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RULE ADOPTIONS

**PUBLIC UTILITIES
BOARD OF PUBLIC UTILITIES**

49 N.J.R. 1097(a)

Readoption with Amendments: N.J.A.C. 14:17

Adopted New Rule: N.J.A.C. 14:17-8.5

Rules of Practice and Procedure of the Office of Cable Television

Proposed: November 7, 2016, at 48 N.J.R. 2220(a).

Adopted: March 24, 2017, by Lawanda R. Gilbert, Director, Office of Cable Television (with approval of the New Jersey Board of Public Utilities, Richard S. Mroz, President; Joseph L Fiordaliso, Mary-Anna Holden, Dianne Solomon, and Upendra J. Chivukula, Commissioners).

Filed: March 24, 2017 as R.2017 d.075, **without change**.

Authority: N.J.S.A. 48:5A-10 and 48:5A-19.b.

BPU Docket Number: CX16080807.

Effective Dates: March 24, 2017, Readoption;

May 1, 2017, Amendments and New Rule.

Expiration Date: March 24, 2024.

The purpose of this rulemaking is the readoption with amendments and a new rule of the Office of Cable Television's (OCTV) procedural rules governing cable television companies.

The notice of rules proposed for readoption with amendments and new rule was published in the New Jersey Register on November 7, 2016, at 48 N.J.R. 2220(a), which included a public hearing held on December 15, 2016. Notice of the proposal was posted on or about November 7, 2016 in the Board of Public Utilities' (Board) lobby and was sent to the Statehouse Press. The notice of proposal was also posted on the Board's website and was e-mailed to the Division of Rate Counsel and interested parties and attorneys as listed with the OCTV under N.J.A.C. 1:30-5.2(a)3. Written comments were accepted through January 6, 2017. The notice of proposal has been discussed and was approved for adoption at the Board's March 24, 2017, public meeting.

Summary of Hearing Officer's Recommendation and Agency's Response:

The public hearing was held on December 15, 2016, at the Board's office in Trenton, New Jersey. No testimony was offered at the public hearing. Hearing Officer William Agee presided at the hearing. Hearing Officer Agee made no recommendations. A record of the public hearing is available for inspection in accordance with applicable law by contacting:

Board of Public Utilities
Office of the Secretary
Attn: Docket No. CX16080807
44 S. Clinton Avenue, 3rd Floor, Suite 314
PO Box 350
Trenton, New Jersey 08625-0350

Summary of Public Comments and Agency Responses:

The following entities submitted written comments: Division of Rate Counsel (Rate Counsel), New Jersey Cable Telecommunications Association (NJCTA) and Jean Public.

General Comments

COMMENT: After review of the proposed changes, Rate Counsel commends Board staff on the proposed modifications throughout the subchapter and section rules under Subchapters 1 (General Provisions); 2 (Fees and Charges); 4 (Pleadings); 6 (Petitions); 8 (New Proposed Rule on Approval of Settlements); and 11 (Compliance with Orders, Decisions and Recommendations), as they achieve parity with other Board regulations and clarify the tenets of the Board's current regulations to ensure fuller understanding of filing requirements and compliance by petitioners and other parties that appear before the Board.

In view of the foregoing, Rate Counsel does not object to the proposed amendments and is in agreement with the new proposed rule, N.J.A.C. 14:17-8.5, defining settlements and their approval. (Rate Counsel)

RESPONSE: The Board thanks Rate Counsel for its comments.

COMMENT: The State of New Jersey needs more competition in the TV industry in New Jersey. The fact is consumers in New Jersey are unfairly limited to one or two companies for services and so the rates that these favored companies charge are through the roof. TV and internet can be sold to subscribers for huge profits at much less than is being charged by these rip off companies such as Comcast, Century Link, and Verizon, these days. The BPU is not working for the consumers at all. It seems to be working for the profiteers' profitability, which is sky high. Comcast is charging so much they have billions left to buy other companies. These companies are not serving for the good of America and BPU is allowing monopoly to go on, hurting Americans. (Jean Public)

RESPONSE: While not a subject of this rulemaking, the Board notes that cable television franchises in New Jersey are non-exclusive. Another cable television company could apply for municipal consent to construct a cable television

system in any municipality or could seek a system-wide cable television franchise from the Board at any time. The provisions governing franchising are found in N.J.S.A. 48:5A-1 et seq., and N.J.A.C. 14:18.

Further, and again, not a subject of this rulemaking, regarding rates charged by cable television companies, in June of 2015, the Federal Communications Commission (FCC) adopted a standard that assumes that all cable television companies are subject to effective competition. In the absence of proof by a local franchising authority (LFA) that a cable television company is not subject to effective competition, a cable television company's rates are not regulated.

N.J.A.C. 14:17-4.2

COMMENT: As the Board notes in its notice of proposed readoption, a rulemaking proceeding related to N.J.A.C. 14:1 to accommodate the Board's implementation of an electronic filing system is anticipated and the Board has waived the requirements of N.J.A.C. 14:17-4.2(a) by way of a July 29, 2016, Order allowing electronic filing and requiring only three paper copies. NJCTA respectfully seeks clarification of whether the waiver will continue to be in effect until the upcoming rulemaking in N.J.A.C. 14:1 is completed. Further, NJCTA asks for clarification as to whether this proposed subsection will be subject to change as a result of that proceeding. Additionally, NJCTA requests that the term "proceeding" be eliminated, as it claims it is unclear and unnecessary in that the language that governs filing of paper copies and that governing electronic submissions should be identical in order to avoid confusion among filing parties. (NJCTA)

RESPONSE: While not a subject of this rulemaking, the Board's July 29, 2016, Order will continue to be in effect until such time as the Board takes action otherwise. Also, while not a subject of this rulemaking, any changes proposed to N.J.A.C. 14:1-4.2 will be subject to public comment in accordance with the Administrative Procedures Act (APA) [page=1098] and interested parties will be permitted to comment. Since the rule adopted in this rulemaking provides that cable television companies will be subject to N.J.A.C. 14:1-4.2, cable television companies would be subject to any amendments adopted in accordance with the APA. The Board declines to remove the word "proceeding" as this language mirrors N.J.A.C. 14:1-4.2. Therefore, no additional changes have been made to this rule.

N.J.A.C. 14:17-11.4

COMMENT: NJCTA seeks clarification as to what form the Board's "notice" may take, specifically, whether "notice" must be in writing and whether it would include electronic mail and/or verbal communications. NJCTA recommends that any such notice be in writing. NJCTA also requests that a Board's notice of violation, which elsewhere in the regulations is entitled to up to a 60-day response time (N.J.A.C. 14:18-16.8(a)), be more specifically excluded from this section. Finally, it is suggested that the term "report" in the first sentence of this section be changed to "response," because an official report addressing the substance of the matter may not be ready within 15 days, although a response might be submitted indicating when an investigation may be concluded and a more full reply provided. (NJCTA)

RESPONSE: This section, which states "unless otherwise specified," is clear in that it would only apply where there is no specific timeframe given otherwise. The Board declines to change the term "report" to "response" as that would change the intent of this section. A response stating when a report would be ready would not comply with the requirements of this section. If a cable television company were unable to provide a report within 15 days, it would be required to notify the Board of its inability to comply, as provided in this section. This section closely mirrors the provisions of N.J.A.C. 14:1-10.4, which also uses the term "notice," and shall mean such notice as the Board determines it to be. The Board declines to further amend this section.

Federal Standards Statement

While many of the rules adopted herein with amendments and a new rule are subject of Federal laws, rules, regulations, and standards, including rate regulations and associated procedures (47 CFR 76.900), the Board does not

believe that any of the rules adopted with amendments and a new rule conflict with or exceed Federal standards. Instead, the adopted rules either directly codify existing Federal requirements or are explicitly within the scope of regulation that the Federal government reserved for the local franchising authority, which in this case is the Board.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 14:17.

Full text of the adopted amendments and new rule follows:

SUBCHAPTER 1. GENERAL PROVISIONS

14:17-1.4 Offices

The statutory offices of the Board, the office of the Secretary of the Board, and the Office of Cable Television are located at 44 South Clinton Avenue, 3rd Floor, Suite 314, PO Box 350, Trenton, New Jersey 08625-0350.

14:17-1.6 Communications

(a) All pleadings, correspondence, and other papers should be addressed to the Secretary, Board of Public Utilities, 44 South Clinton Avenue, 3rd Floor, Suite 314, PO Box 350, Trenton, New Jersey 08625-0350.

(b) All such papers and correspondence shall be deemed to be officially received when filed in accordance with N.J.A.C. 14:1-1.6.

(c) Additional copies of such pleadings and correspondence for the Director and staff may be sent to the Director, Office of Cable Television, 44 South Clinton Avenue, 3rd Floor, Suite 314, PO Box 350, Trenton, New Jersey 08625-0350.

(d) As (a) and (b) above require that all correspondence be addressed to the Board and that said submission shall be deemed to be officially received when filed in accordance with N.J.A.C. 14:1-1.6.

14:17-1.7 Official records

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

SUBCHAPTER 2. FEES AND CHARGES

14:17-2.1 Amount of fees and charges

(a) The fee required to defray administrative expenses of hearings held pursuant to N.J.S.A. 48:5A-16, 17, and 18, where applicable, shall be \$ 500.00 per day of hearing or portion thereof, to be paid by the petitioner or other moving party.

(b) (No change.)

14:17-2.2 Payment of fees and charges

(a) (No change.)

(b) All checks for payment of such fees and charges shall be made payable to the order of "Treasurer, State of New Jersey" and delivered or mailed to the Secretary of the Board or its designee, 44 South Clinton Avenue, 3rd Floor, Suite

314, PO Box 350, Trenton, New Jersey 08625-0350. The check shall include a description as to the nature of the payment.

SUBCHAPTER 4. PLEADINGS

14:17-4.2 Number of copies

(a) Unless otherwise required or permitted by N.J.A.C. 14:1-4.2, there shall be filed with the Board for its own use, an original and 10 conformed copies of each pleading or other paper and amendment thereof, and in addition, an electronic version of each filing, proceeding, or other paper and amendment thereof.

(b) (No change.)

SUBCHAPTER 6. PETITIONS

14:17-6.5 Handling informal complaint to the Office as complaint officer in lieu of petition

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

(c) While no form of informal complaint is prescribed, to be considered by the complaint officer such complaint must be signed, unless electronically submitted, and must state the name and address of the complainant and the party complained of, as well as the essential facts upon which the complaint is based, including the dates of acts or omissions complained of, and the desired outcome.

(d)-(i) (No change.)

14:17-6.9 Petitions for renewal of certificate of approval

(a) Petitions for renewal of a certificate of approval shall conform to the provisions of N.J.A.C. 14:17-4 and 6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. A copy of the original municipal consent or evidence of the original municipal consent and a copy of the renewal municipal consent;

2.-6. (No change.)

(b) (No change.)

14:17-6.10 Petitions for the approval of the sale or lease of property

(a) Petitions for the approval of the sale, conveyance, or lease of real or personal property, or the granting of an easement, or like interest therein as required by law shall conform to the provisions of N.J.S.A. 48:5A-1 et seq., and N.J.A.C. 14:17-4 and 6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. A separate sheet or sheets designated Schedule "A" containing a description of the property. Copies filed must be in accordance with the requirements set forth in N.J.A.C. 14:1-1.6, regarding the filing of petitions.

i. For real property, show the location by municipality and county, a metes and bounds or other adequate description of

the property and rights of any, reserved by the cable television company.

ii. For personal property, include sufficient information to identify the property adequately;

2. The name of transferee or lessee, the consideration or rental and method of payment thereof, and rights reserved by the transferor or lessor;

3. A copy of the written agreement, if any. If there is no written agreement, it shall be so stated;

[page=1099] 4. (No change.)

5. The purpose for which property was originally acquired, the date of acquisition, the use made of the property, the date when and circumstances under which it ceased to be useful for cable television purposes, the present use, the possible prospective use, if any, and the identity of the official or officials who determined that the property is not now nor prospectively required or useful for cable television purposes;

6. The basis of the price or rental: Assessed valuation, appraisal, comparable sales, or other basis; whether it is the best price or rental obtainable; an appraisal, if any, shall be attached as an exhibit;

7. (No change.)

8. The steps taken to put this property on the market and accomplish its sale or lease. If it was advertised, how it was advertised. If bids were solicited, the names of bidders and the consideration or rental offered shall be included;

9.-14. (No change.)

15. When the property to be sold or leased has a net book cost or fair market value of more than \$ 500,000, the petitioner must attach to the petition copies of the advertisement required by (b) below, and proof of publication.

(b) Where the Board's approval of sale or lease is required by law and the property has a net book cost or fair market value of more than \$ 500,000 the property shall be advertised for sale or lease at least twice, one week apart, in a daily newspaper published or circulated in the county in which the property is located, within 90 days immediately prior to the filing of the petition for the approval of the sale or lease, except that advertising shall not be required for sale or lease of property for cable television purposes to another cable television company or other person or company subject to any jurisdiction of this Office or Board, and the advertisement shall contain the following:

1.-4. (No change.)

5. A statement of the place and final date of submitting sealed bids, which shall not be less than 10 days after publication of the second advertisement together with a statement of the time and place of the opening of said bids, which shall not be more than five days following the final date submitting bids, at a place in New Jersey; and

6. A sealed bid, in accordance with the requirements of (b)5 above, must be submitted by a prospective purchaser or lessee. However, an offer or agreement to purchase or lease in writing received by the cable television company or executed before the first date of advertising, and still in effect at such date, shall be considered as if it were a sealed bid, provided such offer or agreement in writing meets all other conditions of sale or lease, if any, included within the advertising.

(c) (No change.)

(d) In addition to any other transactions that, on their merits, may be deemed to be in the ordinary course of business, the sale, lease, encumbrance, or other disposition by any cable television company of such of its property or an interest therein as is hereinafter set forth, may be consummated without petition to the Office for approval, provided the cable television company shall have given written notice thereof to the Office, to be received not less than 30 days prior to the effective date of the proposed sale, lease, encumbrance, or other disposition of such property:

1. (No change.)

2. Except as provided in this section, the lease or permission to use or occupy real property or any interest therein having a net book cost not in excess of \$ 500,000 and a net rental not in excess of \$ 25,000 per annum;

3. (No change.)

(e) On expiration of the notice period and on payment of the required fee, the Secretary will certify on a true copy of the notice to be furnished to the Board, that such sale, lease, or release is deemed by the Board to be in the ordinary course of business and within the statutory proviso. Such notice shall contain, to the extent applicable, the following:

1. The name of transferee or lessee, the consideration or rental and method of payment thereof, and rights, if any, reserved by the transferor or lessor;

2.-9. (No change.)

(f) (No change.)

14:17-6.13 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness, or to execute mortgages

(a) Petitions for authority to issue any stocks, bonds, notes, or other evidence of indebtedness, payable in more than one year from the date thereof, and to execute mortgages shall conform to the provisions of N.J.S.A. 48:5A-1 et seq., and N.J.A.C. 14:17-4, and 6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, provide the following information:

1.-6. (No change.)

7. Where one of the purposes is for the issuance of common capital stock in connection with the organization of a new corporation to operate as a cable television company, the petition must contain the following:

i. A copy of the certificate of incorporation;

ii. The names and addresses of the elected or proposed officers, directors, and stockholders of the company and the number of shares of capital stock to be held by each;

iii. (No change.)

iv. A corporate resolution or proposed resolution of directors of the cable television company authorizing the issuance of the stock;

v. A copy of a pro forma balance sheet of the new corporation and a copy of a pro forma income statement of estimated operating results anticipated for the first two years of its proposed operations, unless a different period is specified by the Office;

vi.-viii. (No change.)

ix. A copy of a pro forma income statement giving effect to the issuance of the proposed securities;

x. (No change.)

8.-14. (No change.)

14:17-6.16 Filings for unregulated charges or which do not propose changes in regulated charges to customers

(a) Filings for the purpose of making effective initial schedules of all prices, rates, terms, and conditions, or revisions, changes, or alterations of existing schedules of all prices, rates, terms, and conditions and where a rate application form as promulgated by the FCC pursuant to 47 CFR 76.900 et seq., is not being filed shall conform to the provisions of N.J.A.C. 14:17-4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. An electronic or paper copy of the proposed schedule of all prices, rates, terms, and conditions. Changes, revisions, or alterations thereof, together with an explanation of the manner in which the schedule of all prices, rates, terms, and conditions or change differs from the existing or a prior schedule of all prices, rates, terms, and conditions may be made by an electronic or paper filing of the individual sheet or sheets reflecting the revised changes to the current schedule of prices, rates, terms, and conditions;

2.-3. (No change.)

4. A statement as to the date on which it is proposed to make the schedule of all prices, rates, terms, and conditions or change effective, which date shall not be earlier than 30 days after the filing, unless otherwise permitted by the Office with the approval of the Board, except where simple notice is sufficient under N.J.A.C. 14:18-3.16.

(b)-(c) (No change.)

14:17-6.18 Petitions for approval of a merger or consolidation

(a) Petitions for approval of a merger or consolidation of one cable television company of New Jersey with that of another cable television company, shall conform to the provisions of N.J.S.A. 48:5A-1 et seq., and N.J.A.C. 14:17-4, 6.1 through 6.4, and 6.13, to the extent applicable, and shall contain in the petition, or as attached exhibits, the following information:

1. A copy of the agreement of merger or consolidation;

2.-5. (No change.)

6. The total number of shares of each of the various classes of capital stock proposed to be issued, if any, by the surviving corporation, the par or stated value per share, and the total amount of new capital stock to be issued;

7.-14. (No change.)

[page=1100] SUBCHAPTER 8. CONFERENCES AND SETTLEMENTS

14:17-8.5 Approval of settlements

A settlement includes any agreement between the parties that resolves disputed matters and may end all or part of the case. No settlement shall be deemed approved by the Board, unless acted on in accordance with N.J.S.A. 48:5A-1 et seq. This section shall not apply to withdrawn petitions or informal complaints.

SUBCHAPTER 11. COMPLIANCE WITH ORDERS, DECISIONS, AND RECOMMENDATIONS

14:17-11.2 Recommendations

Upon the making of any recommendation by the Board, the party to whom the same is directed must, within 15 days after the making of the recommendation, unless otherwise specifically required, notify the Board through the Office of the acceptance or rejection thereof. Failure to comply with this requirement will be deemed an acceptance of the recommendation.

14:17-11.4 Answers to communications

Unless otherwise specified, any letter or notice from the Board through the Office directing investigation of any matter under its jurisdiction must be complied with by the cable television company and a report received by the Office within 15 days from the date of the letter or notice. If circumstances prevent compliance with this section, the cable television company must advise the Board through the Office, in writing within the above prescribed period, of its inability to comply and the reasons therefor.