in the name of a
6 provider.
7

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

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

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

16 **(14)** “Telecommunications service” has the meaning given in s. 196.01(9m),
17 Stats.

18 **(15)** “Video programming” has the meaning given in s. 66.0420(1)(x), Stats.

19 **(16)** “Video service” has the meaning given in s. 66.0420(1)(y), Stats.

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

1 **SECTION 4.** ATCP 123.02(1)(a)(note) is amended to read:

2 **NOTE:** For example, the identification of a ~~cable television~~ video service tier
3 offering should identify the channels ~~which~~ that comprise ~~that tier~~ the
4 offering.

5
6 **SECTION 5.** ATCP 123.02(5)(title) and (intro.) are amended to read:

7 ATCP 123.02(5)(title) ~~PAY-PER-VIEW CABLE TELEVISION~~ VIDEO PROGRAMMING

8 CHARGES; EXEMPTION. A provider of pay-per-view ~~cable television service~~ need video

9 programming is not required to disclose per-view charges under sub. (1) if all of the

10 following apply:

11 **SECTION 6.** ATCP 123.04(1)(note) and (2)(f) are amended to read:

12 **NOTE:** Section ~~134.42(2)~~ 100.209(2)(c), Stats., requires a ~~cable television~~
13 multichannel video provider to give a consumer at least 30 days ~~advanced~~
14 advance written notice before deleting a service or instituting a rate
15 increase. ~~47 USC 76.309 (3) (i) (B)~~ requires a cable television provider to
16 ~~give consumers a 30 day advance notice of any changes in rates or~~
17 ~~services regulated under 47 USC 543.~~

18
19 (2)(f) The subscription change is limited to a change in pay-per-view ~~eable~~

20 ~~television~~ video programming charges that are exempt from disclosure under s. ATCP

21 123.02(5).

22 **SECTION 8.** ATCP 123.10(1), (3), (6) and (8) are amended to read:

23 ATCP 123.10(1) Offer to a consumer any prize, prize opportunity, or free or

24 reduced price goods or services whose receipt is conditioned upon an agreement to

25 purchase or lease ~~telecommunications services or cable television services~~ an electronic

26 communication service unless the provider discloses that a purchase ~~is required~~ or lease

27 requirement in connection with every public announcement or advertisement of the prize,

28 prize opportunity, or free or reduced price goods or services.

1 (3) Misrepresent that a consumer has subscribed to or received a
2 ~~telecommunications service or cable television service~~ an electronic communication
3 service.

4 (6) Fail to honor, on a timely basis, a consumer's request to cancel a
5 ~~telecommunications service or cable television service~~ an electronic communication
6 service according to this chapter and the terms of the subscription for that service.

7 (8) Bill a consumer for ~~telecommunications services or cable television services~~
8 an electronic communication service in violation of this chapter.

9 **SECTION 12.** ATCP 123.12(1)(b) is amended to read:

10 ATCP 123.12(1)(b) A subscription change ~~which~~ that a provider of
11 telecommunications provider service implements by means of a tariff under ch. 196,
12 Stats., other than a tariff change under s. 196.196(3) or 196.499(2), Stats.

13 **SECTION 13.** ATCP 123.14 is repealed.

SECTION 14. EFFECTIVE DATE: This rule takes effect on the first day of the
month following publication in the Wisconsin administrative register, as provided in s.
227.22 (2) (intro.), Stats.

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary