

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 95-014

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### **1. Statutory Authority**

The analysis accompanying the rule states that one of the statutes interpreted by the rule is s. 100.207, Stats. Section 100.207 (6) (e) directs the department, in consultation with the Department of Justice, to promulgate rules under s. 100.207, Stats. If the department has not engaged in this consultation, then it should not promulgate the rule at this time. If the department has engaged in this consultation, then that consultation should be noted in the analysis accompanying the rule.

#### **2. Form, Style and Placement in Administrative Code**

a. The department should review the definitions in s. ATCP 123.01 that reference statutory definitions to ensure that these references are given in a consistent style. For example, s. ATCP 123.01 (2) states that “cable television service” has the meaning given under s. 196.01 (1p), Stats., and s. ATCP 123.01 (10) states that “communications carrier” has the meaning specified under s. 196.01 (8m), Stats.

b. The clause “In this chapter:” should be inserted after the title to s. ATCP 123.01. [See s. 1.01 (7), Manual.]

c. In s. ATCP 123.10 (5), “s.” should be inserted before “PSC 165.05.” [See s. 1.07 (2), Manual.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The analysis accompanying the rule indicates that the rule interprets ss. 100.20 and 100.207, Stats. The rule appears to interpret s. 93.01 (1m), Stats., also. If that is the case, then the department should amend the analysis accordingly.

b. The references to ss. 196.196 and 196.199, Stats., in s. ATCP 123.04 (1) (c) are broad and may potentially lead to unintended consequences. For example, s. 196.196 (1) (f), Stats., establishes by statute the process for a price-regulated telecommunications utility to notify its customers of changes in the price of a telecommunications service subject to s. 196.196 (1), Stats. Another provision, s. 196.196 (3), Stats., specifically provides that, in general, changes in the terms of other service offerings by a price-regulated telecommunications utility are not subject to regulation by the Public Service Commission (PSC). Thus, under s. ATCP 123.04 (1) (c), these service offerings which may be exempt from PSC jurisdiction or from PSC regulations relating to trade practices are also not subject to ch. ATCP 123. Is this the department's intent?

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The department should review the applicability of the rule to ensure that it is unambiguous. In particular, the definition of "consumer" in s. ATCP 123.01 (3) limits a consumer to a natural person who buys or leases telecommunications services or cable television services from a provider primarily for personal, family or household purposes. However, s. 100.207 (5), Stats., establishes that s. 100.207 (2) to (4), Stats., applies to "any practice directed to any person in this state" and thus includes a person buying or leasing telecommunications services for business purposes. Thus, as the rule is drafted, some trade practices relating to the sale of telecommunications services for business purposes will be subject to s. 100.207, Stats., but not to ch. ATCP 123. Also, if the rule is intended to apply only to nonbusiness consumers, the department should consider substituting "nonbusiness consumer" for "consumer" throughout the rule.

b. Under the second sentence in s. 100.207 (3) (a), Stats., "a person may not bill a customer for any telecommunications service that the customer did not affirmatively order unless that service is required to be provided by law, the federal communications commission or the public service commission." Since the rule does not contain an explicit reference to the federal communications commission, it is not clear how the rule incorporates this exception to the prohibition on billing a customer for a telecommunications service that has not been affirmatively ordered. See, for example, the rule's provision on negative option billing in s. ATCP 123.06 (1).

#### **6. Potential Conflicts With, and Comparability to, Related Federal Regulations**

The regulation of cable television services is governed in part by 47 U.S.C. s. 544. For example, under 47 U.S.C. s. 544 (c), in the case of specified existing franchises, a franchising authority, such as a city, may enforce requirements contained within the franchise for the provision of services, facilities and equipment. These requirements could relate to trade practices such as billing and customer notification requirements. In addition, s. 66.082 (3) (e), Stats., authorizes a municipality to establish the rates and regulate the services of a "cable television system" to the extent provided under federal law. If the department has not reviewed the applicable federal and state cable television laws, it should do so to ensure that there are no conflicts between those laws and ch. ATCP 123.