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**PUBLIC UTILITIES
BOARD OF PUBLIC UTILITIES**

Proposed Amendments: N.J.A.C. 14:18-14.13

Proposed New Rules: N.J.A.C. 14:18-14.16, 14.17, 14.18, 14.19 and 14.20

Regulations of Cable Television

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with approval of the Board of Public Utilities: Lee A. Solomon, President; Jeanne M. Fox, Commissioner; Joseph L. Fiordaliso, Commissioner, Nicholas Asselta, Commissioner and Elizabeth Randall, Commissioner).

Authority: N.J.S.A. 48:5A-10, N.J.S.A. 48:5A-19(b)

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: CX091201020

Proposal Number: PRN 2010-225

A **public hearing** concerning the proposal will be held on October 28, 2010 at 11:00 A.M. at:

Board of Public Utilities
Conference Room – First Floor
44 S. Clinton Avenue
Trenton, New Jersey 08625

Comments may be submitted through November 19, 2010 by e-mail in Microsoft Word format, or in a format that can be easily converted to Word, to rule.comments@bpu.state.nj.us; or on paper to:

Celeste M. Fasone, Director
Office of Cable Television
ATTN: Docket No. CX09121020
Two Gateway Center
Suite 801
Newark, NJ 07102

The agency proposal follows:

Summary

On May 7, 2007, the Board of Public Utilities (Board) readopted N.J.A.C. 14:18 with amendments and new rules (see 39 N.J.R. 1766(a)). The new rules dealt with the new regulatory scheme for franchising, known as a "system-wide franchise." Specifically, adopted Subchapter 14 contains the procedures for applying for and obtaining a system-wide franchise. On August 4, 2006, L. 2006, c. 83 was signed into law and amended the State's "Cable

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Television Act," P.L. 1972, c. 186 (N.J.S.A. 48:5A-1 et seq.) to provide an alternate method of obtaining approval for providing cable television service in this State.

Pursuant to the amended Cable Television Act, on December 18, 2006, the Board awarded a system-wide franchise to Verizon New Jersey, Inc. for a period of seven years, with an expiration date of December 18, 2013. Pursuant to N.J.S.A. 48:5A-25.1, Cablevision of New Jersey, Inc. and Cablevision of Oakland, LLC converted their municipal-consent-based franchises in the Borough of Fair Lawn and the Township of Cedar Grove, respectively, on March 20, 2009, with an expiration date for the system-wide franchise in both systems of March 20, 2016; Cablevision of Monmouth, LLC and CSC TKR, LLC converted their municipal consent-based franchises in the Boroughs of Interlaken and Allentown, respectively on January 11, 2010, with an expiration date for both systems of January 11, 2017; and Cablevision of Newark and Cablevision of Hudson County, LLC converted the Township of South Orange Village and the City of Hoboken, respectively, on May 11, 2010, with an expiration date of May 11, 2017. Subsequently, Cablevision of Oakland, LLC converted an additional 18 municipalities; Cablevision of New Jersey converted an additional 11 municipalities; Cablevision of Monmouth, LLC converted two additional municipalities; and CSC TKR, LLC converted an additional 10 municipalities for a total of 47 municipalities converted into system-wide franchises.

On January 14, 2010, Board staff met with Verizon and Cablevision to discuss the proposed revisions to the rules. All cable television companies in the state were invited but only Cablevision and Verizon attended. With some minor exceptions, the two cable television companies were amenable to the proposed amendments and proposed new rules, but did propose certain modifications. On January 15, 2010, Board staff met with Rate Counsel to discuss the proposed revisions to the rules. Rate Counsel had no suggested changes.

On March 15, 2010 and March 16, 2010, Cablevision and Verizon, respectively, submitted suggested language revisions to the proposal. On March 22, 2010, Board staff met again with Verizon and Cablevision to discuss their language changes. Board staff met with Cablevision on April 19, 2010 to discuss an additional change to the language. The Board has made the recommended changes suggested by the companies or has successfully explained to them why it was necessary to retain the proposed amendments and proposed new rules.

N.J.S.A. 48:5A-25.1 provides that a cable television company that converts to a system-wide franchise is not required to comply with the system-wide franchise and municipal consent application requirements of N.J.S.A. 48:5A-28 except for the commitments contained in N.J.S.A. 48:5A-28(h) through (n). The provisions of N.J.S.A. 48:5A-28 that a cable television company converting to a system-wide franchise does not have to comply with, in part, provide that a franchisee shall carry sufficient liability insurance and maintain a performance bond. N.J.S.A. 48:5A-28(d) and (f). The Board is proposing amendments to require a cable television company that converts to a system-wide franchise to provide the following information: the corporate entity that will hold the system-wide franchise, N.J.A.C. 14:18-14.13(a)(3); the amount of the performance bond that entity will maintain for its system-wide franchise, at paragraph a(4); and the type(s) and amount(s) of insurance the cable television company will maintain for the system-wide franchise, at paragraph a(5). The purpose of these amendments is to provide notice to the municipalities of the types and amount of performance bonds and insurance that the cable television operator intends to maintain for the system-wide franchise. The proposed amendments also address the dichotomy in the statute that a converting system-wide franchise

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does not have to abide by the requirements contained in N.J.S.A. 48:5A-28(a) through (g), but a cable television company that renews its system-wide franchise, including a converted system-wide franchise, does. Cablevision is the only cable television company that has converted from a municipal consent-based franchise to a system-wide franchise and is in agreement with the proposed amendments, as modified pursuant to its request.

An amendment is proposed to N.J.A.C. 14:18-14.13, specifically paragraph (a)6, which will require a cable television company that converts to a system-wide franchise to indicate whether any provision within the municipal-consent-based franchise that was converted will have any affect on the cable television company's remaining municipal-consent-based franchises. For example, if a cable television company is required under its municipal-consent-based franchise to maintain a studio within a municipality it decides to convert to a system-wide franchise, it would no longer be obligated under the terminated municipal-consent-based franchise to do so. However, if there were any remaining municipal-consent-based franchises in which the studio was also a commitment, the closure could be construed as a violation of that remaining franchise. Therefore, the Board is proposing that a cable television company converting to a system-wide franchise provide information on its remaining municipal consent-based franchises, if any, as to the effects of the conversion.

An amendment is proposed to N.J.A.C. 14:18-14.13(a)2 to specify that the expiration date of a system-wide franchise does not alter if a cable television company adds municipalities to it. The purpose of proposed amendment is to make clear that the terms of N.J.A.C. 14:8-14.14, which specify that addition of municipalities to a system-wide franchise does not change the expiration date of the system-wide franchise, also apply to any cable television company who converts to system-wide franchise and is necessary because a cable television company can convert individual municipalities as it sees fit and the prospect of several hundred system-wide franchises and term lengths would be onerous on both the cable television company and the Board.

An additional amendment is proposed to N.J.A.C. 14:18-14.13, specifically paragraph (e)3, which will require the Board to include the performance bond amount and the insurance levels the system-wide franchise holder will make available in its order memorializing the conversion of the system-wide franchise. Cablevision has requested that the Board specify that these amounts are in keeping with N.J.S.A. 48:5A-28(d) and (f). The proposed new rule provides that the performance bond and liability insurance amounts should be in keeping with those statutory provisions.

The Board is also proposing new rules governing renewals of system-wide franchises. When the rules for application for and receipt of a system-wide franchise were adopted, the Board did not need to immediately adopt rules for renewal of a system-wide franchise. However, N.J.S.A. 48:5A-19(b) was amended by P.L. 2006, c. 83 to provide, in relevant part that, "[r]enewal of a system-wide franchise shall be valid for a period of seven years from the date of the renewal issuance, and the board shall establish rules governing the renewal of a system-wide franchise." The proposed new rules fulfill that mandate, which would first be implemented in December of 2010.

Franchise renewal in New Jersey is governed by the federal Communications Policy Act of 1934, as amended (Federal Act) (47 U.S.C. § 521 et seq.) and the Cable Television Act. N.J.S.A. 48:5A-10(g) provides that federal law is controlling and that all provisions, regulations

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and requirements in the Cable Television Act stand unless they are in conflict with federal law.

Pursuant to 47 U.S.C. § 546, renewal of a franchise begins 36 months prior to expiration of the franchise agreement. "Ascertainment" is the term of art utilized to explain the fact-finding process described in the Federal Act, which, pursuant to 47 U.S.C. § 546(d), the purpose of is to determine whether: 1) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law; 2) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services other services provided over the system, has been reasonable in light of community needs; 3) the operator has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the operator's proposal; and 4) the operator's proposal is reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.

Pursuant to the federal act, ascertainment is an optional process unless the cable television operator initiates it by issuing a request to commence the process. Either the franchising authority or the cable operator may begin the ascertainment phase of franchise renewal. The interested party must file notice with the other party no sooner than 36 months or later than 30 months before the franchise expires (47 U.S.C. § 546(a)(1)). If the cable television operator requests that the franchising authority start ascertainment proceedings, it must do so within six months of notification by the cable operator (47 U.S.C. § 546(c)(2)).

Federal law requires that the public be given "appropriate notice" and a chance to participate in the fact-finding process (47 U.S.C. § 546(a)). In addition, the public must be afforded a chance to participate and comment on the cable operator's performance (47 U.S.C. § 546(a)).

Proposed N.J.A.C. 14:18-14.16 through 19 will accomplish the federal process outlined above.

Proposed new rule N.J.A.C. 14:18-14.16 specifies how the initiation of the renewal process will take place. Either the OCTV or the system-wide franchise holder may initiate franchise renewal and the rule proposes to require that if the system-wide franchise holder initiates the renewal, the OCTV must begin ascertainment proceedings within six months of that notice. While pursuant to federal law, ascertainment proceedings are optional unless initiated by a cable television company, the OCTV is proposing to obligate itself to undertake ascertainment of system-wide franchises to ensure that the State's cable television customers served by a system-wide franchise are protected and provided an opportunity to be heard.

Proposed new rule N.J.A.C. 14:18-14.17 specifies how the OCTV must undertake the ascertainment process, what it must review during the ascertainment process and governs any proceedings undertaken during ascertainment. The proposed new rule provides for participation by the public, affected municipalities and the cable television company holding a system-wide franchise as well as any other interested party. The proposed new rule at subsection (c) also requires the OCTV to issue a report of its findings to the cable television company operating under the system-wide franchise and the Division of Rate Counsel no more than seven months prior to expiration of the system-wide franchise in question.

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Proposed new rule N.J.A.C. 14:18-14.18 specifies the procedures a cable television company must follow to apply for a renewal of its system-wide franchise as well as the procedures the OCTV and the Board must use to process the renewal application. The proposed rule requires, within 90 days of receipt of the report issued by the OCTV, a cable television company operating under a system-wide franchise to file an application on a form prescribed by the Director of the OCTV, with a copy to the Division of Rate Counsel, which form must be accompanied by a fee of \$1000. The proposed new rule also sets forth the requirements for the Board to hold hearings on the application for public comment for which the system-wide franchisee shall publish notice and pay to the Board \$500 per day of hearing, as well as the timeframe under which the Board must act on the application. The proposed new rule also provides that if a cable television company's system-wide franchise expires prior to Board action, the cable television company has the authority to continue to provide service to its customers pending final Board action. This is in keeping with Director of the Office of Cable Television's general regulatory powers under the statute.

Proposed new rule N.J.A.C. 14:18-14.19 governs the process for Board assessment of denial of a system-wide franchise renewal and directs that the matter be treated as a contested case pursuant to applicable rules.

Proposed new rule N.J.A.C. 14:18-14-21 memorializes a provision of the Cable Act (N.J.S.A. 48:5A-25.1(b)) to provide that a cable television company that is operating under a system-wide franchise may either seek municipal consent or renewal municipal consent from a municipality or convert its system-wide franchise into a municipal-consent-based franchise at any time.

A 60-day comment period is provided and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the notice of proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and N.J.A.C. 1:30-3.2 governing rulemaking calendars.

Social Impact

The proposed amendments at N.J.A.C. 14:18-14.13(c)3 through (c)5 will address concerns over how a cable television company that converts to a system-wide franchise will protect the municipalities while not overburdening the system-wide franchise holder with individual municipal requirements for liability insurance and performance bonds. Municipalities would still be permitted to manage their public rights-of-way on a reasonable and nondiscriminatory basis, in accordance with N.J.S.A. 48:5A-25.1(b).

The proposed new rules will determine whether the past performance by a cable television company operating under a system-wide franchise have been met and what future cable-related needs of the municipalities under the system-wide franchise are necessary in accordance with statutory provisions of N.J.S.A. 48:5A-28. While the Cable Television Act specifies what a cable television company operating under a system-wide franchise is required to provide under its franchise, it is important to provide an opportunity for municipalities and the general public to be heard and to determine if the municipalities covered by the system-wide franchise are fully utilizing the benefits provided by law.

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Economic Impact

It is anticipated that the proposed amendments will reduce costs to cable television companies that convert to system-wide franchises. The Cable Television Act requires that a cable television company operating under municipal-consent-based franchise or franchises maintain individual performance bonds and liability insurance for each municipality it serves. The Act only requires that a cable television company that is awarded a system-wide franchise by the Board maintain one general performance bond and liability insurance policy for its entire system. The Board has proposed the amendments to allow a cable television company that is converting its municipal-consent-based franchises to a system-wide franchise to specify the amount of performance bond it will hold. This requirement will eliminate the need to maintain separate bonds and insurance policies for each municipality, as required under municipal consent-based franchises.

Proposed new N.J.A.C. 14:18-14.16 through 20 will impose no additional costs or requirements on existing municipal-consent-based cable television operators or municipalities. There will be some attendant costs to applicants for renewal of system-wide franchises, specifically with regard to preparation and copying of the application form, filing fees, discovery responses and hearing fees; these are not expected to be unreasonable. However, the Board is required by statute to adopt rules for renewals of system-wide franchises and therefore, the costs are considered reasonable and necessary.

As with regulated public utilities, all reasonable levels of expenses incurred by cable television operators in complying with these requirements will be considered to be business expenses, recoverable through rates, rate proceedings and cost of service regulations. All fees and charges associated with practice and procedure before the Board and OCTV are set by statute pursuant to N.J.S.A. 48:2-56 and 48:5A-1 et seq., respectively.

Federal Standards Statement

The proposed new rules and proposed amendments are the subject of federal laws, rules, regulations and standards, specifically the federal franchising statute (47 U.S.C. §§ 541 and 546). However, upon review of the applicable Federal documents, the Board does not believe that any of the rules proposed herein conflict or exceed Federal standards.

Agriculture Industry Impact

The proposed new rules and proposed amendments will have no impact on the agricultural industry.

Jobs Impact

It is not anticipated that the proposed new rules and proposed amendments will result in the creation of new jobs or the loss of existing jobs. The proposed new rules and proposed amendments will not have an impact on any other sector of the economy of the State of New Jersey.

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Regulatory Flexibility Statement

There are no small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to which the proposed new rules and proposed amendments would apply. The businesses affected all have more than 100 full-time employees and/or are based out-of-State.

Smart Growth Impact

The proposed new rules and proposed amendments will not function to achieve the goal of smart growth and the implementation of the State Development and Redevelopment Plan. L. 2006, c. 83, N.J.S.A. 48:5A-28h(2), specifically provides that as of November 2, 2006, the Board's smart growth rules no longer apply to cable television companies.

Housing Affordability Impact

The proposed new rules and proposed amendments will have no impact on the cost of housing or number of housing units. The proposed new rules and proposed amendments concern conversion to and renewal of system-wide franchises for cable television operators.

Smart Growth Development Impact

The proposed new rules and proposed amendments will have no impact on the cost of housing, the number of housing units, or new construction within Planning Areas 1 and 2, or Development Centers, under the State Development and Redevelopment Plan. The proposed new rules and proposed amendments concern conversion to and renewal of system-wide franchises for cable television operators.

Full text of the proposed new rules and proposed amendments follow (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 14. [APPLICATION FOR]SYSTEM-WIDE FRANCHISE APPLICATION AND RENEWAL

14:18-14.13 Cable television operator system-wide franchise conversion

(a) - (b) (No change.)

(c) In its notice to the Board and each affected municipality, the cable television company shall:

1. Confirm that it will abide by the provisions of N.J.S.A. 48:5A-28h through n;
[and]
2. List each municipality that is to be initially converted to a system-wide franchise[.];

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3. List the corporate entity that will hold the system-wide franchise as well as the name to be used;

4. Indicate the amount of the performance bond, consistent with the provisions of N.J.S.A. 48:5A-28d, it will maintain for the system-wide franchise;

5. Indicate the type(s) and amount(s) of insurance, consistent with the provisions of N.J.S.A. 48:5A-28f, it will maintain for the system-wide franchise; and

6. Indicate whether any provision of the municipal-consent-based franchise that is subject of the conversion will affect the cable television operator's franchise obligations in any remaining municipal consent within the cable television operator's system.

(d) (No change.)

(e) The Board shall issue a system-wide franchise order memorializing the conversion of the Certificate(s) of Approval to a system-wide franchise, which shall specify:

1. (No change.)

2. That the franchise term is for seven years from the date of receipt of the cable television company's notice specifying its intent to convert to a system-wide franchise, **and shall not change if the cable television operator adds municipalities to its system-wide franchise after the date of receipt of such notice, in accordance with N.J.S.A. 48:5A-25.1a;** [and]

3. The amount of the performance bond and type(s) and amount(s) of insurance, not exceeding the amounts required for system-wide franchise applicants under N.J.S.A. 48:5A-28d and f, that the cable television company commits to maintain under its system-wide franchise; and

[3.]4. (No change in text.)

14:18-14.16 Initiation of system-wide franchise renewal process

(a) Renewal procedures shall commence three years prior to the expiration of the system-wide franchise.

(b) The Office shall notify the cable television operator that it will commence a fact finding process (ascertainment) between 36 and 30 months prior to the expiration of the system-wide franchise and shall begin the review process by the end of the 30th month prior to the expiration of the system-wide franchise.

(c) A cable television company holding a system-wide franchise may also initiate renewal proceedings by filing notice with the Office requiring it to commence renewal proceedings. Said notice must be provided no sooner than 36 months or later than 30

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months prior to the expiration of the system-wide franchise. If the cable television company provides notice requiring the Office to begin the review process, the Office shall begin the renewal process within six months of the notice provided by the cable television company. In no event shall the cable television company holding a system-wide franchise file notice for review before the 36th month prior to the expiration of the franchise unless agreed upon by the Board and the cable television company.

14:18-14.17 System-wide franchise renewal pre-proposal phase

(a) By 30 months prior to the expiration of the system-wide franchise, or within six months of filing of notice by the cable television company operating under a system-wide franchise, whichever is later, the Office shall begin to conduct ascertainment proceedings. Those proceedings shall: 1) review, consistent with N.J.S.A. 48:5A-1 et seq., the past performance of the cable television operator holding a system-wide franchise; and 2) assess the future cable-related needs and interests of the municipalities covered by the system-wide franchise, consistent with N.J.S.A. 48:5A-28. Such proceedings shall afford affected municipalities, the public and the cable television operator(s) notice and opportunity for participation.

1. Proceedings shall be performed by staff of the Office or any other officer as determined by the Board.

2. If the Office deems that a public hearing or hearings are necessary to assess the cable related needs and interests and to review, consistent with N.J.S.A. 48:5A-1 et seq., the cable television operator's past performance, the public hearing or hearings shall be held in the cable television operator's franchise territory. Such hearing or hearings shall be held upon at least 15 days' written notice to the public and the cable television operator. At any such hearing or hearings, all participants shall have the right to present relevant comments.

3. Any proceedings pursuant to this section shall include transcripts of any public hearings and opportunity for public comment, written or oral. Transcripts shall be made at the expense of the cable television company operating under a system-wide franchise.

(b) The Board shall assess the cable-related needs for the system-wide franchise and, in reviewing the cable television operator's performance in accordance with the commitments required of cable television companies operating under a system-wide franchise pursuant to N.J.S.A. 48:5A-1 et seq., consideration shall be limited, to the following:

1. Any statewide needs and requirements as may be established by the State Cable Act;

2. The extent to which the cable television company operating under a system-wide franchise has met its commitments pursuant to N.J.S.A. 48:5A-28 and the rules and regulations of the Office of Cable Television, in accordance with the State

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Cable Act; and

3. Performance and substantial compliance with material terms and conditions of the existing franchise based on notice and opportunity to cure under applicable Federal law as placed on the record.

(c) At least seven months prior to the expiration of the system-wide franchise, the Office of Cable Television shall issue a report to the Board with copies to the cable television operator and Division of Rate Counsel. The report shall be made available for public inspection.

14:18-14.18 Application for renewal of a system-wide franchise

(a) Within 90 days of receipt of the ascertainment report specified in N.J.A.C. 14:18-14.17(c), the cable television operator operating under a system-wide franchise shall file an application for renewal of its system-wide franchise in accordance with the specifications of N.J.A.C. 14:18-14.2.

(b) The application must be submitted in triplicate to the Director of the Office with a copy provided to the Division of Rate Counsel. Notice of the filing for renewal of the system-wide franchise shall be filed with each municipality for which the applicant has authorization to provide service, which notice shall include information as to how a municipality can receive a copy of or review the application filed with the Office.

(c) An application for renewal of a system-wide franchise shall be filed on the standard form supplied by the Office, and shall have attached a filing fee, made payable to "Treasurer, State of New Jersey," in the amount of \$1000.

(d) Upon receipt of the application for renewal of a system-wide franchise, the Board shall schedule public hearings on the application in accordance with N.J.A.C. 14:18-14.3.

1. Notice of the public hearings shall be provided by the system-wide franchise applicant in accordance with N.J.A.C. 14:18-14.4 which public hearings shall be scheduled no later than 45 days of the filing of the application for renewal of a system-wide franchise;

2. A record of any public hearing shall be made in accordance with N.J.A.C. 14:18-14.8; and

3. The applicant for renewal of a system-wide franchise shall pay to the Office of Cable Television a fee of \$500 per day of hearing or fraction thereof.

(e) The Board shall render a decision, either to renew the system-wide franchise or issue a preliminary assessment that the system-wide franchise shall not be renewed, no later than 120 days from the date of filing by the cable television company operating under a system-wide franchise, by order pursuant to the specifications of N.J.A.C. 14:18-

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14.11. A cable television company operating under a system-wide franchise that has applied for renewal of its system-wide franchise and whose franchise has expired prior to Board action on the system-wide franchise renewal application shall have the authority to continue to provide cable television service under its current system-wide franchise until such time as the Board makes a decision.

(f) Any amendments to the application for renewal of a system-wide franchise shall be provided to the Office of Cable Television, with a copy to the Division of Rate Counsel, in writing.

(g) Any additional information other than amendatory shall be provided in accordance with N.J.A.C. 14:18-14.7.

14:18-14.19 Denial of renewal of a system-wide franchise

If the Board Staff, after review of the performance of the cable television company operating under a system-wide franchise and needs assessment pursuant to N.J.A.C. 14:18-14.17, does not support renewal of the cable television operator's system-wide franchise, the matter shall be treated as a contested case and treated pursuant to the procedures in the Administrative Procedures Act, N.J.S.A. 52:14B-1 and 52:14F-1, the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, the Board of Public Utilities Rules of Special Applicability, N.J.A.C. 1:14 and the Board of Public Utilities' rules for Contested Case Hearings, N.J.A.C. 14:17-9.

14:18-14.20 Conversion of a system-wide franchise to a municipal-consent-based franchise

Nothing shall prevent a cable television company from converting its system-wide franchise to a municipal-consent-based franchise. If a cable television company determines that it wishes to convert its system-wide franchise to municipal-consent-based franchises, it shall follow the provisions for obtaining renewal municipal consent pursuant to N.J.A.C. 14:18-13.1 et seq., if it determines to convert upon renewal, or the provisions for obtaining initial municipal consent pursuant to N.J.A.C. 14:18-11.1 et seq. if it determines to seek municipal consent outside the renewal period.