STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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October 7, 2011

Filed electronically Via ECFS
Marlene H. Dortch
Office of Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

Re: PS Docket No. 11-82, New York State Public Service Commission Initial Comments

Dear Ms. Dortch:

On October 5, 2011, at the request of staff at the Federal Communications Commission (FCC), staff of the New York Department of Public Service (NYDPS) had a phone meeting with John Healy, Associate Division Chief, Vernon Mosley, Senior Engineer and Gregory Intoccia, Legal Counsel with the FCC's Public Safety and Homeland Security Bureau, Cybersecurity and Communications Reliability Division. Staff participating from the NYDPS Office of Telecommunications were: Chad Hume - Director; Michael Rowley, Interim Chief - Network Reliability; and Christine Sealock Kelly, Utility Analyst. Also participating was Brian Ossias, Assistant Counsel, NYDPS Office of General Counsel.

The parties discussed several points raised in the New York Public Service Commission's (NYPSC) comments filed on August 8, 2011 in the above listed docket. NYDPS staff clarified mandated and voluntary reporting of outages for digital voice carriers under rules applicable to video, voice and data services provided by companies operating in New York. A copy of rules applicable to video service providers was subsequently provided to Gregory Intoccia (see attachment). NYDPS staff discussed the rationale set forth in the NYPSC's order in Case 05-C-0616, Transition to Intermodal Competition, Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings

(issued April 11, 2006) which set the framework for voluntary reporting of outages by VoIP service providers. Staff also supported the need for strengthening the definition of outages requiring reporting to include loss of connectivity to or by Public Service Answering Points and other emergency facilities, as well as hospitals and military facilities.

NYDPS stressed the states' need for instantaneous reporting (i.e., within an hour) for significant outage events as well as access to broadband network reliability information under consideration in this proceeding that is anticipated to be reported on a more routine basis. NYDPS staff addressed the possibility of accommodating the pace of technology change under regulation by focusing on outcome (e.g. impact on call completion or end user) and our desire that standards be developed neutral of platform and class of service to the extent possible. The costs for outage reporting were assessed as de minimis because service providers already have sophisticated network monitoring systems in place and only minimal incremental cost is necessary to report such information, if not done so already. NYDPS recognizes that certain carriers may need to establish a delivery protocol to comply with a standardized reporting requirement, however, when applied equally across platform segments and competitive services it creates a level playing field and improves carrier acceptance and participation.

Lastly, we discussed the value of public-private partnerships, but indicated that those are not sufficient to ensure network reliability and that regulators have an interest in establishing a standard accountable to public scrutiny.

If you have any questions or would like more information, please contact the undersigned.

Respectfully submitted,

Chad Hume
Director,
Office of Telecommunications

This information is not the official version of the Official Compilation of the Rules and Regulations of the State of New York (NYCRR). No representation is made as to its accuracy, nor may it be used as an official business record of the New York State Department of Public Service. To ensure accuracy and for evidentiary purposes, reference should be made to the official NYCRR. The Official NYCRR is available from West Publishing: 1-800-344-5009.

§ 890.60 Applicability

Every cable television company shall comply with the customer service and consumer protection standards set forth in this Part. Additional standards not inconsistent with Federal and State law may be established by municipal franchising authorities by a franchise agreement or by the exercise of its police powers consistent with section 895.1(1) of this subtitle.

§ 890.61 Definitions

(a) Basic channel shall mean any channel which is provided as part of the basic service tier.

(b) Billing dispute shall mean a disagreement between a subscriber and a cable television company concerning:

(1) credits for payments made by the subscriber to the cable television company;

(2) credit or refund for service outage;

(3) errors in billing amount; or

(4) assessment of late charges.

(c) Home wiring shall mean the internal wiring contained within premises of a subscriber which does not include any active elements such as amplifiers, converters or decoder boxes or remote control units.

(d) Collection charge shall mean a fee or charge imposed upon a subscriber by a cable television company for its efforts at collecting or attempting to collect a past due account by personal visit at a subscriber's home or place of business.

(e) Commission shall mean the New York State Public Service Commission,

(f) Downgrade charge shall mean a charge imposed upon a subscriber for implementing a request by the subscriber for a change in service to a less expensive tier than the tier currently subscribed to.

(g) Late charge shall mean a charge which is added to a cable television subscriber's account or bill for nonpayment of a previously due account.

(h) Local office shall mean the business office of the cable television company serving the municipality in which a billing dispute arises.

(i) Normal business hours shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, normal business hours must include some evening hours at least one night per week and/or some weekend hours.

(j) Normal operating conditions shall mean those service conditions which are within the control of a cable company. Those conditions which are not within the control of a cable company include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of a cable company include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, channel and/or service alterations, and maintenance or upgrade of the cable system.

(k) Service call shall mean any work at a subscriber's premises which requires the presence of a cable television company representative and the subscriber, including but not limited to, installations, and reconnections.

(l) Service interruption shall mean the loss of picture or sound of one or more cable channels.

(m) Service outage shall mean a loss of picture or sound on all basic channels or on all channels provided on any other service tier or on one or more premium channels occurring during normal operating conditions which is not caused by the subscriber's television receiver or the subscriber.

(n) Small cable television system shall mean any cable television system with fewer than 1,000 subscribers.

(o) Subscriber complaint shall mean a notice to the commission from a cable television subscriber, whether in writing, by telephone or electronic mail, concerning an unresolved billing service or other service related matter affecting the complaining subscriber directly.

§ 890.62 Billing practices; billing period

(a) (1) Every cable television company shall adopt billing practices in compliance with sections 890.61 through 890.66 of this Part and shall provide notice to subscribers in accordance with section 890.80(e) of this Part.

(2) Every cable television company:

(i) shall file copies of its billing practices and payment requirements with the commission; and

(ii) shall maintain copies thereof on file in its local office for public inspection for a period of two years.

(b) Billing practices may include the opportunity for advance billing.

(c) Billing practices shall provide that a subscriber, upon request, shall be given the option of paying monthly. Use of coupon books for the remittance of monthly payments shall satisfy the monthly payment option request. If such coupon books are used by a cable television company, no other bills for service are required to be sent to subscribers.

§ 890.63 Bill format, late charges, collection charges, reconnect charges and downgrade charges

(a) Each subscriber bill shall be clear, concise and understandable and shall:

(1) (i) include the name, address and telephone number of the cable television company; and

(ii) the toll free subscriber assistance telephone number of the commission identified as "Unresolved Inquiries, NYS Public Service Commission" or otherwise as may be approved by the commission upon specific request by a cable company;

(2) itemize each category of service including, but not limited to, basic service, cable programming services, per channel premium services, and pay-per-view programming, and each piece of equipment for which a charge is imposed;

(3) state the billing period and clearly delineate all activity during the billing period, including but not limited to, the amount of current billing and appropriate credits or rebates, optional charges, late charges and past due balances, if any.

(b) Each subscriber bill shall specify a minimum time for payment which shall not be less than 15 days from mailing of the bill.

(c) Any late charge permitted by law or by the franchise, if imposed upon the subscriber, shall be itemized on the subscriber's bill, or notice of delinquent payment in cases where coupon books are used.

(d) If a late charge is to be imposed, it shall not be imposed sooner than 45 days after the mailing of the bill to the subscriber or the due date, if coupons are used.

(e) No cable television company shall impose a collection charge upon any subscriber, except as prescribed in subdivision 890.66(e) of this Part.

(f) No cable television company shall impose a charge for the reconnection of service, the amount of which is based solely upon a consideration of whether the subscriber was previously in arrears for an amount due said company.

(g) A cable television company may impose a downgrade charge upon the conditions and in the circumstances as follows:

(1) subscribers have been notified of such charge in writing in at least 10 point type;

(2) the charge does not exceed the amount permitted under applicable State or Federal law or regulation; and

(3) the downgrade was not requested by a subscriber affected by a significant programming change or a network change which included a retiering of service or a rate change within 30 days of the receipt by the subscriber of:

(i) a notice required by section 890.80(b)(4) and (c)(4) of this Part; or

(ii) a notice of retiering or rate change as required by section 890.80(a) of this Part.

§ 890.64 Billing disputes, auxiliary equipment, credits, and refunds

(a) Every cable television company shall establish procedures for the prompt investigation of any billing dispute. The procedures shall provide for a period of at least 30 days from the date of receipt of the bill for the subscriber to file a timely complaint. The procedures shall provide that the subscriber remit the undisputed portion of the bill in question pending resolution of the portion in dispute and that the subscriber shall be responsible for paying the undisputed portion of current and future bills.

(b) Cable television service shall not be discontinued due solely to nonpayment of the portion in dispute during the period allowed herein for investigation of a billing dispute.

(c) If the billing dispute is not resolved within 30 days of the date it is received by the company, the subscriber may refer the matter to the commission in accordance with the provisions of section 890.7 of this Part. If referral is not made within 30 days, the company may commence its disconnection procedures in accordance with section 890.66 of this Part.

(d) The cable television company shall retain all billing complaint records for at least one year.

(e) When a cable television company supplies auxiliary equipment such as a converter or other modifying device to a subscriber the company can expect reasonable care of such equipment by the subscriber. A cable television company shall notify the subscriber and the commission in writing of any charges to subscribers for lost, stolen or damaged converters. In the event such equipment is lost, stolen or damaged, and the cable television company seeks to charge the subscriber for such equipment, the company shall give written, dated notice to the subscriber of the amount sought to be collected from the subscriber and the subscriber's opportunity to refer the matter to the commission in accordance with the provisions of section 890.70 of this Part.

(f) Refund checks will be issued promptly but no later than:

(1) the subscriber's next billing cycle following a determination that a refund is warranted or 30 days after such determination, whichever is earlier; or

(2) the subscriber's next billing cycle after the return of equipment supplied by the cable company if service is terminated or 30 days after the return of the equipment, whichever is earlier.

(g) Credits for service will be issued not later than the subscriber's next billing cycle following a determination that a credit is warranted.

§ 890.65 Credit for service outage

(a) Every cable television company shall provide credit to subscribers affected by any service outage in excess of four continuous hours in accordance with subdivisions (b) and (c) of this section. The four-hour period shall commence at the time the cable television company first becomes aware of the service outage.

(b) Whenever a cable television company may reasonably determine the existence and scope of a service outage as, for example, a service outage caused by a major failure in the system's headend or distribution electronic equipment, which service outage exceeds four continuous hours and some part of which occurs during the hours 6:00 p.m. to 12:00 a.m., the cable television company shall automatically credit the account of each affected subscriber.

(c) In the event a cable television company cannot determine all subscribers affected by a service outage in excess of four continuous hours or no part of such outage occurs during the hours of 6:00 p.m. to 12:00 a.m., credit shall be given to any eligible subscriber who makes application therefor by either written or oral notice within 90 days of such service outage.

(d) The minimum credit for a service outage shall be equal to one thirtieth times the applicable monthly charge for each 24-hour period during which a service outage continues for at least four hours.

(e) A cable television company shall be responsible for every service outage except for interruption of programming to provide emergency information to the public using the Emergency Alert System as defined in section 896.5.

§ 890.66 Discontinuance of service for nonpayment

(a) A cable television subscriber shall not be considered delinquent in payment until at least 45 days have elapsed from the mailing of the bill to the subscriber or from the due date, if coupons are used, and payment has not been received by the cable television company.

(b) No cable television company shall physically or electronically discontinue service for nonpayment of bills rendered for service until:

(1) the subscriber is delinquent in payment for cable television service; and

(2) at least five days have elapsed after a separate written notice of impending discontinuance has been served personally upon a subscriber; or

(3) at least eight days have elapsed after mailing to the subscriber a separate written notice of impending discontinuance (for which postage has been paid by the cable television company), addressed to such person at the premises where the subscriber requests billing; or

(4) at least five days have elapsed after a subscriber has either signed for or refused a certified letter (for which postage has been paid by the cable television company), containing a separate written notice of impending discontinuance addressed to such person at the premises where the subscriber requests billing.

(c) Notice of service discontinuance shall clearly state the amount in arrears, the total amount required to be paid to avoid discontinuance of service, reconnection charges, if applicable, and the manner and date by which, and the place where, such payment must be made.

(d) No cable television company shall disconnect service for nonpayment on a Sunday, public holiday or a day when the local office of the company is not open for business without providing an opportunity for the subscriber to a pay the amount in arrears on such date.

(e) When a cable television company representative is at a subscriber's residence or place of business to disconnect service and the subscriber, at that time, pays the amount in arrears in lieu of disconnection, the company may add a reasonable collection charge to the subscriber's bill provided all other applicable provisions of this section have been followed.

(f) Receipt of a subsequently dishonored negotiable instrument in response to a notice of discontinuance shall not constitute payment, and no cable television company shall be required to provide additional notice prior to discontinuance.

§ 890.70 Subscribers' complaints; procedure

(a) A subscriber complaint will be processed by the commission after the subscriber has first attempted to resolve the particular matter with the cable television company. The procedure with respect to such complaints shall be as follows:

(1) A copy of the complaint together with a written notice requesting a statement concerning the matter described therein shall be served on the cable television company. Within 10 days, or such other period as may be specified in the notice, the cable television company shall submit a written response to the commission and shall serve a copy of said response on the complainant. The response must contain a statement of the action that has been taken to resolve the complaint and/or to preclude any recurrence of the matter complained of. If the subject of the complaint is the failure of the company to provide cable television service to a potential subscriber who has requested service, the commission may require the cable television company to provide, in addition to the information required by this paragraph, a map of the franchised area indicating information requested by the commission.

(2) Complaints received by the commission by telephone shall be recorded and kept on file. Where the nature of a telephone complaint warrants, the commission may request written information from the complainant. In such cases, the commission shall follow the procedure specified in paragraph (1) of this subdivision.

(3) Where numerous complaints are made, concerning a particular cable television company or where it appears that complaints have not been satisfactorily resolved by a particular company, the commission may make further inquiry of said company, which may be formal or informal, and which may include a hearing or oral argument, or both.

(b) Every cable television company shall adopt and file with the commission, in writing, its procedures for reporting and the resolution of subscriber complaints, which procedures may be in such form and contain such provisions as the company deems necessary, provided they are not in conflict with any procedures, rules or regulations of the commission. Every cable television company shall provide notice to subscribers of such procedures in accordance with section 890.80(f)of this Part.

(c) (1) The commission may delegate by written notice to any of its officers or employees authority pursuant to this section to investigate, hear and resolve subscriber complaints concerning disputed bills, charges, deposits, service problems and other subscriber-related problems. Such authority shall include the authority to conduct informal hearings. Except in the instance of an appeal by any party, disposition of unresolved complaints will be determined by such officers or employees of the commission as the commission designates to act in its place. In exercising this function, the designated officers or employees may obtain the information required to make a determination by conversation with the complainant or his or her representative, by telephone or in person, supplemented where appropriate by written materials from the complainant, reports or documents from the cable television company (including such data as may be required by the staff at the request of the complainant or on its own initiative); through written complaints similarly supplemented; or through a conference conducted by the designated officer or employee at which the complainant, accompanied and assisted by such friend, advisor or attorney as he or she desires, and company representatives are present. Officers or employees designated to consider complaints will afford both the complainant and the cable television company a fair and reasonable opportunity to present evidence pertinent to the complaint and to challenge evidence submitted by the other party to the dispute. The complainant or cable television company complained of may obtain a written statement of the determination, including a statement of the brief reason for the conclusion. The party adversely affected by the determination of the officer or employee designated to consider the complaint may appeal to the commission. Any such appeal shall be in writing filed with the commission within 20 days of receiving notice of the determination and shall set forth the specific basis for claiming error.

(2) After receipt of the response to a complaint, and where the procedures described in paragraph (1) of this subdivision are not applicable or cannot reasonably resolve the issues raised by a complaint, the commission, on its own initiative, the recommendation of staff or the request of the complainant or cable television company, may hold a hearing upon reasonable advance notice to all interested parties.

(3) Pending resolution of a complaint, the commission may require appropriate interim relief to either party. In the case of complaints regarding bills or deposits, the commission, without hearing or formal order, may, and in the absence of unusual circumstances shall, preclude discontinuance of service or the issuance of any notice of discontinuance during the commission's investigation of such complaint, upon such terms and conditions as it deems appropriate.

§ 890.80 Subscriber notices

(a) Rates programming services and channel positions.

(1) Notice required. Every cable television company shall provide notice to subscribers of:

(i) products and services;

(ii) prices and options for programming and other services and the conditions of subscription to programming and other services; and

(iii) the channel positions of programming carried on the system.

(2) Form and content of notice.

(i) Notice shall be provided:

(a) to new subscribers at the time of installation;

(b) to any subscriber who requests a change in service;

(c) to all subscribers at least semi-annually; provided, however, that any cable television company that bills subscribers only by coupon book and does not provide regular mailings to subscribers at least quarterly may provide such notice to subscribers on an annual basis; and

(d) to any person who requests such information.

(ii) Notice shall be in writing and:

(a) shall be provided immediately where a request is made in person; or

(b) shall be provided by first class mail sent within 10 business days of the date of any request made by telephone or in writing.

(iii) The notice shall contain a description, materially accurate as of the first day of the previous month, of all service tiers and the networks provided thereon and the rates and charges therefor and other services or products offered to subscribers and the rates and charges for such other services and products. The notice shall also include a statement of significant rights accorded to the subscribers pursuant to section 224-a of the Public Service Law and the regulations promulgated by the commission. Such statement shall be in a form as approved by the commission. In addition, notice to new subscribers shall include a copy of any notice which has been sent to current subscribers pursuant to subdivisions (a) - (c) of this section within the previous 60 days.

(3) Changes.

(i) Every cable television company shall provide notice to subscribers of any changes in rates, programming services or channel positions as soon as possible through announcement on the cable system and in writing. Notice of any increase in the rates for the basic service tier or associated equipment must be provided to subscribers at least 30 days in advance. Notice of other such changes must be given to subscribers 30 days in advance if such change is within the control of the cable television company. For purposes of this paragraph announcement on the cable system shall mean a written, on-screen message on the affected channel(s), or program listing channel, or such other channel, as may be used for the dissemination of written messages to subscribers.

(ii) If a change in programming services or channel positions constitutes either a "significant programming change" as defined in subdivision (b) of this section or a "network change" as defined in subdivision (c) of this section, the cable television company shall also provide the notice as described in such subdivision.

(b) Significant programming change. (1) Definitions. For purposes of this section:

(i) a significant programming change shall mean the removal or alteration of recurring programming which materially changes the quality or level of programming on a network; provided, however, such terms shall not include deletions of programs mandated by the regulations of the Federal Communications Commission, nor shall it include deletions of programs that are distributed by the cable television company in lieu of such programs deleted pursuant to such regulations of the Federal Communications Commission;

(ii) a network shall mean a group of programs distributed, packaged, promoted or sold to subscribers as the offering of a single entity, including but not limited to, a channel or station; and

(iii) service tier shall mean a category of cable television services or other services provided by a cable television company and for which a rate or fee is charged by the cable television company, including, but not limited to, basic services, premium networks or services, recurring pay-per-view services and other categories of cable services for which there are additional charges.

(2) Notice required. Every cable television company shall provide notice of a significant programming change to the commission and to subscribers affected thereby.

(3) Notice to commission. Notice shall be provided to the commission no later than the later occurring of 45 days prior to the effective date of the change or within five business days of the date upon which the cable television company first knows of such change. The notice shall specify the recurring programming affected by the change, whether such recurring programming was, or will be, distributed as part of basic service tier or some other service tier immediately prior to the change and the effective date of the change.

(4) Notice to subscribers. Notice shall be provided to subscribers who are receiving services affected by such change in writing no later than the later occurring of 30 days prior to the effective date of such change or within 30 days of the date

upon which the cable television company first knows of such change and by written on-screen visual message prominently displayed on the affected television program channel or channels, and on the program listing channel of the cable television system, if one is provided, at least once each hour for no less than a 30-day period.

(5) Form and content of notice to subscribers. Notice shall be directed to each affected subscriber as follows:

(i) by the mailing of a separate written notice to the subscriber's billing address of record; or

(ii) by a written notation printed on the subscriber's regular billing statement; or

(iii) by a written notice accompanying the subscriber's regular billing statement. Such notice shall specify the recurring programming affected by the change and the effective date of the change. Such notice shall also inform subscribers of the opportunity to downgrade or terminate service within 30 days of the receipt of the notice without charge for such termination or downgrade if the programming change includes a retiering of service or a rate increase.

(c) Network change. (1) Definitions. For purposes of this subdivision:

(i) a network change shall mean the removal of a network from a service tier whether or not added to another tier or a substantial alteration of the character of a network by a cable television company or an affiliate it controls except that a network change shall not include the removal of a network from a service tier within 31 days of the date upon which such network was added to such service tier for promotional purposes, where such promotion was clearly disclosed to subscribers;

(ii) the character of a network shall be determined by reference to the nature, mix and quantity of programming provided on the network and whether such programming is supported by commercial sponsorship or other means. The character of a network which contains a uniform programming format, e.g., an all-shopping channel, an all-weather channel, an all-sports channel, etc., shall be considered distinct from the character of a network which includes various categories of programming. The character of a network shall also include consideration of whether a network provides programming 24 hours per day or some lesser period of time; and

(iii) promotes repeatedly and in a significant manner shall mean a promotion of the availability of a particular network on basic cable service which is designed to encourage the public to subscribe to basic cable service to receive such network and which is conducted by use of multiple media or by the multiple use of a single medium.

(2) Notice required. Every cable television company shall provide notice of a network change to the commission and to the subscribers affected thereby.

(3) Notice to commission. Notice shall be provided to the commission no later than the later occurring of 45 days prior to the effective date of the change or within five business days of the date upon which the cable television company first knows of such change. Notice shall specify the network affected by the change, whether such network was, or will be, distributed as part of the basic cable service or some other service tier immediately prior to the change and the effective date of the change. If the network change relates to the basic service tier, the notice to the commission shall also state whether said network has been repeatedly promoted by the cable television company as available on its basic cable service during the six months immediately preceding the date of the change and, if the network has been so promoted during such period of time, the notice shall also include the specific date upon which such promotion was concluded and the number of subscribers who commenced their subscription to basic cable service during the 90 days immediately before and after the last day of promotion. If the network change relates to a network that is being deleted from basic cable service and will not be available on any other service tier, the notice shall state whether said network continues to be reasonably available to the cable television company. For purposes of this paragraph the term continues to be reasonably available to the cable television company shall mean a network, including a broadcast television station, that has been lawfully distributed by the cable television company to its subscribers as part of its basic cable service and without a substantial alteration of the character of the network remains available to the cable television company on the same terms and conditions as before or remains available to the cable television company pursuant to terms and conditions as previously agreed. A network shall also be considered to continue to be reasonably available to a cable television company when, notwithstanding a modification of the terms and conditions under which it may be distributed or a change in the character of the network, the commission so determines in writing based upon consideration of:

(i) whether the cable television company is required to offer commercial leased access and the terms and conditions of such leased access, if any;

(ii) the character of the network relative to the character of other networks distributed on the system and the manner of distribution of such other networks;

(iii) the terms and conditions pursuant to which the network is available to the cable television company relative to the terms and conditions applicable to the distribution by the cable television company of other networks as part of basic cable television service;

(iv) the extent to which the network is currently being distributed by other cable television companies in the State as part of basic cable television service on terms and conditions similar to the terms and conditions at issue; and

(v) the extent to which the cable television company may have an ownership interest in any network distributed on the system which is similar in character to the terminated network.

(4) Notice to subscribers. Every cable television company shall provide notice of a network change to each subscriber affected thereby. Such notice shall be provided to subscribers who are receiving services affected by any such change in writing no later than the later occurring of 30 days prior to the effective date of any change or within 30 days of the date upon which the cable television company first knows of such change and by written on-screen visual message prominently displayed on the affected television programming channel or channels, and on the program listing channel of the cable television system, if one is provided, at least once each hour for no less than a 30-day period.

(5) Form and content of notice to subscribers. Notice shall be directed to each affected subscriber as follows:

(i) by the mailing of a separate written notice to the subscriber's billing address of record; or

(ii) by a written notation printed on the subscriber's regular billing statement; or

(iii) by a written notice accompanying the subscriber's regular billing statement. Such notice shall specify the network affected by the change and the effective date of the change and shall inform subscribers of the opportunity to downgrade or terminate service within thirty (30) days of the receipt of the notice without any charge for such termination or downgrade if the network change includes a retiering of service or rate increase.

(6) Additional provisions for network change affecting a premium service tier. If the notice describes a network change that affects a network that was being distributed as part of a premium service tier immediately prior to the change such notice shall also inform subscribers who have incurred installation, upgrade or other one-time charges relating to such premium service tier within six months prior to the effective date of the change, or who have prepaid any monthly service charges for said premium service tier, that they may elect to downgrade or terminate service within 30 days of the receipt of such notice and obtain a rebate of any such charges.

(7) Additional provisions for network change affecting basic cable service. If the notice describes a network change which affects a network that was being distributed as part of basic cable service immediately prior to the change, and the network was repeatedly promoted by the cable television company and in a significant manner as available as part of basic cable service at any time during the six months immediately preceding the date of the change, such notice, or a second notice given in the same manner as the first notice within 30 days of the first notice, shall contain additional information as follows:

(i) Removal of network to premium tier. If a network is moved from basic cable service to a more expensive tier, such notice shall inform subscribers who commenced their subscriptions to basic cable service during the 90-day period immediately before or after the last day of the promotion, of the opportunity within thirty days of receipt of the notice either:

(a) to upgrade to the more expensive service tier which includes the network at no charge and to receive said service tier for up to six months also at no charge; or

(b) to terminate service and receive a refund of all installation, upgrade or other one-time charges paid during the six months prior to the change.

(ii) Removal of network from system. If a network:

(a) is deleted from basic cable service;

(b) was a substantial inducement to a significant number of subscribers; and

(c) continues to be reasonably available to the cable television company, such notice shall inform subscribers who commenced their subscriptions to basic cable service during the 90-day period immediately before or after the last day of the promotion, of the opportunity, within 30 days of receipt of the notice, either:

(1) to terminate service and receive a refund of all installation, upgrade or other one-time charges paid during the six months prior to the change; or

(2) to continue service and receive a credit in the amount specified in the notice which credit shall be for a portion of the monthly rate for basic cable service for each month or portion thereof the network is not available on the system during the six-month period commencing with the last day of the promotion; or

(3) to continue service and petition the commission for determination of the amount of an appropriate credit for a portion of the monthly rate for basic cable service for each month or portion thereof the network is not available on the system during the six-month period commencing with the last day of the promotion.

(8) A cable television company shall maintain copies of all advertisements, lists or other notifications regarding programming sent to or made available to the public. For purposes of this subdivision, advertisements, lists or other notification shall mean any commercial messages which a cable television company originates and causes to be disseminated to the public or its subscribers by means of radio, television or print, or pursuant to a printed directive, which relate to the service tiers, networks or programming offered by said company to its subscribers and the rates and charges therefor, except that such terms shall not include any commercial message concerning a network or programming which originates with the network or programmer independent of the cable television company.

(d) Pay-per-view programming. Subdivisions (a) - (c) of this section shall not apply to pay-per-view programming.

(e) Billing practices. (1) Every cable television company shall provide notice to subscribers of its billing practices and payment requirements including the use of payment coupons. The notice shall describe or define, at a minimum, billing procedures (including payment requirements to avoid discontinuance of service, e.g. payment due dates), late charges, downgrade charges, advance billing options, if any, procedures to be followed in billing disputes and credit to be given for service outages.

(2) Notice shall be in the form of a separate written notice and shall be provided:

(i) to new subscribers, at the time of initial subscription or reconnection,

(ii) to all subscribers annually; and

(iii) to all subscribers at least 30 days in advance of any significant change in such billing practices or payment requirements.

(iv) to any subscriber upon request.

(f) Complaint procedures. (1) Every cable television company shall provide notice to subscribers of its complaint procedures.

(2) Notice shall be in writing and shall be provided:

(i) to new subscribers at the time of initial subscription or reconnection to the cable television system;

(ii) to all subscribers annually;

(iii) to all subscribers at least 30 days in advance of any significant change in such complaint procedures; and

(iv) to subscribers at any time upon request. The notice shall inform the subscriber that any unresolved complaint with the company may be referred to the commission pursuant to section 890.70 (a) of this Part. Such notice shall also contain the address and toll free subscriber assistance telephone number of the commission.

(g) Installation, use and maintenance of cable service. Every cable television company shall provide notice to subscribers of its installation and service maintenance policies, instructions on how to use cable services with company provided or subscriber owned equipment, and a description of any incompatibility problems and the means of resolving such problems. Notice shall be in writing and shall be provided to new subscribers at the time of installation:

(1) to any person upon request;

(2) to all subscribers annually; and

(3) to all subscribers at least thirty 30 days in advance of any significant changes in such information; and

(4) to subscribers at any time upon request.

(h) Lost, stolen or damaged equipment. A cable television company shall provide notice to subscribers of any charges for lost, stolen or damaged equipment in accordance with section 890.64(f) of this Part.

(i) Disconnection of service. Every cable television company shall provide separate written notice of service discontinuance in accordance with section 890.66 of this Part.

(j) Removal of home wiring.

(1) Every cable television company shall provide notice to subscribers of the opportunity to acquire home wiring upon termination of service if the company seeks to remove such wiring.

(2) Notice shall be in writing and shall be provided to subscribers at least seven days prior to the earliest date such home wiring would be removed.

§ 890.90 Telephone availability and answer standards; customer service centers

(a) Every cable television company shall maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week, provided, that after normal business hours, the access line may be answered by an answering service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

Trained company representatives must be available to respond to callers during normal business hours.

(b) Every cable television system, except a small cable television system, under normal operating conditions, shall meet the following telephone answer standards no less than 90 percent of the time, measured on a quarterly basis:

(1) telephone answer time by trained company representatives, including wait-time, shall not exceed 30 seconds from when the connection is made;

(2) if a call needs to be transferred, transfer time shall not exceed 30 seconds;

(3) callers will receive a busy signal less than three percent of the time.

(c) Information to demonstrate compliance with the telephone answer standards in subdivision (b) of this section shall be reported to the commission for normal business hours on an annual basis and shall include:

(1) the total number of days trained company representatives were available to receive incoming calls;

(2) the total number of calls received on such days;

(3) the average length of time a caller waits on hold before reaching a trained company representative;

(4) the total number of calls abandoned by incoming callers;

(5) the percentage of time callers received a busy signal; or

(6) or such other information that will document compliance with such standards.

(d) Every cable television company required to file the information specified in subdivision (c) of this section must maintain for a period of one year, a summary of records sufficient to measure and verify compliance with telephone answer standards on a quarterly basis.

(e) Annual reports on telephone answer standards shall be filed with the commission on or before January 31st of each year for the previous calendar year. Any cable television system that routinely meets or exceeds the standard in subdivisions (a) and (c) of this section may petition the commission for a waiver of the reporting requirements of this section. This waiver does not excuse a cable company from maintaining service records, subject to review by the Commission, on a quarterly basis.

(f) A cable television system will not be required to acquire equipment or perform surveys to measure compliance with telephone answer and service standards unless an historical record of complaints indicates a clear failure to comply.

(g) Customer service centers and bill payment sites shall be conveniently located and open at least during normal business hours.

§ 890.91 Installations, outages and service calls

(a) Whenever a service call is not started within the scheduled "appointment window", as established pursuant to paragraph (3) of subdivision (b) of this section, the subscriber shall not be charged for such service call, including any installation or reconnection scheduled to be performed, unless the service call was rescheduled with the subscriber's consent before the close of business on the business day prior to the day of the scheduled "appointment window".

(b) All cable television systems under normal operating conditions, shall meet no less than 95 percent of the time, measured on a quarterly basis, the following service standards:

(1) standard installations of up to 150 feet from existing aerial distribution plant shall be performed within seven business days after an order is placed unless a subscriber requests a particular date beyond seven business days;

(2) excluding conditions beyond control of the cable company, a cable television system will:

(i) begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known; and

(ii) begin actions to correct other service problems the next business day after notification of the service problem or trouble call;

(3) the appointment window alternatives for service calls will be either:

(i) a specific time;

(ii) morning or afternoon hours;

(iii) a four-hour block of the time during normal business hours;

(iv) evenings or Saturdays during normal business hours; or

(v) at the option of the cable television company a specific time or block of time outside of normal business hours for the express convenience of the customer; and

(4) if a cable company representative is likely to be late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as soon as possible, at a time which is convenient for the customer consistent with paragraphs (1) and (2) of this subdivision.

(c) Information to demonstrate compliance regarding the service standards contained in subdivision (b) of this section, measured on a quarterly basis, shall be reported to the commission and shall at a minimum include:

(1) number of requests for standard installations and the number of such installations actually performed within 7 business days;

(2) number of service interruptions and number of service interruptions responded to within and after 24 hours after notification;

(3) number of service calls to subscribers' residences and the number of such calls completed within the appointment window;

(4) number of installations or service calls rescheduled; and

(5) number of credits issued for missed service calls to subscribers' premises, or such other information that will document compliance with such standards.

(d) Service reports shall be filed annually with the commission on or before January 31st of each year for the previous calendar year. Cable systems that routinely meet or exceed the requirements of subdivisions (a) and (b) of this section may petition the commission for a waiver of the report requirements of this section. This waiver does not excuse a cable company from maintaining service records on a quarterly basis, which are subject to review by the Commission.

(e) Provisions of subdivision (a), paragraphs (3) and (4) of subdivision (b), and subdivisions (c) and (d) of this section shall not be applicable to small cable television systems.

(f) Reports of service or trouble calls by cable television systems shall be made available, upon request, and for a period not to exceed 90 days from such service or trouble call as follows:

(1) For each trouble call reported by a single subscriber, the cable television system shall identify:

(i) the subscriber;

(ii) the date and approximate time the trouble call was received;

(iii) the date and approximate time of the response to the trouble call;

(iv) the corrective steps taken (if any required);

(v) the date the trouble call is closed; and

(vi) identification of the technician or repair person.

(2) A report on each service outage shall include the following data:

(i) brief description of the area affected sufficient to allow the later determination of the approximate number of subscribers affected;

(ii) date and approximate time of failure;

(iii) cause of failure; and

(iv) date and time service was restored.

§ 890.92 Removal of home wiring

Upon voluntary termination of cable service by a subscriber, a cable television company shall not remove cable home wiring in which it claims ownership unless it gives the subscriber the opportunity to acquire the wiring at the replacement cost, and the subscriber declines. The cost is to be determined based on the replacement cost per foot of the home wiring multiplied by the length in feet of such wiring. If the subscriber declines to acquire the cable home wiring, the cable television company must then remove it within thirty seven days or make no subsequent attempt to remove it or to restrict its use. Every cable television company shall provide notice to subscribers of the provisions of this section in accordance with section 890.80(j) of this Part.

§ 890.93 "Negative option" promotional practices

(a) No cable television company may bill any subscriber for any service not affirmatively requested by the subscriber.

(b) For purposes of this section, a subscriber's affirmative request need not be in writing, but any cable television company relying on an oral affirmative request shall keep accurate records of the date on which, and the employee to whom, the request was made.

(c) For purposes of this section, a subscriber shall be deemed to have affirmatively requested a service if (1) the subscriber voluntarily makes payment for such service after an initial free trial period, and (2) there was included, in the notice or advertising material describing the service, a statement clearly advising the subscriber that he has incurred no obligation to pay for such service and that he need not take any action to avoid incurring any such obligation.

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§ 891.1 Intent and applicability

(a) It is the intent of the commission that the rules contained in this Part comply with the provisions of *47 U.S.C. Section 546* relative to franchise renewals. Except as otherwise provided, these rules shall apply to the renewal of every cable television franchise. No renewal of any franchise shall be effective unless it is approved by the commission pursuant to section 222 of the Public Service Law. An application for approval of a renewal shall comply with Part 897 of this subtitle provided, however, that the filing of a timely application pursuant to Part 897 shall, without further action, extend the applicant's operating rights pending final commission action.

§ 891.2 Proposal for renewal of franchise that requires affirmative action by municipality

(a) Filing requirement. Except as provided in section 891.3 of this Part, any cable television company lawfully engaged in the operation of a cable television system pursuant to an existing franchise may submit a proposal for renewal of said franchise in accordance with *47 U.S.C. section 546*(h) at any time. Title *47 U.S.C. Section 546*(h) is available for public inspection and copying at the office of the Department of Public Service, Three Empire State Plaza, Albany, New York 12223 and the New York State Department of State located at 41 State Street, Albany, New York 12207. *47 U.S.C. Section 546*(h) is published in the United States Code by the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402.

The proposal shall be submitted to the municipality and a copy shall be served on the commission. The proposal shall encompass the minimum standards for franchises as set forth in Part 895 of this chapter. The municipality may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time; provided, however, a municipality may not grant a proposal for renewal except after a public hearing on notice to the public in accordance with state and local laws applicable to public hearings generally, which notice shall also specifically state that the renewal proposal is available for public inspection at the office of the municipal clerk prior to the hearing.

(b) Notwithstanding the provisions of paragraph (a) hereof, and subject to the provisions of paragraph (c), a municipality shall during the six month period which commences with the thirty-sixth month prior to the expiration of an existing franchise, commence a process which affords the public in the franchise area appropriate notice and participation for the purpose of:

(i) identifying the future cable-related community needs and interests, taking into account the costs of meeting such needs and interests; and

(ii) reviewing the performance of the cable television company during the then current franchise term; provided, however, that if during such six month period, the franchisee requests by written renewal notice submitted to the municipality (with a copy to the commission) the commencement of such a process, the municipality may defer the commencement of the process for a period not longer than six months after the date such notice is received from the franchisee. The process shall be completed on or before the first day of the fifteenth month prior to the expiration date of the franchise.

(c) Whenever a municipality grants a renewal proposal submitted by the franchisee pursuant to paragraph (a), the provisions of paragraph (b) shall be of no further effect;

(d) In order to facilitate the renewal of cable television franchises, either party to a renewal negotiation has the right to request the non-binding mediation services of the commission to aid resolution of any disagreements that have become obstacles to renewal. In addition to the foregoing, within six months of the expiration of any franchise, the cable operator shall, upon request, notify the commission staff, orally or in writing, of the status of franchise renewal negotiations.