

NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS

NOTICE OF ADOPTION OF RULE

Pursuant to the authority vested in the Commissioner of the Department of Information Technology and Telecommunications by section 1043 of the Charter, the Department of Information Technology and Telecommunications has adopted this amendment of Title 67 of the Rules of the City of New York regarding deletion of obsolete rules.

This rule was first published on May 24, 2013 and a public hearing was held on June 28, 2013.

These rules will take effect 30 days after publication.

STATEMENT OF BASIS AND PURPOSE OF FINAL RULES

These rules update the rules of the Department of Information Technology and Telecommunications (DoITT) to reflect current law and practices. No substantive changes are intended. Specifically:

- Chapter 3 is repealed. Chapter 3 provided a schedule of fees for the use of the production and editing facilities and services provided by the cable television network of the City of New York. That network, which was formerly known as Crosswalks and is now known as NYC-TV, is administered by the Mayor's Office of Media and Entertainment (MOME). MOME no longer provides production and editing facilities and services. Therefore, chapter 3 is repealed.

- References to the Department of Telecommunications and Energy are updated. Outdated references in Chapter 4 to the Department of Telecommunications and Energy are replaced with references to the Department of Information Technology and Telecommunications.

- Chapter 5 is repealed. Chapter 5 governed DoITT’s regulation of subscription rates charged by the City’s cable television franchisees. Federal law granted DoITT the authority to regulate rates while cable television services were not subject to effective competition as defined in federal law. However, following the introduction of Verizon’s FiOS cable television service, the Federal Communications Commission issued a series of determinations in 2008 and 2009 concluding that the cable television market in New York City had become subject to effective competition. Those FCC determinations terminated DoITT’s authority to regulate cable television subscription rates. Therefore, chapter 5 is repealed.

- Outdated transitional provisions in Chapter 6 are deleted. Certain transitional provisions in Chapter 6 that were created to facilitate the transition of unpermitted public pay telephones to permitted status are now outdated. For example, in 2010, the submission window for interim pay telephone applications closed, and rules providing for such applications are no longer needed.

- Outdated legal references are updated. Section 2-02(f) of Title 34 of the Rules of the City of New York has changed to Section 2-09(f)(xvi), and appendix A to 28 CFR Parts 35 and 36 has changed. Therefore, references to those provisions in sections 6-41(l) and 6-44 of these rules are updated.

Section 1. Chapter 3 of title 67 of the Rules of the City of New York is repealed.

Section 2. The definitions of “Commissioner” and “Department” in section 4-01 of chapter 4 of title 67 of the Rules of the City of New York are amended to read as follows:

Commissioner. "Commissioner" shall mean the Commissioner of the Department of Information Technology and Telecommunications [and Energy].

Department. "Department" shall mean the Department of Information Technology and Telecommunications [and Energy] of the City of New York.

Section 3. Subdivisions (e) and (f) of section 4-04 of chapter 4 of title 67 of the Rules of the City of New York is amended to read as follows:

§4-04 Notice.

(e) The cable television company shall submit to [DTE] the Department quarterly reports with respect to any resale arrangement for use of electricity to operate equipment situated on premises not owned, operated or leased by the cable television company in a form and containing such information as the Commissioner may reasonably specify. Upon request of the Commissioner, the cable television company shall promptly submit to the Commissioner additional information in an appropriate format to verify and supplement the information contained in the report required by this subdivision. The Commissioner may waive the submission of such records as the Commissioner deems appropriate.

(f) The cable television company shall submit to [DTE] the Department summary quarterly reports containing information on each notice sent out pursuant to the requirements of subparagraphs a, b, and c of this section in a form and containing such information as the Commissioner may reasonably specify. Upon request of the Commissioner, the cable television company shall promptly submit to the Commissioner additional information in an appropriate format to verify and supplement the information contained in the report required by this subdivision. The Commissioner may waive the submission of such records as the Commissioner deems appropriate.

Section 4. Chapter 5 of title 67 of the Rules of the City of New York, governing the regulation of subscription rates charged by cable television franchisees, is repealed.

Section 5. The definition of “Interim Occupancy Fee” in section 6-01 of subchapter A of chapter 6 of title 67 of the Rules of the City of New York is deleted.

Section 6. Paragraph (1) of subdivision (b) of section 6-02 of subchapter A of chapter 6 of title 67 of the Rules of the City of New York is amended to read as follows:

(b) Notwithstanding any other provision of this section:

(1) an owner who fails on two occasions within any three month period to provide phone service from a public pay telephone for any period of time exceeding twenty-four continuous hours or who fails to provide coinless twenty-four hour 911 service from such public pay telephone in compliance with the provisions of subdivision (a) or subdivision (b) of §6-05 of this chapter, as the case may be, shall be in violation of such subdivision(s) and shall be liable for a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each violation which may be recovered in a civil action or in a proceeding before the Environmental Control Board. In the case of a violation exceeding twenty-four hours, each day's continuance shall be a separate and distinct occasion in which an offense has occurred. An owner of a public pay telephone shall not be considered to have failed to provide the service required in this subdivision where such owner has posted and maintained a written notification on the public pay telephone within seventy-two hours of the occurrence and provided written notification to the Department, within twenty-four hours, of the occurrence of an event or a condition beyond his or her control, such as a power failure or an inability of the telephone company to provide access to the switched telephone network, that has rendered such telephone unable to provide such service. However, in the event that service is not restored to the public pay telephone within ninety (90) days of the date the loss of service began, the owner of the public pay telephone shall again be considered to have failed to provide the service required in this subchapter unless the owner temporarily removes the public pay telephone installation and informs the Department of such temporary removal, which may not exceed six (6) months. If the temporary removal exceeds 6 months, the permit or other authorization for the public pay telephone shall be revoked and the public pay telephone must be removed. Notwithstanding the above, if the temporary removal exceeds six (6) months and either: (i) the public pay telephone site is inaccessible to the public; or, (ii) there is litigation pending concerning the failure of the provider to provide service to the subject public pay telephone, the six (6) month period may be extended in three (3) month intervals, subject to approval by [DoITT] the Department, for each three (3) month extension.

Section 7. Appendices A and B of subchapter B of chapter 6 of title 67 of the Rules of the City of New York, relating to the outdated public pay telephone interim registry and an outdated certification related to the interim registry, are repealed.

Section 8. Section 6-23 of subchapter B of chapter 6 of title 67 of the Rules of the City of New York, relating to the discontinuance of interim eligible public pay telephones identified in registry, is repealed.

Section 9. Subdivisions (b) and (c) of section 6-24 of subchapter B of chapter 6 of title 67 of the Rules of the City of New York are amended to read as follows:

(b) *Form and contents.* (1) A registry shall be in the form prescribed by the Commissioner [in Appendix A to this subchapter].

(2) A registry shall state:

- (i) the name and address of the owner;
- (ii) the geographic location of each public telephone identified on the registry and the type of mounting for each such telephone; and
- (iii) the date of installation and activation of each public pay telephone identified on the registry, accompanied by documentation of the activation.

(c) *Certification.* A registry shall be accompanied by a notarized certification that the information on the registry is accurate and that each public telephone identified thereon provides (i) continuous twenty-four hour service, (ii) continuous twenty-four hour coinless 911 access and (iii) continuous New York State Public Service Commission approved operator services. Such certification shall be in the form prescribed by the Commissioner [in Appendix B to this subchapter]. In addition to any penalty provided pursuant to §6-02 of this chapter an owner who submits a certification pursuant to this subdivision knowing that such certification contains a false statement or false information shall be subject to prosecution under article one hundred seventy-five of the penal code and the telephones with respect to such certification shall be removed pursuant to §6-26 of this chapter.

Section 10. Subdivision (d) of section 6-24 of subchapter B of chapter 6 of title 67 of the Rules of the City of New York, relating to fees for interim eligible public pay telephones, is repealed.

Section 11. Subdivision (d) of section 6-31 of subchapter C of chapter 6 of title 67 of the Rules of the City of New York is amended to read as follows:

(d) A permit issued pursuant to this chapter may be transferred to an owner other than the owner to whom the permit was issued, provided that such transfer has the written approval of the Commissioner and provided further that the transferee is the holder of a public pay telephone franchise granted by the City, and on the condition that, as of the date of the proposed transfer, neither party is in arrears or in default of: franchise fees [(as defined in §8 of the franchise agreement); interim registry fees]; fines owed for notices of violation (assessed by the Environmental Control Board after either the entry of a guilty plea or the issuance of a decision in favor of the City after a hearing); or, any fees payable to the City associated with the installation, operation or maintenance of any public pay telephone installations owned or operated by either party. However, the Commissioner may waive in writing any portion of this subsection if the Commissioner determines that there is a public safety need for the public pay telephone.

Section 12. Subdivisions (a) and (b) of section 6-32 of subchapter C of chapter 6 of title 67 of the Rules of the City of New York are amended to read as follows:

(a) An application for a permit to install, operate and maintain a public pay telephone shall be in a form prescribed by the Commissioner and shall be accompanied by the permit fee of three hundred ninety-five dollars (\$395) [, subject to any applicable reduction pursuant to paragraph (d)(4) of §6-24 of this chapter].

(b) [Applications] An application for a permit [pending as of March 15, 2000 shall be denied unless the fee required pursuant to this §6-32 was received by the Department on or before June 30, 2000. Applications received after March 15, 2000] shall be denied if [such] the fee required by subdivision (a) of this section is not included with the application.

Section 13. Subdivision (a) of section 6-33 of subchapter C of chapter 6 of title 67 of the Rules of the City of New York is amended to read as follows:

(a) *Term of permit.* A permit for a public pay telephone shall continue in effect, unless earlier revoked or suspended by the Commissioner pursuant to §6-37 of this subchapter or §23-404 of

the Administrative Code, for the term of the franchise held by the owner of such telephone except:

- (1) [as provided in subdivision (a) of §6-38 of this chapter in regard to newly permitted telephones owned by the telephone company;
- (2)]as provided in subdivision (b) of this section;
- ~~(2)~~[(3)] as provided in subdivision (b) of §6-38 of this chapter in regard to a public pay telephone the owner of which has not been awarded a franchise;
- ~~(3)~~ [(4)] as provided in §6-46 of this chapter;
- ~~(4)~~ [(5)] as provided in subdivision (c) of §6-31 of this chapter in regard to an owner of public pay telephones that has persistently failed to maintain such telephones free of graffiti or has otherwise failed to repair such telephones or maintain such telephones in a safe and clean condition; or
- ~~(5)~~ [(6)] if the Commissioner determines after grant of the permit that the permitted public pay telephone was located or installed in violation of any applicable provision of subchapter D of this chapter.

Section 14. Paragraphs (2) and (3) of subdivision (b) of section 6-35 of subchapter C of chapter 6 of title 67 of the Rules of the City of New York, relating to expired permit application windows, are repealed, and paragraph (4) is renumbered paragraph (2).

Section 15. Section 6-38 of subchapter C of chapter 6 of title 67 of the Rules of the City of New York, relating to the issuance of interim permits, is repealed.

Section 16. Paragraph (1) of subdivision (b) of section 6-38.1 of subchapter C of chapter 6 of title 67 of the Rules of the City of New York is amended to read as follows:

(b) Telephones owned by companies other than the telephone company.

(1) No later than thirty (30) days following the award of a franchise to an owner other than the telephone company, such owner may apply for the issuance of permits for those public pay telephones identified in a registry submitted pursuant to subchapter B of this chapter (i) for which the Commissioner made no objection or an objection was cured within the time required by the Commissioner, and (ii) which were not otherwise in violation of any provision of §6-41 of this chapter which is applicable to such public pay telephones under §6-40 of this chapter or of the wiring rules under §6-43 of this chapter [; provided all the annual interim occupancy fees have been paid for the public pay telephones in such registry]. Any such public pay telephone for which such owner does not apply for a permit shall be removed by the owner within sixty days following the award of the franchise, and if not so removed, shall be subject to removal pursuant to §23-408 of the Code and shall be deemed a violation for purposes of subdivisions (a) and (c) of such section.

Section 17. Subdivisions (b) and (c) of section 6-38.2 of subchapter C of chapter 6 of title 67 of the Rules of the City of New York, relating to consolidation options and timetables for moves to the curb of public pay telephones, are repealed.

Section 18. Appendices A and B of subchapter C of chapter 6 of title 67 of the Rules of the City of New York, relating to outdated applications to install and maintain a public pay telephone and an outdated consent form and certification, are repealed.

Section 19. Subdivision (c) of section 6-40 of subchapter D of chapter 6 of title 67 of the Rules of the City of New York is amended to read as follows:

(c) A public pay telephone that is not in compliance with the provisions of this subchapter shall be in violation thereof and the owner of such telephone shall be subject to the penalties set forth in §6-02 of this chapter (and the grant by the Commissioner of a permit for a public pay telephone, whether under [§6-38,] §6-38.1, §6-31 or otherwise, shall not be deemed to be a waiver of such required compliance or to immunize an owner from such penalties).

Section 20. Paragraph (4) of subdivision (j) of section 6-41 of subchapter D of chapter 6 of title 67 of the Rules of the City of New York is amended to read as follows:

(4) Nothing in this subdivision shall be construed to [(i)] require the removal of a public pay telephone that has been registered with the Department pursuant to §6-21 of this chapter; or has been issued a permit by the Department prior to the effective date of these rules; or was operational pursuant to a license issued pursuant to the provisions of former §19-128 or 19-131 of the Administrative Code of the City of New York; [or (ii) prohibit the installation of a public pay telephone where a notice to proceed has been issued by the Department prior to June 26, 1998.]

Section 21. Subdivision (l) of section 6-41 of subchapter D of chapter 6 of title 67 of the Rules of the City of New York is amended to read as follows:

(l) *Sidewalks of a distinctive design.* A public pay telephone shall not be installed on, or result in the destruction, damage or removal of any part of, a sidewalk of a distinctive design. For purposes of this subdivision, "sidewalk of a distinctive design" shall include a pavement of granite, slate, bluestone or brick and a sidewalk constructed and approved pursuant to § [2-02] 2-09(f)(xvi) of Title 34 of the Rules of the City of New York.

Section 22. Subdivision (g) of section 6-42 of subchapter D of chapter 6 of title 67 of the Rules of the City of New York is amended to read as follows:

(g) clearly and legibly identify the public pay telephone using the PPT identification number issued by [DoITT] the Department.

Section 23. Paragraph (1) of subdivision (a) of section 6-43 of subchapter D of chapter 6 of title 67 of the Rules of the City of New York is amended to read as follows:

§6-43 Installation and Maintenance.

(a) *Workmanship.* (1) Materials, workmanship and wiring shall comply with all applicable provisions of Title 27 of the [Administrative] Code and the National Electrical Safety Code.

Section 24. Section 6-44 of subchapter D of chapter 6 of title 67 of the Rules of the City of New York is amended to read as follows:

§6-44 Compliance with Americans with Disabilities Act.

A franchisee shall comply with the provisions of the Americans with Disabilities Act and the regulations promulgated thereunder, contained in [Appendix A to]28 CFR Parts 35 and 36, and any additional applicable Federal, State and local laws relating to accessibility for persons with disabilities and any rules or regulations promulgated thereunder, as such laws, rules or regulations may from time to time be amended.

Section 25. Section 6-46 of subchapter D of chapter 6 of title 67 of the Rules of the City of New York, relating to the outdated timing of when a permit is granted, is repealed.