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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

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* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)



State of Wisconsin
Jim Doyle, Governor

Senator Robert Jauch
JCRAR Co-Chair
Room 118 South, State Capitol

Department of Agriculture, Trade and Consumer P.
Rod Nilsestuen, Secretary

PUBLIC NOTICE

FINAL DRAFT RULE TO LEGISLATURE

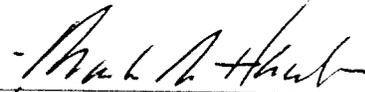
The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: **08-027**
SUBJECT: **Electronic Communications Services**
ADM. CODE REFERENCE: **ATCP 123**
DATCP DOCKET #: **08-R-04**

Dated this 12th day of August, 2008.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By



Rodney J. Nilsestuen
Secretary

Agriculture generates \$51.5 billion for Wisconsin



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: August 12, 2008

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220, South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Michael Huebsch
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
PO Box 8952
Madison, WI 53708-8952

FROM: Rodney J. Nilsestuen, Secretary 
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Electronic Communications Services
(Clearinghouse Rule #08-027)

The Department of Agriculture, Trade and Consumer Protection ("DATCP") is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats. This rule relates to subscription and billing practices of telecommunications, cable TV and satellite TV services that are provided to consumers on a subscription basis.

Background

The Department of Agriculture, Trade and Consumer Protection ("DATCP") currently regulates unfair subscription and billing practices related to telecommunication services, cable TV services and satellite TV services that are provided to consumers on a subscription basis. Current DATCP rules are contained in ch. ATCP 123, Wis. Adm. Code. Telecommunications subscription and billing practices are consistently among the top categories of consumer complaints received by DATCP.

Current DATCP rules regulate unfair and deceptive subscription and billing practices, *not* price levels or service delivery. 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.

Agriculture generates \$51.5 billion for Wisconsin

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 access 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 and clarifies current rule coverage to ensure that consumers subscribing to electronic communications services (including video services and internet access services) are protected on an equal basis, regardless of the technology or method used to deliver the service. This rule also incorporates new statutory terminology.

Current rules already apply to subscriptions for telecommunications services, including the “conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum.” This rule clarifies that this current coverage includes video services and internet access services. Exclusion of these services would reduce current rule coverage and consumer protection.

This rule does not make major changes in rule content, but does make minor content adjustments to address new service delivery methods and clarify what services are covered by the rule. This rule also incorporates new statutory definitions created by 2007 Wis. Act 42.

Rule Content

This rule does all of the following:

- Retitles ATCP 123 from “Telecommunications and Cable Television Services” to “Electronic Communications Services.”
- Defines “electronic communications service” to mean a service, such as telecommunications service, video service, cable service, satellite television service, and internet access service, that involves the conveyance of voice, data, video programming or other information at any frequency over any part of the electromagnetic spectrum. This rule applies to electronic communications services that are provided to consumers on a subscription basis.
- 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 communications service.”
- Changes other words in the rule text to reflect recent statutory definition changes (2007 Wisconsin Act 42).

Public Hearings

DATCP held one public hearing on this rule. DATCP held the hearing on May 28, 2008 in Madison and accepted written comments until June 13, 2008. Two persons attended but did not comment, and 5 persons offered comments. DATCP also held discussions with the Wisconsin Public Service Commission, the Wisconsin Department of Justice, and the Wisconsin State Telecommunications Association, pursuant to s. 100.207(6)(em), Stats. DATCP also consulted with other affected interests, including telecommunications companies and cable TV representatives. DATCP completed these discussions before recommending any final draft rule to the DATCP Board.

Changes from Hearing Draft

In response to comments, DATCP modified the definition of “electronic communications service” in the final draft rule. DATCP replaced the term “broadband internet” with the more technically precise term “internet access service” (at the recommendation of the Legislative Council Rules Clearinghouse), and has eliminated references to other goods, services, equipment or devices that are not part of the “electronic communications service.”

Some comments suggested that Federal Communications Commission regulations have preempted DATCP from regulating internet access services. However, federal preemption, if any, is limited to traditional utility-type rate and service regulation – *not* consumer protection regulations to address unfair or deceptive subscription billing practices. The Federal Communications Commission has clearly stated that its regulations are *not* intended to preempt states from regulating fraud, unfair or deceptive business practices, or marketing or advertising practices. Those are exactly the things that this rule addresses. This rule, like the current rules, regulates unfair and deceptive subscription and billing practices – *not* price levels or service delivery.

Some comments questioned DATCP’s authority to adopt this rule under 2007 Wis. Act 42. This comment is misdirected. Although this rule incorporates definitional changes made by Act 42, DATCP is not proposing this rule under authority of Act 42. This rule, like the current rules, is based on DATCP’s combined authority of ss. 93.07(1), 100.20(2), 100.207(6)(e) and 100.209(3), Stats. DATCP has ample statutory authority to adopt this rule. The Legislative Council Rules Clearinghouse has not questioned that authority.

Response to Rules Clearinghouse Comments

The final draft rule incorporates changes (including definitional changes) recommended by the Legislative Council Rules Clearinghouse.

Business Impact

This rule will have few, if any, negative impacts on business. Representatives of the affected industries have stated to the DATCP Board that this rule imposes no burdensome substantive requirements, and that compliance will be simple. This rule simply updates the definitions and clarifies the coverage of current rules to prevent the erosion of *current* consumer protection regulations.

Some video service providers now use new electronic delivery methods that fall within the current general definition of "telecommunications" but are not separately referenced in current rules. This rule clarifies that those delivery methods are covered by current rules prohibiting unfair subscription and billing practices, so that consumers will continue to enjoy reasonable protection.

This rule prevents arbitrary denial of basic consumer protection, based solely on technical differences in the form of service delivery. Where multiple services are "bundled" in a single subscription, and billed together, this rule also ensures that the same fair subscription and billing practices will apply to all of the "bundled" services, regardless of immaterial differences in how the various individual services may be delivered.

This rule will help maintain fair competition between electronic communications service providers, regardless of the delivery method used. Although the current rule covers some small businesses, the modifications made in the proposed rule do not change this coverage or otherwise affect small businesses.

Fiscal Impact

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

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 practices of service providers.

The Honorable Fred Risser
The Honorable Michael Huebsch
August 12, 2008
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Recently, the federal communications commission (FCC) determined that high speed internet access service is an "information service," and that federal law preempts states from applying traditional "telephone company" rate regulations to that information service. But the FCC also made it clear that it did *not* intend to preempt state laws governing consumer fraud, general commercial dealings, marketing and advertising, as those laws may apply to internet access services. Thus, the FCC did *not* preempt the application of ATCP 123-type regulations to internet access services.

Surrounding State Regulations

Surrounding states do not regulate electronic communications subscription and billing practices in the same manner as Wisconsin. The surrounding states take a more *ad hoc* approach – focusing on narrow issues such as the unauthorized switching of long-distance services or consumer protection for users of coin-operated phones. Wisconsin is the only state that has adopted comprehensive subscription and billing practice standards that apply equally to all competing providers of electronic communications services.

Public Hearing Summary

Electronic Communications Services

ATCP 123, Wis. Adm. Code
Clearinghouse Rule # 08-207

Hearings Held: May 28, 2008 – Madison

The hearing was held from 10:00 a.m. until 12:00 p.m. Two persons appeared but did not register.

The public hearing record for written comments remained open until June 13, 2008. The department received five (5) written comments for the hearing record. The comments may be summarized as follows:

Person/Organization

Comments

AT&T

Opposed hearing draft inclusion of “broadband services” in definition of electronic communication services.

Opposed hearing draft use of term “electronic communication service.”

Opposed hearing draft inclusion of “final stage receiving devices, equipment goods or service provided...as part of the electronic service” in definition of electronic communication service (removed from final draft rule).

Verizon

Opposed hearing draft inclusion of “broadband services” in definition of electronic communication service.

Wisconsin State Telecommunications
Association

Supported majority of the hearing draft.

Opposed hearing draft inclusion of
“broadband services” in definition of
electronic communication.

Opposed hearing draft inclusion of “final
stage receiving devices, equipment goods or
service provided...as part of the electronic
service” in definition of electronic
communication service (removed from final
draft rule).

State Representative Phil Montgomery

Opposed hearing draft inclusion of
“broadband services” in definition of
electronic communication.

State Representative Jeff Plale

Opposed hearing draft inclusion of
“broadband services” in definition of
electronic communication.

**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 communications services offered to consumers.

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

The Department of Agriculture, Trade and Consumer Protection (DATCP) currently regulates unfair subscription and billing practices related to telecommunications, cable television and satellite television services that are provided to consumers on a subscription basis. Current DATCP rules are contained in ch. ATCP 123, Wis. Adm. Code. The current rules regulate unfair and deceptive practices, not price levels or service delivery.

This rule updates and clarifies 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 electronic communications service subscribers, regardless of the method used to deliver the 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 (rates and service delivery) 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 (DFI), rather than local, franchising of video service providers (DATCP retains its authority, and responsibility, to regulate unfair subscription and billing practices). 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 subscription and billing practices related to telecommunications, cable television and satellite television services that are provided to consumers on a subscription basis. The current rules regulate unfair and deceptive practices, not price levels or service delivery. 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 access 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 and clarifies current rule coverage to ensure that consumers subscribing to electronic communications services (including video services and internet access services) are protected on an equal basis, regardless of the technology or method used to deliver the service. This rule also incorporates new statutory terminology.

Current rules already apply to subscriptions for telecommunications services, including the “conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum.” This rule clarifies that this current coverage includes video services and internet access services. Exclusion of these services would reduce current rule coverage and consumer protection.

This rule does not make major changes in rule content, but does make minor content adjustments to address new service delivery methods and clarify what services are covered by the rule. This rule also incorporates new statutory definitions created by 2007 Wis. Act 42.

Rule Content

This rule does all of the following:

- Re-titles ch. ATCP 123 from “Telecommunications and Cable Television Services” to “Electronic Communications Services.”
- Defines “electronic communications service” to mean a service, such as telecommunications service, video service, cable service, satellite television service, and internet access service, that involves the conveyance of voice, data, video programming or other information at any frequency over any part of the electromagnetic spectrum. This rule applies to subscription and billing practices related to “electronic communications services” that are provided to consumers on a subscription basis.
- 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 communications 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 services delivered by those new methods, so consumers will continue to enjoy protection.

This rule will help maintain fair competition between electronic communications service providers, regardless of the delivery method used. Although the current rule covers some small businesses, the modifications made in the proposed rule do not change this coverage or otherwise affect 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 practices of service providers.

Recently, the federal communications commission (FCC) determined that high speed internet access service is an “information service,” and that federal law preempts states from applying traditional “telephone company” rate regulations to that information service. But the FCC also made it clear that it did *not* intend to preempt state laws governing consumer fraud, general commercial dealings, marketing and advertising, as those laws may apply to internet access services. Thus, the FCC did *not* preempt the application of ATCP 123-type regulations to internet access services.

Surrounding State Regulations

Surrounding states do not regulate electronic communications subscription and billing practices in the same manner as Wisconsin. The surrounding states take a more *ad hoc* approach – focusing on narrow issues such as the unauthorized switching of long-distance services or consumer protection for users of coin-operated phones. Wisconsin is the only state that has adopted comprehensive subscription and billing practice standards that apply equally to all competing providers of electronic communications services.

Data and Analytical Methodologies

This rule does not depend on any complex analysis of data. This rule merely updates current rules to address changes in business practices and technology, and to incorporate new definitions created under 2007 Wisconsin ACT 42.

1 to procedures prescribed by the federal communications commission after the consumer
2 fails to select a provider.

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

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

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

12 (5) "Electronic communications service" means a service, such as
13 telecommunications service, video service, cable service as defined under 47 USC
14 522(6), service provided by a multichannel video programming distributor as defined
15 under 47 USC 522(13), and internet access service as defined in 47 USC 231(e)(4),
16 which involves the conveyance of voice, data, video programming or other information at
17 any frequency over any part of the electromagnetic spectrum. "Electronic
18 communications service" includes the collection, storage, forwarding, switching and
19 delivery of information incidental to the electronic communications service. "Electronic
20 communications service" does not include broadcast service as defined in s. 196.01(1m),
21 Stats., or the transmission of information by means of non-electronic media such as hard-
22 copy newspapers or magazines.

23 (6) "Individual" means a human being.

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

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

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

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

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

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

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

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

22 (14) “Video programming” has the meaning given in s. 66.0420(1)(x), Stats.

23 (15) “Video service” has the meaning given in s. 66.0420(1)(y), Stats.

24 (16) “Written” or “in writing” means legibly printed on a tangible non-electronic
25 medium, such as paper, which is delivered to a consumer, or legibly printed in electronic

1 form on a television screen or computer monitor if the consumer can readily retrieve,
2 store or print the video image for future reference. "Written" or "in writing" does not
3 include presentation on a medium, such as a billboard, which cannot be conveniently
4 retained by a consumer.

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

6 **NOTE:** For example, the identification of a ~~cable television~~ video service tier
7 offering should identify the channels ~~which that~~ comprise that tier the
8 offering.
9

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

11 ATCP 123.02(5)(title) ~~PAY-PER-VIEW CABLE TELEVISION VIDEO PROGRAMMING~~
12 ~~CHARGES; EXEMPTION.~~ A provider of pay-per-view ~~cable television service need~~ video
13 programming is not required to disclose per-view charges under sub. (1) if all of the
14 following apply:

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

16 **NOTE:** Section ~~134.42(2)~~ 100.209(2)(c), Stats., requires a ~~cable television~~
17 multichannel video programming distributor, as defined in 47 USC 522
18 (13), to give a consumer at least 30 days advanced ~~advance~~ written notice
19 before deleting a service or instituting a rate increase. 47 USC 76.309 (3)
20 ~~(i) (B) requires a cable television provider to give consumers a 30-day~~
21 ~~advance notice of any changes in rates or services regulated under 47 USC~~
22 543.
23

24 (2)(f) The subscription change is limited to a change in pay-per-view ~~cable~~
25 television video programming charges that are exempt from disclosure under s. ATCP
26 123.02(5).

27 **SECTION 7.** ATCP 123.10(1), (3), (6) and (8) are amended to read:

28 ATCP 123.10(1) Offer to a consumer any prize, prize opportunity, or free or
29 reduced price goods or services whose receipt is conditioned upon an agreement to

1 purchase or lease ~~telecommunications services or cable television services~~ an electronic
2 communications service unless the provider discloses that a purchase ~~is required~~ or lease
3 requirement in connection with every public announcement or advertisement of the prize,
4 prize opportunity, or free or reduced price goods or services.

5 (3) Misrepresent that a consumer has subscribed to or received a
6 ~~telecommunications service or cable television service~~ an electronic communications
7 service.

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

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

13 SECTION 8. ATCP 123.12(1)(b) is amended to read:

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

17 SECTION 9. ATCP 123.14 is repealed.

1 **SECTION 10. EFFECTIVE DATE:** This rule takes effect on the first day of the month
2 following publication in the Wisconsin administrative register, as provided in s. 227.22
3 (2) (intro.), Stats.

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis

Rule Subject: Electronic Communications Services
(Subscription and Billing Practices)
Adm. Code Reference: ATCP 123
Rules Clearinghouse #: 08-027
DATCP Docket #: 08-R-04

Background

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) currently regulates unfair subscription and billing practices related to telecommunications, cable TV, and satellite services that are provided to consumers on a subscription basis. Current rules are contained in ch. ATCP 123, Wis. Adm. Code.

The current rules regulate unfair subscription and billing practices, not price levels or service delivery. 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 access 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 and clarifies current rule coverage to ensure that consumers subscribing to electronic communications services (including video services and internet access services) are protected on an equal basis, regardless of the technology or method used to deliver the service. This rule also incorporates new statutory terminology.

Current rules already apply to subscriptions for telecommunications services, including the “conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum.” This rule clarifies that this current coverage includes video services and internet access services. Exclusion of these services would reduce current rule coverage and consumer protection.

This rule does not make major changes in rule content, but does make minor content adjustments to address new service delivery methods and clarify what services are covered by the rule. This rule also incorporates new statutory definitions created by 2007 Wis. Act 42.

Rule Content

This rule does all of the following:

- Retitles ATCP 123 from “Telecommunications and Cable Television Services” to “Electronic Communications Services.”
- Defines “electronic communications service” to mean a service, such as telecommunications service, video service, cable service, satellite television service, and internet access service, that involves the conveyance of voice, data, video programming or other information at any frequency over any part of the electromagnetic spectrum. This rule applies to electronic communications services that are provided to consumers on a subscription basis.
- 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 communications service.”
- Changes other words in the rule text to reflect recent statutory definition changes (2007 Wisconsin Act 42).

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 services delivered by those new methods, so that consumers will continue to enjoy protection.

This rule will help maintain fair competition between electronic communications service providers, regardless of the delivery method used. Although the current rule covers some small businesses, the modifications made in the proposed rule do not change this coverage or otherwise affect small businesses.

Steps to Assist Small Business

None of the businesses affected by this rule are “small businesses.” This rule does not make special exceptions for “small businesses.”

Conclusion

This rule will help maintain fair competition between competing businesses and will have few, if any, negative effects on business. This rule will have no effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

Dated this 12th day of August, 2008

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Janet Jenkins
Janet Jenkins, Administrator,
Division of Trade & Consumer Protection

FISCAL ESTIMATE

DOA-2048 N(R10/98)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB No. and Bill/Adm. Rule No.

Ch. ATCP 123

Amendment No. If Applicable

Subject

Electronic Communication Service

Fiscal Effect**State:** No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum certain appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

 Increase Costs - May be possible to Absorb Within Agency's Budget Yes No Decrease Costs**Local:** No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory
3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations**Assumptions Used in Arriving at Fiscal Estimate**

This rule will have no significant fiscal impact on DATCP or local units of government.

Background

Current DATCP rules (ch. ATCP 123, Wis. Adm. Code) protect consumers against unfair subscription and billing practices related to telecommunications, cable TV, and satellite TV services that are provided to consumers on a subscription basis.

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 access 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.

Current rules already apply to subscriptions for telecommunications services, including the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum. This rule clarifies that this current coverage includes video services and internet access services. Exclusion of these services would reduce current rule coverage and consumer protection.

This rule does not make major changes in rule content, but does make minor content adjustments to address new service delivery methods and clarify what services are covered by the rule. This rule also incorporates new statutory definitions created by 2007 Wis. Act 42.

Impact of the Proposed Rule on State Government

This rule will have no significant fiscal impact on DATCP or other state agencies, because it does not make major changes in rule content or significantly alter DATCP's regulatory responsibilities.

Impact of the Proposed Rule on Local Government

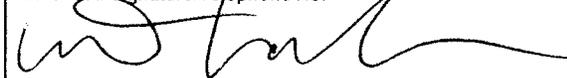
This rule will have no fiscal impact on local government.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Dept of Agriculture, Trade & Consumer Protection

Authorized Signature/Telephone No.



Date

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