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The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
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REPRESENTING THE PEOPLE
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LEGISLATIVE AIDE
MARJORIE C. DECKER
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February 24, 1998

Mayor Francis Duehay and
The Honorable Members of the Council
City of Cambridge
City Hall
Cambridge, MA 02139

Dear Mayor Duehay and Members of the Council,

The Cable Television Division of the Massachusetts Office of Consumer Affairs will be holding a public hearing on proposed regulations adopting customer service standards for cable television companies on Tuesday, March 3, 1998 with written comment due no later than March 18.

Since customer service from our cable provider is an on-going issue, I am enclosing the announcement together with the proposed regulations. I know that you will wish to provide input on this matter of importance to so many of our Cambridge citizens.

Sincerely,

Alice K. Wolf

Alice K. Wolf
Sate Representative

829

Massachusetts Office of Consumer Affairs
Department of Telecommunications & Energy

Cable Television Division

133 Portland Street, Suite 300
Boston, Massachusetts 02114-1707

(617) 727-6925
1-888-MACBLTV • 1-888-622-2588

Argeo Paul Cellucci
Governor

Jane Swift
Director of Consumer Affairs

John D. Patrone
Commissioner
&
Cable Television Director

February 2, 1998

To All Interested Parties:

Pursuant to M.G.L. c. 30A, § 2, please be notified of the following public hearing regarding proposed regulations.

NOTICE OF PUBLIC HEARING

Pursuant to M.G.L. c. 166A, § 16 and M.G.L. c. 30A, the Cable Television Division (formally, the "Division of Community Antenna Television" under M.G.L. c. 166A, § 2) will hold a public hearing concerning proposed regulations adopting customer service standards for cable television companies. The hearing will be held on Tuesday, March 3, 1998 at 10:00 A.M. in the Hearing Room of the Cable Television Division at 133 Portland Street, Third Floor, in Boston. Written comments may be filed with the Division no later than Wednesday, March 18, 1998. Copies of the text of the proposed regulations are available at the Division's office at 133 Portland Street, and can be viewed on the world wide web at http://www.magnet.state.ma.us/dpu/catv. For further information, contact the Division at (617) 727-6925 or toll-free at 1-888-622-2588. By Order of the Cable Television Division, John D. Patrone, Commissioner and Cable Television Director.

If you have any questions concerning the hearing, please contact the Division.

Sincerely,

John D. Molloy

John D. Molloy
Assistant General Counsel

FAX: (617) 727-7887 TDD: (617) 727-7625 MCABLE@STATE.MA.US

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Department of Telecommunications & Energy

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Commissioner
&
Cable Television Director

February 2, 1998

To All Interested Parties:

Enclosed please find a Notice of Proposed Rulemaking ("NPRM") proposing to add a new chapter, 207 CMR 11.00, to the Division's regulations, adopting customer service standards. The Division has scheduled a public hearing for **Tuesday, March 3, 1998, at 10:00 A.M.** at the Division's office, 133 Portland Street, Third Floor, to discuss the NPRM. The Division must receive written comments no later than **Wednesday, March 18, 1998.** We strongly encourage, but do not require, that commenters also submit their written materials on a disk formatted for an IBM-compatible computer, preferably on Microsoft Word.

If you have any questions, please contact the Division.

Sincerely,

John D. Molloy

John D. Molloy
Assistant General Counsel

FAX: (617) 727-7887 TDD: (617) 727-7625 MCABLE@STATE.MA.US

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS & ENERGY
CABLE TELEVISION DIVISION*

In Re	)	
	)	Docket No. R-26
Adoption of	)	
207 CMR 11.00	)	Released February 10, 1998
	)	

Public Hearing: March 3, 1998

Comment Date: March 18, 1998

NOTICE OF PROPOSED RULEMAKING

I. INTRODUCTION

In this rulemaking, the Division proposes to add a new chapter to its regulations, adopting customer service standards. These proposed standards will help to ensure that all subscribers receive prompt, reliable service from their cable companies, and that cable marketing efforts are conducted in a fair and reasonable manner. The proposed rule addresses a number of specific customer service issues which the Division has identified as a result of daily interaction with and feedback from consumers throughout the Commonwealth. There are three major areas of customer service which would be covered by our proposed rule: marketing, handling consumer calls and subscriber service calls.

Marketing to Subscribers

With system upgrades taking place in many communities across the Commonwealth, many operators have undertaken ambitious marketing initiatives aimed at enticing current subscribers to purchase enhanced cable services and equipment. One of the issues consumers have raised with us is that they may come away from these marketing pitches with the mistaken impression that they are *required* to purchase services which are actually optional. We believe our proposed marketing rules establish some reasonable disclosure requirements designed to ensure that subscribers are fully informed about the nature and cost of the services and equipment they are offered, as well as the option to decline these added services or equipment.

Handling Consumer Calls

As new cable services have been rolled out, cable subscribers in many parts of the Commonwealth have found themselves faced with an array of new services, including increased cable programming, Internet access and two-way data service options. These new services and

* Formally, "Division of Community Antenna Television" under M.G.L. c. 166A, § 2.

products have spurred additional subscriber questions, leading to increases in both the number and length of consumer calls to cable operators.

The FCC has issued what we tentatively find to be appropriate minimum customer service standards for adoption and enforcement by state or local cable regulators and we propose to offer comparable standards in our rule. These standards would generally require that operators allow customers to call them toll-free at any time and that, under normal operating conditions, all such calls be answered by a trained customer service representative within 30 seconds, 24 hours a day, seven days a week. We recognize that these are rigorous standards, but we tentatively find them to be justified given the importance we attach to a consistently high level of customer service on the part of all the operators we oversee.

Installations and Service Calls

Finally, our proposed rule includes standards for installation and service calls. The rule requires operators to conduct installations and other service calls in the evenings or on the weekend to accommodate consumers who might not be available during the weekdays. It also mandates that cable providers perform standard installations within one week. Finally, if an operator misses an installation appointment, our proposed rule requires that the installation be done for no charge. These standards also closely parallel the FCC's service call regulations. We tentatively conclude that the standards are reasonable and worthy of adoption.

II. THE PROPOSED CUSTOMER SERVICE STANDARDS, 207 CMR 11.00

A. 11.01: Definitions

We propose that three definitions are warranted for our new rules. The first, "demarcation point", defines the point outside the subscriber's premises from which to measure the length of an installation. This definition is substantially similar to the FCC's definition of this term.[1]

There are several references in our proposed rules to the term "normal business hours". We have defined this to mean the hours from 9:00 A.M. to 5:00 P.M. Monday through Friday, excluding federal holidays.

Third, we have defined the phrase "normal operating conditions" as "those service conditions which are within the control of the cable operator." The definition contains a number of conditions which we tentatively find are *not* within the operator's control, including severe weather conditions and power or telephone outages. This phrase is used in section 11.03 to exempt operators from mandatory consumer call response times and other requirements during the course of unusually adverse conditions which are not within their control.

B. 11.02: Marketing to Subscribers

As cable operators continue to upgrade their systems and begin to offer new and varied programming services and equipment, operators are stepping up their direct marketing efforts to induce subscribers to purchase these new products and services. The introduction of new cable

[1] 47 C.F.R. § 76.5(mm).

products and services presents many benefits for Massachusetts subscribers. Timely marketing efforts help operators to inform their customers about new products and services. Ultimately, these efforts may help to spur interest in the new offerings which may be crucial to their long-term success. As such, marketing is an important part of the cable operator's overall effort to bring enhanced products and services to the marketplace, all of which helps strengthen our state's economy.

However, we also recognize the importance of protecting consumers against aggressive -- and, in some cases, misleading -- sales tactics which might unfairly induce subscribers to purchase services or equipment they might not otherwise buy. Accordingly, we are proposing that operators be required to disclose the complete terms of any sales offer made, upon request from the subscriber. We tentatively find this to be a sensible but necessary step to prevent consumers from being subjected to unfair or misleading sales tactics.

Proposed subsection (1) provides that whenever an existing subscriber is offered services by telephone, the terms of the offer must be fully and promptly disclosed to the subscriber in writing, upon request from the subscriber.

Proposed subsection (2) applies this disclosure standard to personal solicitations, but this subsection also requires that the written information be provided in *all* cases, not just in those instances in which the subscriber affirmatively requests the written terms of the offer.

We have proposed subsection (3) to address the situation where an operator pursues subscribers in a newly rebuilt system in an effort to convince them to purchase new programming or equipment in conjunction with the rebuild. Subscribers may be required to change or upgrade their programming or equipment as a result of the rebuild. For example, with an increase in megahertz capacity, new channels are often added to the expanded basic programming tier. The operator may also reconfigure or even eliminate entire programming tiers in this process. Additionally, operators may replace existing converters with new models with more features, such as addressable converters. These new converters often carry higher monthly charges.

Our specific concern is that operators may attempt to induce subscribers to purchase these new offerings under the guise that they are *required* to buy them if they want to continue to receive current services or their equivalent. Accordingly, proposed subsection (3)(b) requires that if such offerings are *optional*, the operator must affirmatively identify and describe them as such, including any resulting increase in monthly charges. Conversely, proposed subsection (3)(a) requires that operators affirmatively identify and describe any new *required* offerings as such, including any resulting increase in monthly charges. We have tentatively concluded that these new requirements will provide subscribers with the information necessary for them to make informed decisions whether to continue to receive their current offerings, downgrade to a less expensive offering, or obtain more programming or improved equipment at higher costs.

C. <u>11.03: Consumer Calls to the Cable Operator</u>

Often the first and most effective way for subscribers to resolve cable disputes is through a call to their operator. Reaching a cable company representative by phone, however, is sometimes an unnecessarily difficult task for many Massachusetts consumers. We received many complaints from subscribers during 1997 regarding their inability to reach their cable operator by telephone within a reasonable period of time. The problem is one which we have tentatively concluded warrants our formal regulatory attention.

Many operators should be familiar with the telephone customer service regulations we propose. Indeed, they are drawn from the FCC's regulations on the same topic.[2] Under those regulations, state and local authorities may adopt the FCC service standards or, alternatively, establish standards that are even more stringent.[3] We tentatively propose to adopt telephone service standards modeled on, but not identical to, the FCC's own customer service obligations.[4] We have chosen this course for three reasons.

First, we have reviewed the FCC's rules and we tentatively find them to be fair and reasonable. They appear to establish sensible consumer protections, without unduly burdening operators who, in the interests of maintaining good relations with their subscribers, should already be meeting such standards. Second, many Massachusetts operators -- especially large multiple system operators -- should be generally familiar with the FCC rules. At the time the FCC regulations were proposed, the National Cable Television Association ("NCTA"), the primary trade association for the cable industry, filed extensive comments generally in support of them.[5] The regulations, which were issued in March 1993, have presumably been adopted by many state and local governments throughout the country. Finally, the FCC regulations are substantially similar to standards which were previously adopted by the NCTA.[6]

Proposed subsections 11.03(1) and 11.03(2) require all operators to maintain a local, toll-free or collect call telephone access line, with trained company representatives available to accept calls 24 hours a day, seven days a week, including holidays. This goes beyond the FCC rules requiring operators to have company representatives answer calls during business hours, and provide an answering system to pick up calls received after hours. We tentatively find that most, if not all, large operators are already staffing their telephone customer service centers 24 hours a day. With respect to operators who are not, especially smaller operators, they may seek waivers upon a showing that granting them would be in the public interest.[7]

Proposed subsection 11.03(3) mandates that, under normal operating conditions as defined by 11.01(3), operator representatives shall answer subscriber calls within 30 seconds after the connection is made. The standard must be met at least 90 percent of the time, measured on a quarterly basis. This provision has been adopted by both the FCC and the NCTA.

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[2] 47 CFR § 76.309(c)(1).
[3] *Id.* at § 76.309(a) and (b).
[4] *Id.* at § 76.309(c)(1)(ii) and (iv).
[5] *In the Matter of Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992*, FCC 93-145, MM Docket No. 92-263, at ¶¶ 51-55.
[6] See *Office and Telephone Availability* regulations and *Installations, Outages and Service Calls* regulations in NCTA Requirements for Receiving the Seal of Customer Service Excellence.
[7] 207 CMR 2.04.

We propose to add a subsection not found in the FCC's consumer regulations, addressing automated phone systems operators may employ to direct calls by category or topic. These systems often include automated information retrieval systems or voice mail boxes which allow callers to leave information with the operator without actually speaking with anyone from the company. They can often serve as a cost-effective way for operators to address subscribers' needs. We also tentatively find, however, that these automated phone systems should allow callers the option to speak personally with a representative, rather than provide information to an automated information retrieval system. Accordingly, proposed subsection 11.03(4) provides that all such systems must allow callers the option to speak with an actual customer service representative at all times. It also extends the 30 second answering requirement in 11.03(3) to calls which are transferred to a company representative, measured from the time the call is transferred.

Proposed subsection 11.03(5) mandates that consumers cannot receive a busy signal on calls to operators any more than three percent of the time, measured on a quarterly basis. This is the same three percent standard set by the FCC.[8] A similar standard was adopted by the NCTA.[9] Accordingly, we tentatively find this standard to be reasonable.

D. <u>11.04: Standards for Installations, Outages and Service Calls</u>

Section 11.04 sets forth proposed standards for installations and other cable service calls.

Proposed subsection 11.04(1) requires that operators conduct installations and other service calls not only during business hours, but also *at least* four evening or weekend hours per week. Subsection 11.04(1) tentatively sets broad time frames in which to schedule installation and other cable service appointments which are convenient for subscribers. This standard would enable customers unavailable during the weekdays to attend a scheduled service call at night or on the weekend. This requirement is identical to service call regulations issued by both the FCC[10] and the New York Public Service Commission.[11] We tentatively find that it is reasonable for operators to offer, at a minimum, four hours per week outside of weekdays to schedule appointments at subscribers' residences.

Proposed subsection 11.04(2) establishes a three-prong standard for meeting scheduled appointments for installations and other service calls which closely parallels the FCC's customer service obligations.[12] Operators must meet these standards no less than 95 percent of the time, under normal operating conditions as defined by 11.01(3).

Our first proposed standard requires operators to perform standard installations -- those defined as extending no more than 125 feet from the cable operator's existing distribution system to the

[8] 47 CFR § 76.309(c)(1)(iv). This regulation does not include the quarterly measurement period the Division proposes to include in its rule.
[9] See *Office and Telephone Availability* regulations in NCTA Requirements for Receiving the Seal of Customer Service Excellence.
[10] 47 CFR § 76.309(c)(4)(i).
[11] Title 9, § 590.61(j) of the New York State Code of Regulations.
[12] 47 CFR §§ 76.309(c)(2) and (c)(2)(i), (ii) and (iv).

demarcation point -- within five business days after the order has been placed. The "demarcation point" as defined in our own proposed rule at 11.01(1), is taken directly from the FCC's regulations.[13] We tentatively find that this provision would ensure that standard cable installations are completed promptly.

The second standard we propose prohibits operators from canceling service appointments after 5:00 P.M. on the business day prior to the appointment. We tentatively find that it is reasonable for consumers to rely on their operator's commitment to a scheduled service call, and that it is also reasonable for an operator who must cancel to do so promptly.

Our final proposed standard governs installation appointments which are canceled through no fault of the subscriber. The cable operator must reschedule such an appointment to take place no later than three business days after the canceled appointment. In other words, *the actual visit by the cable operator* must take place no later than three business days after the date of the canceled appointment. While FCC rules establish a five day window for rescheduled appointments, we tentatively find that cancellations should be rare. When they do occur, it should be an operator's priority to make the service call as soon thereafter as possible. Accordingly, we propose the more stringent three business day window if an original appointment cannot be met through no fault of the consumer.

Finally, if the canceled appointment is an installation, the cable operator may not assess all or any part of the normal installation charge. We understand that many operators have already voluntarily adopted this policy. The provision would give operators a regulatory incentive to complete installations as initially scheduled.

D. <u>11:05: Enforcement of Standards</u>

We propose to include both compliance standards and penalty provisions in this section.

In 207 CMR 11.05(1), we propose quarterly measurement of the customer service and service call performance standards found in subsections 11.03 and 11.04. We note that both the FCC[14] and the National Cable Television Association[15] have adopted guidelines which call for quarterly measurement of comparable customer service performance standards. Neither set of guidelines includes information on how to conduct this measurement. However, we propose that operators track and maintain this information "systematically", as opposed to a more limited sampling requirement.

We lack sufficient information at this juncture to propose specific measurement standards. We therefore invite comment on two issues. First, should our rules include more specific guidance on how operators would measure their performance against all applicable standards? Second, what would those rules entail? Input should reflect our tentative conclusion that data we receive

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[13] *Id.* at § 76.5(mm).
[14] Id. at § 76.309(c)(1) and (2).
[15] See *Office and Telephone Availability* regulations and *Installations, Outages and Service Calls* regulations in NCTA Requirements for Receiving the Seal of Customer Service Excellence.

from operators should allow for meaningful comparisons among them, based on uniform reporting requirements.

We recognize that measuring telephone performance typically involves the use of hardware, such as PBX equipment. The Division has not previously surveyed regulated operators to determine whether they are already using such equipment. We therefore specifically seek comment on both the reasonableness of this measurement proposal and the estimated costs associated with compliance. We further invite comment on whether smaller cable operators should be exempt from this provision. Our current rules would allow operators to seek waivers of these compliance standards upon a showing that such waivers were in the public interest.[16] In this case, we would anticipate that the public interest standard would be met where the cost to the operator -- which may be passed on to subscribers -- would exceed or outweigh the benefits to those subscribers.

Proposed subsection 11.05(2) tentatively sets a range of fines for violating provisions of Chapter 11:00. Our authority to issue fines in an amount of up to $1,000 per violation is found in our enabling statute.[17] We tentatively conclude that fines may be necessary to compel compliance by all operators. We have concluded that the Division has the latitude to choose the size of these fines, depending on the nature and severity of the violation(s) at issue. We invite specific comment on the reasonableness of our proposed penalty section.

III. CONCLUSION

The Division seeks input from all interested parties, including recommended alternatives to the proposals we have put forth herein. The Division will conduct a required public hearing on this Notice of Proposed Rulemaking on **Tuesday, March 3, 1998** at 10:00 A.M. in the Hearing Room of the Cable Television Division at 133 Portland Street, Third Floor, in Boston. Written comments may be filed with the Division no later than **Wednesday, March 18, 1998.**

By Order of the Cable Television Division*
of the Massachusetts Department of
Telecommunications & Energy

John D. Patrone

John D. Patrone
Commissioner and Cable Television Director

Date: February 2, 1998

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[16] 207 CMR 2.04.

[17] M.G.L. c. 166A, § 18. Section 18 states that "[a]ny person or the officer, agent, or employee of any organization who willfully violates any provision of this chapter or of any rule, regulation, or order adopted thereunder, or who willfully procures, aids, or abets any violation of such a provision shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars..."

* Formally, "Division of Community Antenna Television" under M.G.L. c. 166A, § 2.

207 CMR 11.00: CUSTOMER SERVICE STANDARDS

Section

11.01: Definitions

(1) Demarcation Point. For single unit installations, the term "demarcation point" means a point at or about 12 inches outside of where the cable wire enters the subscriber's premises. For multiple dwelling unit installations, the term "demarcation point" means a point at or about 12 inches outside of where the cable wire enters the subscriber's dwelling unit, but shall not include so-called loop through or other similar series cable wire.

(2) Normal Business Hours. The term "normal business hours" means those hours between 9:00 A.M. and 5:00 P.M. from Monday through Friday, excluding federal holidays.

(3) Normal Operating Conditions. The term "normal operating conditions" means those operating conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator 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 the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, peak or seasonal demand periods, and maintenance or upgrade of the cable system.

11.02: Marketing to Subscribers

(1) Following every telemarketing call made to a subscriber or a member of a subscriber's household, the cable operator shall, upon request, send to the subscriber's billing address within 24 hours written information outlining all of the terms of the offer, including specific information on the services provided and all charges incurred, all limited discount periods, and all charges which take effect after such discount periods expire.

(2) During every personal solicitation of a subscriber or a member of a subscriber's household, the operator shall provide the written information described in 207 CMR 11.02(1).

(3) Where a cable operator makes a sales or marketing contact with a subscriber in anticipation of the rebuild of the cable system in that subscriber's community, the operator shall do the following:

(a) If the rebuild will require that the subscriber obtain additional or different programming services or new equipment, the operator shall clearly describe all of these requirements, including any resulting increase in monthly charges, both orally and in any written materials provided to the subscriber.

(b) If the rebuild will not require that the subscriber obtain additional or different programming services or new equipment, the operator shall clearly identify them as such, including any resulting increase in monthly charges if the subscriber elects to obtain such services or equipment. The operator shall provide such information both orally and in any written materials provided to the subscriber. Any written materials must clearly and conspicuously state that no additional or different services or new equipment will be required as the result of the rebuild.

11:03: Consumer Calls to the Cable Operator

(1) The cable operator shall maintain a local, toll-free or collect call telephone access line which will be available to consumers 24 hours a day, seven days a week.

(2) Trained company representatives shall be available to respond to all telephone inquiries 24 hours a day, seven days a week.

(3) Under normal operating conditions, a telephone call to the cable operator shall be answered not more than 30 seconds after the connection is made. This standard shall be met no less than 90 percent of the time under normal operating conditions.

(4) If an operator uses an automated system to direct incoming calls by category or issue, such a system shall provide an option which allows all callers, at their option, to speak with a trained company representative. Under normal operating conditions, callers using an automated system shall be connected with a trained company representative not more than 30 seconds after the caller selects the option to do so.

(5) Under normal operating conditions, consumers shall receive a busy signal on calls made to the operator no more than three percent of the time.

11.04: Standards for Installations and Service Calls

(1) The cable operator shall perform service calls during normal business hours, as defined in 207 CMR 11.01(1). Additionally, the cable operator shall perform service calls at least four evening or weekend hours per week.

Under normal operating conditions, the cable operator shall be required to meet each of the following three standards no less than 95% of the time.

(a) Cable television service installations up to 125 feet from the operator's existing distribution system shall be performed within five business days after an order has been placed.

(b) An operator may not cancel an appointment with a customer after 5:00 P.M. on the business day prior to the scheduled appointment.

(c) Appointments canceled through no fault of the customer shall be rescheduled within three business days. If an installation appointment is canceled through no fault of the customer, the cable operator shall not charge the customer for standard installation costs.

11.05: Enforcement of Standards

(1) Measurement of Compliance. The cable operator shall systematically measure all consumer calls and installations against the standards established in 207 CMR 11.03(2) (3) and (4) and 207 CMR 11.04(2), on a quarterly basis.

(a) The operator shall maintain complete records of these measurements, which shall include quarterly summaries. The records shall be provided upon request from the Division.

(b) Additionally, the operator shall annually file a complete summary of its measurement records in accordance with its consumer complaint form filing under M.G.L. c. 166A, § 10.

(c) If the operator fails to meet any of the standards referenced in subsection 11.05(1) as a result of conditions which were not within its control as defined in 207 CMR 11.01(3), it shall provide a written description of these conditions, including justification for why they were not within its control.

(2) Penalties. Any cable operator which violates any of the provisions of 207 CMR 11.01 through 11.05 shall be subject to a fine of not less than $100 nor more than $1,000 per violation.

REGULATORY AUTHORITY

207 CMR 11.00: 47 U.S.C. § 552, M.G.L. c. 166A, §§ 2A, 10, 16, 17 and 18.

Consent Communication #9 1308

Communication was received from
State Rep. Alice Wolf transmitting a
notification of a public hearing for the
Cable Television Division of the
Mass Office of Consumer Affairs on proposed
regulations adopting customer service
standards for cable television.

In City Council March 2, 1998

PLACED ON FILE