

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Regulations of Cable Television

Redoption with Amendments: N.J.A.C. 14:18

Adopted New Rules: N.J.A.C. 14:18-3.27 and 16.8

Adopted Repeal: N.J.A.C. 14:18-6.5

Proposed: April 21, 2014, at 46 N.J.R. 678(a).

Adopted: September 30, 2014, by Lawanda R. Gilbert, Acting Director, Office of Cable Television (with approval of the New Jersey Board of Public Utilities, Dianne Solomon, President, Joseph L. Fiordaliso, and Mary-Anna Holden, Commissioners).

Filed: September 30, 2014, as R.2014 d.158, **without change**.

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

BPU Docket Number: CX14020154.

Effective Dates: September 30, 2014, Redoption;
November 3, 2014, Amendments, New Rules, and Repeal.

Expiration Date: September 30, 2021.

The purpose of this rulemaking is the redoption with amendments, new rules, and a rule repeal, of the Office of Cable Television's (OCTV) substantive regulations governing cable television operation and franchising.

The notice of rules proposed for redoption with amendments, repeal, and new rules was published in the New Jersey Register on April 21, 2014, at 46 N.J.R. 678(a), which included a public hearing held on June 13, 2014. Notice of the proposal was posted on or about April 21, 2014, 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 emailed 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. Notice of the public hearing also appeared in newspapers around the State. Written comments were accepted through June 20, 2014. The notice of proposal has been discussed and was approved for adoption at the Board's September 30, 2014, public meeting.

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

The public hearing was held on June 13, 2014, at the Board of Public Utilities in Trenton, New Jersey. The following persons or entities offered testimony at the public hearing: New Jersey Division of Rate Counsel (Rate Counsel); New Jersey Cable Telecommunications Association (NJCTA); Verizon New Jersey, Inc. (Verizon); and New Jersey Business & Industry Association (NJBIA). President Dianne Solomon presided at the hearing. The comments and responses are included with the written comments below. 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. CX14020154
44 S. Clinton Avenue, 9th Floor
PO Box 350
Trenton, New Jersey 08625-0350

Summary of Public Comments and Agency Responses:

In addition to the comments received at the public hearing (as noted above), the following entities submitted written comments: Rate Counsel; Verizon; NJCTA; NJBIA; and Jersey Access Group (JAG).

General Comments

1. COMMENT: The proposed changes to the cable rules do not go far enough in following executive and legislative policy guidelines regarding the reduction of unnecessary burdens and responsibilities on cable companies, which restrict their ability to invest in new and innovative products and services that customers want, expect, and deserve. The

Legislature and Governor have expressly tasked the Board with eliminating antiquated rules, streamlining regulatory requirements, and introducing new regulatory requirements only where their benefits outweigh the burden on the regulated community. Subjecting relatively new entrants, like Verizon, to regulation only distorts competition and harms consumers. It distorts competition by forcing competitive cable television providers to respond to artificial regulatory requirements, rather than competitive forces. And it harms consumers by placing regulatory burdens on competitive companies that restrict investments in new and innovative products and services. (Verizon)

RESPONSE: Since Verizon began providing cable television service in New Jersey, it has continued to argue that competition dispels the need for regulation. The Board disagrees. Customer service standards continue to be important in a competitive environment because these standards allow customers to make informed decisions as to which cable television operator to choose. In addition, not all customers, even in competitive areas, have the choice of two or more multichannel video providers. While Verizon cites competition from DISH and DirecTV, many people cannot receive satellite service for a myriad of reasons. Additionally, Verizon is under no obligation to provide service to anyone outside the minimum required by statute, which is 70 municipalities, and even there, Verizon can seek not to provide service to certain properties for reasons outlined in N.J.S.A. 48:5A-25.2.

Furthermore, some cable television companies require customers to lock into service agreements of one to two years, for all services, in order to get the best price. This illustrates the need for customer service standards, so that a customer may make the best choice prior to signing up for a term length contract.

The Board has proposed its rulemaking with much consideration and believes the rulemaking to be a fair and reasonable compromise between the needs of the State's cable television customers and the requests of the cable television industry.

2. COMMENT: The NJCTA believes that the proposed amendments to N.J.A.C. 14:18 provided in this redoption represent much-needed improvements to the rules regulating the cable industry and begin to reflect the reality of cable companies operating in a competitive environment. While we continue to advocate for additional changes and believe that the regulatory environment needs to further recognize the competitive nature of the market, we thank the Board and its staff for the continued time, effort, and consideration that have gone into this process. (NJCTA)

RESPONSE: The Board thanks NJCTA for their comments.

3. COMMENT: NJCTA and its members would like to thank the Board and its staff for the time and effort put into this redoption and amendment process. We invite the Board to continue to consider the impact of the competitive environment upon the rules covering cable operators in the State, and continue to call upon the Board to reduce and modernize the regulations based upon the changes in the marketplace. This redoption with the changes proposed represents a strong first step in that process, and NJCTA thanks all of the participants for their efforts throughout the process. (NJCTA)

RESPONSE: The Board thanks NJCTA for their comments.

4. COMMENT: The proposed rules before the Board today are another step to help modernize and streamline requirements on business, while still promoting advanced technology deployment in New Jersey. The current regulatory regime governing cable operators was established decades ago at a time when cable companies served about 98 percent of the paid video market nationwide, and regulation was intended to serve as a proxy for competition. Since then, competition for video services has flourished in the State of New Jersey and throughout the country, so that now cable companies serve just 53 percent of the pay TV market in the US. Customers have an increasing number of choices that rapid advances in technology have helped spur.

This new marketplace has resulted in unique regulatory requirements for cable operators, while many of the new types of direct competitors are not subject to rates regulations. While today's rule proposal will not address that situation, it does take important steps to further reduce operational burdens.

NJBIA applauds the Board for taking steps to modernize its requirements to allow for electronic submission and streamlining

compliance. These modest and incremental changes will help cable operators focus on serving customers while making sure the State remains on the cutting edge with high quality products that meet their demands. (NJBIA)

RESPONSE: The Board thanks NJBIA for its comments.

5. COMMENT: JAG is troubled with the proposed language changes to Chapter 18, as well as the stated motivation for such changes. In the draft, the rationale for the proposed changes is stated as follows: "However, it is believed that this rulemaking will lessen costs to cable television companies by allowing them to file documents electronically and to provide notice to customers and municipalities less frequently and electronically. By reducing unnecessary administrative burdens and cutting red tape, these rules will reduce compliance costs, thereby mitigating upward pressure on rates and allowing cable television companies to focus their resources on other priorities that too benefit customers."

Notification and filing requirements are not unnecessary burdens – rather they are customer service protections and rights that customers including local franchising authorities should continue to maintain. There is no evidence to suggest that changing the rules pursuant to the proposed changes will mitigate pressure on rates. Unless the Board were to require a quid pro quo in return for eliminating certain regulations, in the form of guarantees from cable operators that the regulatory savings will result in rate benefits to consumers – and penalties for lack of compliance, the cost savings to the cable operators, if indeed there are any, could just as easily go to shareholder dividends or benefits to corporate management. The effect of the proposed rules will do little more than reduce customer service standards and consumer protections and increase corporate profits, to the benefit of the cable providers. (JAG)

RESPONSE: The electronic filing requirements are required to implement changes in the law passed by the Legislature pursuant to P.L. 2013, c. 97, and P.L. 2013, c. 232. Moreover, on January 20, 2010, Governor Chris Christie signed Executive Order No. 2 (EO No. 2), which in relevant part, provides that, "[a]gencies should require submission of the minimum amount of information necessary to administer their rules." Furthermore, EO No. 2 provides that State agencies, "Draft all proposed rules so they impose the least burden and costs to business, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective." The Board believes that modification of the rules as proposed in this rulemaking furthers those goals. The Board does not believe that customers will be harmed by this rulemaking. It is noted, however, that only basic rates are regulated, and only in a limited number of municipalities.

Subchapter 1. General Provisions

N.J.A.C. 14:18-1.2 Definitions

6. COMMENT: Rate Counsel recommends that the Board not revise the definition of "normal business hours" and retain the current definition. By eliminating the requirement that "normal business hours" must include some evening hours at least one night per week and/or some weekend hours," cable companies could jettison evening hours and weekend hours. Ratepayers should continue to have these options especially for cable companies where equipment pick-up is necessary to avoid truck roll charges. (Rate Counsel)

7. COMMENT: Under Subchapter 1, General Provisions, JAG objects to the proposed language change to the definition of "normal business hours" which eliminates the requirement that cable companies must have evening and weekend hours for their bricks and mortar locations. By only allowing stores to maintain hours between 9:00-5:00 P.M., it greatly reduces the ability of consumers to conduct necessary business and may require a customer to take time off of work in order to visit a store. Cable customers often have needs that other utility businesses do not have. For example, customers often need to exchange equipment, such as a remote control, modem, or other device. Customers often visit cable companies directly in order to conduct this business, rather than make an appointment and have to wait at home for a long duration of time. This proposed language change is particularly detrimental to the consumer.

Moreover, combined with proposed changes in Subchapter 5, which makes it easier for cable companies to close or relocate offices, this

provision is particularly troublesome. If the nearest cable store is 35 miles from a customer's home, how is that customer going to be able to visit that store in accordance with the proposed revision to "normal business hours" without missing time off work? (JAG)

8. COMMENT: At the public hearing, Rate Counsel recommended that the current definition of "normal business hours" be retained because the proposed definition would allow cable companies to limit evening and weekend hours. This recommendation misses the point. As the Board recognized, cable companies should have the flexibility to determine the hours of operation that best serve the needs of their customers and what weekend or evening hours are appropriate, if any, for a particular office area. Any company who fails to address customer preferences will lose its customers. (Verizon)

RESPONSE TO COMMENTS 6, 7, AND 8: The Board's intention in proposing the changes to the definition of "normal business hours" was to specify the hours during which the Board and the Office of Cable Television are open for business. Cable television companies determine the hours in which to conduct business based on the needs of their customers.

9. COMMENT: A major impediment to business practices that focus on the customer are rules that are unclear, onerous to implement, and do not offer a consumer benefit. For example, the term "complaint" is defined as "any written or verbal contact ... in connection with any product or service" offered in which a "person expresses discontent or dissatisfaction." If construed liberally, this definition would encompass an overly broad array of contacts made by cable customers, or prospective customers (for example, if a customer were to say that he did not want to buy a service or package because it lacks certain features or costs more than the customer is willing to pay). Similarly, it could include statements of dissatisfaction about lawful practices (for example, if a customer were to complain about being required to provide a security deposit). And, it could capture expressions of dissatisfaction about issues that have nothing to do with the cable operator's conduct (for example, if the customer's television were unplugged or if the batteries in the customer's remote needed to be replaced), or about issues that are promptly resolved to the customer's satisfaction (for example, if the operator is able to clarify the customer's confusion about a bill). Thus, not only is the definition virtually impossible to apply in practice, its breadth means that it does not help gain insight into service quality or customer satisfaction.

There is no need for the Board to gain such insight regarding service in a competitive environment because a company that fails to satisfy a customer is likely to lose that customer to a competitor. But, if the Board continues to define the term "complaint" in its rules, it would be better served by a complaint reporting process that focuses on expressions of dissatisfaction with a cable operator's products and services that remain unresolved at the conclusion of the contact (Verizon)

RESPONSE: In 2005, the term, "complaint," was proposed and adopted to implement the "Complaint recording and reporting" rule, N.J.A.C. 14:18-6.7. The notice of adoption of this amendment was published in the New Jersey Register on May 2, 2005 (see 37 N.J.R. 1536(a)). The definition was adopted pursuant to statutory changes, which did not define the word "complaint." The Board adopted its definition to avoid instances of subjective application that were occurring where different definitions and different methods of capturing and accounting for customer complaint data between companies were frustrating the intent of the statute. The Board does not believe that the definition of complaint should contain language that would allow the cable operator to be subjective in capturing and reporting complaint data. In addition, the Board does not believe the definition should be limited to only those matters that remain unresolved at the conclusion of the customer's contact with the company. Such a limitation unduly limits the Board's jurisdiction in responding to its statutory mandate to report all consumer complaints to the Legislature.

Subchapter 3. Customer Rights

10. COMMENT: N.J.A.C. 14:18-3, Customer Rights, should be eliminated because these regulations were intended to protect consumers in a video monopoly environment; with the introduction of the System-wide Franchise Law and the ascendancy of satellite and other video

competition, such a monopoly environment no longer exists. If Verizon's recommendation to eliminate Subchapter 3, Customer Rights, is rejected, at a minimum, modifications suggested by Verizon in comments 12, 13, 14, 15, 21, 23, 26, 29, and 32 should be made to the rules, and these revised provisions should be included in N.J.A.C. 14:18-16.7, which lists rules that should not apply to cable operators subject to "Effective Competition," as defined by 47 CFR 76.905. (Verizon)

RESPONSE: Not all customers in New Jersey have the ability to choose between cable television companies; therefore customer service standards are still necessary. Additionally, it would be difficult for the Board to manage piecemeal customer service regulation, and would provide the customer with no outlet of redress if a cable television company did not perform at the required regulatory standards. Therefore, the Board declines to amend the rules as suggested by Verizon.

11. COMMENT: JAG objects to the multiple proposed rule changes under Subchapter 3 that would remove the requirement for cable companies to provide a schedule of prices, rate, terms, and conditions, notices, and other customer information directly to customers if it elects to provide such information on its website. Cable rates, packages, terms, and conditions, channel lineups, and other critical customer information are largely driven by local franchise agreements. It is very difficult to navigate through the national website of the cable provider to find the local information. The effect of this regulation will directly impact the customer's ability to monitor and review charges and service offerings provided by the cable company. Further, JAG strongly disagrees with the assertion in the proposed rule changes that "these changes will also benefit customers by reducing industry compliance costs, thereby reducing overall costs, and accordantly, rate pressures." There is no evidence across the country to substantiate the assertion that removing notice requirements reduces costs. This simply will not happen. (JAG)

RESPONSE: The proposed rules are pursuant to statutory changes and must be instituted. Customers must be provided quarterly notice of how they can obtain a current copy of the schedule of prices, rates, terms, and conditions. Additionally, customers that are unable to access the Internet can obtain a paper copy of a cable television company's schedule of prices, rates, terms, and conditions. The Board disagrees that "[c]able rates, packages, terms, and conditions, channel lineups, and other critical customer information are largely driven by local franchise agreements." Municipalities are disallowed from regulating rates or programming and terms and conditions are up to the cable television company, within the strictures of State and Federal law.

The Board believes that removing notice requirements reduces costs to the cable television company. The Board has always maintained that there is a cost of compliance with its rules, but that the cost was outweighed by the need for customer service standards. The Board has now determined that a modification to these requirements as set forth in this rulemaking is appropriate and declines to make the recommended changes.

N.J.A.C. 14:18-3.2 Requests for Service

12. COMMENT: N.J.A.C. 14:18-3.2(a), regarding requests for service which provides that a customer must request service in person, by mail or by telephone, needs to be modified to recognize that customers can submit applications using cable company websites. (Verizon)

RESPONSE: If a cable television company wishes to take applications via its website, the Board does not object. However, the Board does not seek to impose such a requirement.

13. COMMENT: N.J.A.C. 14:18-3.2(d) should be eliminated. As noted in prior comments above, the video market in New Jersey is competitive, and this metric should no longer be included in the Board's cable rules because customer preferences, and not arbitrary regulation, should drive performance. (Verizon)

RESPONSE: This metric is from the standards set by the Federal Communications Commission (FCC), which require 95 percent of standard service installations be completed within seven business days, and provides for an exception to the standard where a later date for installation is selected by the customer.

14. COMMENT: N.J.A.C. 14:18-3.2(e) should be modified to recognize that there may be other justifiable and nondiscriminatory

reasons (for example, architectural or technical reasons with the installation) that prevent service connections. (Verizon)

RESPONSE: The Board declines to make the change. If the OCTV directs the cable television company to connect a customer, the cable television operator must follow that directive or seek an order of relief or other form of redress.

N.J.A.C. 14:18-3.3 Customer Information

15. COMMENT: The requirements in N.J.A.C. 14:18-3.3(c) may have been relevant when television consumers were first being introduced to "VCRs," "remote control units," and "cable ready sets," but this subsection is now antiquated and extraneous. Out of necessity, cable operators already advise customers if "any auxiliary equipment is necessary to provide cable television service." Moreover, this rule is unnecessary because the FCC's rules require cable operators to provide initial and annual notices to subscribers regarding equipment compatibility and any specialized equipment necessary to receive cable services from the operator. See 47 CFR 76.1621, 1622. Accordingly, this subsection should be eliminated. (Verizon)

RESPONSE: On January 20, 2010, Governor Chris Christie signed Executive Order No. 2, which in relevant part, provides that all future rulemakings, "[a]dopt federally promulgated rules as written, unless separate State rules are permitted and appropriate to achieve a New Jersey specific public policy goal." As noted, this rule adopts the Federally promulgated rule. Therefore, the Board declines to amend the rule as proposed by Verizon.

16. COMMENT: Subject to the above general objection (see Comment No. 10), Verizon does not object to the addition of new N.J.A.C. 14:18-3.3(e) regarding customer information that may now be provided on a cable company website instead of through a mailing, while giving a new customer the right to obtain a paper copy of this information if the customer is unable to obtain it from the website via the Internet. Verizon also does not object to new N.J.A.C. 14:18-3.3(f) that requires quarterly instructions to customers about how to access its Internet website. (Verizon)

RESPONSE: The Board thanks Verizon for its comments.

N.J.A.C. 14:18-3.4 Information on Company's Schedule of Prices, Rates, Terms, and Conditions

17. COMMENT: Subject to the above general objection (see Comment No. 10 above), Verizon does not object to the addition of N.J.A.C. 14:18-3.4(e), (f), and (g) that: (1) relieve cable television companies from certain notice requirements related to the company's schedules of prices, rates, charges, and services if the information is provided on the company's website; (2) provides for quarterly notices to customers on how schedules can be obtained; and (3) provides for the provision of paper copies to customers who cannot access the company's website. (Verizon)

RESPONSE: The Board thanks Verizon for its comments.

N.J.A.C. 14:18-3.3 Customer Information and N.J.A.C. 14:18-3.4 Information on Company's Schedule of Prices, Rates, Terms, and Conditions

18. COMMENT: Rate Counsel submits the proposed change to replace paper filings with posting on websites is beneficial to customers and the cable companies (N.J.A.C. 14:18-3.3(e) and (f) and 3.4(e) and (f)). (Rate Counsel)

RESPONSE: The Board thanks Rate Counsel for its comments.

19. COMMENT: Rate Counsel recommends that the last sentence of N.J.A.C. 14:18-3.3(e) be revised to delete the word "new." Any customer who does not have internet access should be able to get the information in paper form. This revision would eliminate any confusion with N.J.A.C. 14:18-3.4(g), which says any customer can get information in paper form. (Rate Counsel)

RESPONSE: The proposed rules are clear. The Board does not propose to modify these two sections/subsections. Both N.J.A.C. 14:18-3.3(d) and new N.J.A.C. 14:18-3.3(e) deal with new customers, while N.J.A.C. 14:18-3.4 applies to all customers; therefore, the amendments proposed by the Board are appropriate.

N.J.A.C. 14:18-3.5 Outage Credit

20. COMMENT: Rate Counsel does not oppose the additions added in N.J.A.C. 14:18-3.5(a)7 and 8; the additions added in N.J.A.C. 14:18-3.5(f)1 and 2 related to alternative forms of compensation; N.J.A.C. 14:18-3.(a)7 and 8; web posting of outage credit notices N.J.A.C. 14:18-3.5(f)1; and the option for customers to receive outage credit notices in written form on at least an annual basis N.J.A.C. 14:18-3.5(f)2. (Rate Counsel)

RESPONSE: The Board thanks Rate Counsel for its comments.

21. COMMENT: N.J.A.C. 14:18-3.5(a)5 provides, among other things, that “[a] customer who contacts the cable television company during an outage requesting a credit shall be entitled to receive credit for service based on that contact, if applicable.” The Board adopted this language over cable company opposition in 2008, and implementation of it has proven to be problematic over the last six years. The reason is simple: many customers call before an outage meets or exceeds the durational thresholds. Thus, it is difficult to reconcile which customers making calls during an outage are ultimately due credits. (Verizon)

RESPONSE: The Board believes that with today’s monitoring and tracking systems, cable television companies know where and when customers are affected by a threshold outage. This rule does not require cable television companies to issue blanket credits or any credit at all if not requested by a customer. Therefore, the Board declines to amend this provision.

22. COMMENT: N.J.A.C. 14:18-3.5(a)7: Subject to the above general objection (see Comment No. 10 above), Verizon does not object to this new paragraph, which provides that a cable television company may offer a customer a form of compensation other than a credit or rebate, which the Board proposes to implement pursuant to P.L. 2013, c. 97. (Verizon)

RESPONSE: The Board thanks Verizon for its comments.

23. COMMENT: N.J.A.C. 14:18-3.5(a)8: Subject to the above general objection (see Comment 10 No. above), Verizon does not object to the first sentence of this new paragraph, regarding promotional service in lieu of a credit or rebate, but the second sentence goes beyond the intent of the Legislature set forth in P.L. 2013, c. 97, and, thus, should be removed. (Verizon)

RESPONSE: The second sentence, which requires a cable television company to affirmatively continue a free promotional service offered in lieu of compensation does not go beyond the scope of the legislation cited above. While P.L. 2013, c. 97, amends N.J.S.A. 48:5A-11a to add subsection b. to provide that a subscriber may accept an alternate form of compensation in lieu of an outage credit or rebate, N.J.S.A. 48:5A-11a continues to provide that the director of the OCTV, with the authority of the Board, “shall adopt rules and regulations” and “may provide for appropriate exceptions and limitations.” The Board believes this is an appropriate limitation because by agreeing to such alternate compensation, a subscriber may be charged for services unknowingly. Therefore, the Board declines to delete the second sentence.

24. COMMENT: N.J.A.C. 14:18-3.5(f)1 and 2: Subject to the above general objection (see Comment No. 10 above), Verizon does not object to these new provisions. (Verizon)

RESPONSE: The Board thanks Verizon for its comments.

N.J.A.C. 14:18-3.7 Bills for Service; Form of Bill

25. COMMENT: Rate Counsel opposes the change in N.J.A.C. 14:18-3.7(a)3 that would permit the cable companies not to include identification of service packages. Such information is essential for customers to assess whether they are being billed for the appropriate service package that they subscribed to. Rate Counsel does not oppose the changes in N.J.A.C. 14:18-3.7(g)1. (Rate Counsel)

26. COMMENT: Verizon disagrees with Rate Counsel’s objection to the proposed change to this rule, which would eliminate the need to identify service packages. In a highly competitive cable television market, like New Jersey, with discounts, promotions, and incentives, the component prices for phone, television, and Internet inside the bundle varies based on whether the customer has two or three items in the bundle. The component prices also vary depending on the type of triple or double bundle. With component pricing shown explicitly on the bill, customers mistakenly think they can cut one component and get that price for the new bundle. Generally, Verizon gives bigger discounts when

customers purchase three products, so if a customer cuts one product, the discount goes down and the price for a double bundle is not the triple bundle price less one component price. In Verizon’s new bill design, customers are informed of what is in the bundle on the charges page of the bill. The component price is listed in another section to prevent customer confusion. Accordingly, Rate Counsel’s objection to the proposed change to N.J.A.C. 14:18-3.7(a)3 should be rejected because it could hurt rather than help customers regarding the pricing of bundled elements. (Verizon)

RESPONSE TO COMMENTS 25 AND 26: The Board agrees with Verizon that the costs for bundled components do not necessarily translate to stand-alone prices and, therefore, the cost to provide each service is often artificial and does not bear much meaning for a customer. Since cable television companies are permitted to charge what they choose to, with the exception listed, the breakout price does not assist consumers. Therefore, the Board declines to make the recommended change.

N.J.A.C. 14:18-3.15 Trial and Promotional Services

27. COMMENT: Rate Counsel opposes the Board’s proposed change to N.J.A.C. 14:18-3.15(b) that would eliminate advance notice of trials and promotions to OCTV and would require provision of them only upon request. The cable companies should be required to post on their websites all trial and promotional offerings available to consumers. This proposed change would eliminate the need to request the data and would assist the Board and Rate Counsel when complaints or inquiries are received concerning trial or promotional offerings. (Rate Counsel)

28. COMMENT: Verizon disagrees with Rate Counsel’s objections to the proposed change to N.J.A.C. 14:18-3.15(b) that would eliminate advanced notice of trials and promotions to the OCTV. Rate Counsel ignores the fact that the video marketplace in New Jersey is highly competitive and is no longer a monopoly held by a single cable television service provider. In a competitive marketplace, service providers should be free to advertise customer trials and promotions as they deem appropriate, not encumbered by regulatory limitations that would provide competing companies with advanced competitive intelligence, potentially influencing the success or failure of such trials and promotions. Should the Board and Rate Counsel receive a complaint or inquiry, the service provider would be contacted anyway. Thus, Rate Counsel’s objection to the rule modification should be disregarded. (Verizon)

RESPONSE TO COMMENTS 27 AND 28: Because promotions change on a regular basis, the Board believes it is difficult for cable television companies to keep OCTV staff advised of every promotion at all times. As noted in Verizon’s comment, if a customer has a complaint or inquiry regarding a promotion or a trial service, the customer would contact the cable television company, which would be able to assist the customer to understand the terms and conditions of that service. OCTV staff is also available to address concerns or inquiries regarding promotional or trial services. Cable television companies are required to assist OCTV in resolution of complaints regarding cable television service. Therefore, the Board adopts the rule as proposed.

N.J.A.C. 14:18-3.16 Notice of Price Change

29. COMMENT: Subject to the above general objection (see Comment No. 10), Verizon does not object to the proposed modifications to this rule. However, cable companies are operating in a fiercely competitive video market and should, therefore, not be required to notify OCTV within 10 days of instituting a price decrease. Accordingly, the language related to price decreases at the end of N.J.A.C. 14:18-3.16(a)1 and the entirety of N.J.A.C. 14:18-3.16(a)2 should be deleted from the proposed amended rule. (Verizon)

RESPONSE: The Board sees no nexus to Verizon’s comments that it is in a “fiercely competitive video market” and providing notice to the OCTV of price decreases. As complaint officer for over 90 percent of the franchises in the State, the OCTV requires this information to address customers’ questions. Additionally, the Board has relaxed this rule. Therefore, the Board declines to make the requested revision.

30. COMMENT: The Board proposes to permit electronic filing of schedules of prices, rates, terms, and conditions, elimination of notice to municipalities of price changes, and advance notice of price decreases

with the requirement to notify OCTV within 10 days of implementation. Rate Counsel opposes the elimination of notice to municipalities, unless such notices are posted on the website of the cable company. (Rate Counsel)

RESPONSE: The Board believes that specific notice to municipalities is no longer necessary and, therefore, adopts the rule as proposed.

31. COMMENT: JAG objects to the proposed change under N.J.A.C. 14:18-3.16 that eliminates the requirement for the cable companies to provide notifications of price changes to municipalities. Local governments receive numerous requests for information, as well as consumer complaints from cable customers on a regular basis. This proposed change prevents municipalities from obtaining important information that it needs to assist its residents, which ultimately benefits cable operators. If the Board adopts this rule and essentially takes local governments out of the process of assisting consumers, local governments will be resigned to advising consumers to call their cable operators, or to call the Board in order to learn why local governments no longer receive this information. Moreover, notices of price changes are often required by franchise agreements, and elimination of this requirement by the Board will constrain a local government's ability to enforce local compliance. (JAG)

RESPONSE: In New Jersey, a municipality under a municipal consent-based franchise is permitted to determine whether it or the OCTV will serve as the designated complaint officer for cable television customers of the municipality. For over 90 percent of the municipal consent-based franchises, as well as all of the system-wide franchises, the OCTV is the designated complaint officer. Additionally, the OCTV has staff dedicated to addressing inquiries and complaints from all cable television customers and is equipped to answer their questions and concerns. A municipality that has chosen to be the complaint officer for residents subscribing to cable television must set up procedures for handling those complaints. Municipalities may also refer cable television customers to the OCTV at its toll free complaint line dedicated to cable television complaints.

N.J.A.C. 14:18-3.17 Notice of Change in Channel Allocation

32. COMMENT: Verizon has a waiver of this provision, but nonetheless believes that it should be eliminated since there is already a Federal rule governing rate and service changes. See 47 CFR 76.1603 "Customer Service—Rate and Service Changes." (Verizon)

RESPONSE: 47 CFR 76.1603 provides at (a), "A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards." The Federal rule is not effective if a cable franchise authority does not enforce it. The Board, as franchising authority in New Jersey, does enforce these standards and therefore, declines to delete the section in question.

33. COMMENT: The Board proposes numerous changes to N.J.A.C. 14:18-3.17(a) through (d). Rate Counsel supports the revisions to N.J.A.C. 14:18-3.17(d) (formally N.J.A.C. 14:18-3.17(c)), which deal with loss of channels due to fees disputes. Rate Counsel also supports the new provisions regarding public, educational, and government access channels. (Rate Counsel)

RESPONSE: The Board thanks Rate Counsel for their comments.

34. COMMENT: Rate Counsel opposes the change in N.J.A.C. 14:18-3.17(b) that eliminates notice to municipalities. Rate Counsel recommends that the Board require all channel additions and deletions covered by these rules to be posted on the cable company website. (Rate Counsel)

RESPONSE: See the Response to Comments 30 and 31 above.

35. COMMENT: JAG strenuously objects to the proposed language in N.J.A.C. 14:18-3.17(c). PEG channel location changes are expensive and difficult to manage for PEG operators that rely on the identity of channel locations as part of their branding. For example, many PEG channels are identified by channel number on the channel lineup. Thirty days' notice is not sufficient for PEG channels to make appropriate internal and external changes including alerting viewers to the new channel location. This proposed language will also result in a substantial increase of costs to

PEG operators particularly for those that must re-brand their channel to a new channel number. (JAG)

RESPONSE: The requirement for cable television companies to provide 30 days' written notice to municipalities regarding a deletion or change in channel allocation for a public, educational, and governmental (PEG) access channel has not changed. Such notice was required under N.J.A.C. 14:18-3.17(a), which now only requires 10 days' electronic notice of deletions or channel allocation changes. The addition of N.J.A.C. 14:18-3.17(d) protects the 30 days' notice to municipalities for PEG access channel reallocations and deletions. Therefore, the Board declines to make any additional modifications.

36. COMMENT: N.J.A.C. 14:18-3.17(d) also appears to further relax the notification provision for alterations and deletions that are not "within the exclusive control of the cable television operator." Under this subsection, it is proposed that the cable television operator only needs to provide 24 hours' notice via electronic means. It is unclear whether this proposed language is intended to also apply to PEG channels. However, because it does not explicitly exempt PEG channels, it appears to apply. As stated above (in Comment 35), 30 days is not sufficient notice for channel deletions or changes in location, let alone 24 hours. JAG is concerned with the proposed language under this section removing the requirement that cable companies must notify affected municipalities of alterations in channel allocation. If adopted, the new rules will make it more difficult to get important information to consumers, and result in more calls to cable operators and to Board for this information. (JAG)

RESPONSE: JAG is correct that N.J.A.C. 14:18-3.17(d) applies to PEG access channels, but the cable television company would have to show that additional notice was not possible for reasons beyond its control, which is unlikely in the case of a PEG access channel. Therefore, the Board does not propose any additional modifications to this subsection.

N.J.A.C. 14:18-3.18 Periodic Notices to Customers

37. COMMENT: Subject to the above general objection (see Comment No. 32), Verizon does not object to the proposed modifications to this rule. (Verizon)

RESPONSE: The Board thanks Verizon for its comments.

38. COMMENT: The Board has revised N.J.A.C. 14:18-3.18 to add a new subsection (d) that permits the cable company to provide the information required under this rule to customers in electronic form subject to compliance with N.J.A.C. 14:18-3.27. N.J.A.C. 14:18-3.27 established the rules for electronic service. Rate Counsel supports the proposed changes. (Rate Counsel)

RESPONSE: The Board thanks Rate Counsel for its comments.

N.J.A.C. 14:18-4.1 Permits

39. COMMENT: The Board should make changes to this rule to more accurately reflect a cable company's obligations regarding permits and the associated fees under the referenced statutory provisions. Specifically, the requirements related to permits and a waiver of associated fees should not be limited to road opening permits. See for example, *Middletown v. Storer Cable Communications, Inc. and New Jersey Cable Television Associates*, 206 N.J. Super 572, (1985). (Verizon)

RESPONSE: Verizon is operating under a system-wide franchise. Under N.J.S.A. 48:5A-30.d(1), the franchise fee paid to municipalities by a holder of a system-wide franchise is "in lieu of all other franchise taxes and municipal license fees, and for the purpose of providing property tax relief ..." For system-wide cable television franchise holders, the statute does not contain any reference to the use of streets. Additionally, the Board notes that Verizon is deploying its FiOS network pursuant to its Federal Title II, Telecommunications franchise. Therefore, the Board declines to amend this section.

N.J.A.C. 14:18-4.3 Basis of Discontinuance of Service

40. COMMENT: N.J.A.C. 14:18-4.3 should be modified to make it clear that service can be discontinued not only for failure to comply with the terms and conditions of a cable television's "schedule," but also with terms and conditions that may be established between a cable provider and its customers. Companies, such as Verizon, that are subject to effective competition do not have to file tariffed rate schedules or terms and conditions with the Board. Terms and conditions between these cable

companies and their customers are reflected in the customer agreements. Additionally, the rule should be modified to allow for the discontinuance of service when communications from a customer are abusive or threatening. (Verizon)

RESPONSE: Neither Verizon or any other cable television company has been relieved from filing schedules of prices, rates, terms, and conditions. N.J.A.C. 14:18-4.3 does not reference "tariffed" rates. These are informational schedules and required to be filed by all cable television companies under N.J.A.C. 14:18-3.4. Therefore, the Board declines to amend this section.

N.J.A.C. 14:18-4.5 Compensation for Taking because of Installation of Cable Television Facilities

41. COMMENT: Verizon believes the section heading is too limiting and, thus, is confusing. This rule addresses a number of issues related to cable company access to multiple dwelling units (MDUs) besides compensation. This rule should cover all the statutory elements necessary for a cable television provider to obtain access. N.J.A.C. 14:18-4.5(a) should state that MDU owners cannot deny any cable television operator access to their MDUs. It should also state that just compensation should not be limited to \$1.00 and allow cable television providers to provide other compensation to the owner such as wiring or other material items.

Property owners, managers, or representatives have attempted to reject Verizon's requests for access to their properties by stating that the introductory clause of N.J.A.C. 14:18-4.5(b) means that they do not have to allow access. The language is outdated and it serves no useful purpose for a market that can be served by two or more cable television providers and in a state in which all companies are supposed to have access to potential customers. N.J.A.C. 14:18-4.5(b)3 should be eliminated because a cable television company may not be able to approximate when it will install service if the property owner has not allowed the company access to the property to develop a design plan. N.J.A.C. 14:18-4.5(b)5 needs to be clarified since access may also be granted pursuant to a Board order. A new paragraph, N.J.A.C. 14:18-4.5(b)6, should be added to make clear that a "Mandatory Access" petition is only necessary when a cable television company receives a request for service from a current resident.

Verizon suggests that N.J.A.C. 14:18-4.5(c) should be modified to state that if the cable television company has been unable to gain access to the property, it may not be able to provide a specific description of the proposed method of installation. A general description of the method of installation is already included as part of the notice. A new paragraph, N.J.A.C. 14:18-4.5(c)2, should be added to streamline the mandatory access process. It is similar to language in the New York cable television regulations and would allow the Board to issue an administrative finding without participation of a property owner.

The language in N.J.A.C. 14:18-4.5(d) regarding MDUs that already receive cable service from another provider should be deleted for the reasons discussed above. The word "just" should be deleted and the word "additional" should be inserted to clarify that this provision allows owners to make a showing that compensation in addition to the \$1.00 amount may be sought if any additional cost recovery is justified. (Verizon)

RESPONSE: Such revisions to the rules are outside the Board's authority under N.J.S.A. 48:5A-49, which provides, "No owner of any dwelling or his agent shall ... demand or accept payment in any form as a condition of permitting the installation of such service in the dwelling or portion thereof occupied by such tenant as his place of residence ..." Verizon's suggested revisions appear to be in direct conflict with this provision. Therefore, the Board declines to amend N.J.A.C. 14:18-4.5(a) through (d). The Board also declines to add a new paragraph, N.J.A.C. 14:18-4.5(c)2, which would allow the Board to issue an administrative order without participation of a property owner, as it would affect the property owner's due process rights, as set forth in the statutes. Under N.J.S.A. 48:5A-49, the owner may require that reasonable conditions be met. The owners' participation cannot be eliminated merely as a means to expedite the process.

N.J.A.C. 14:18-4.8 Receipts and Records

42. COMMENT: For greater efficiency and as a "Green" initiative, cable television companies should only be required to provide receipts for deposits where such deposit is paid in cash. The customer's canceled check, credit card statement, or similar proof of payment should serve as proof of deposit in all other cases. (Verizon)

RESPONSE: The Board declines to modify this section as proposed by Verizon. Cable television companies must provide receipts for deposit. Since the cable television company is holding the customer's funds, each cable television company must verify the deposit.

Subchapter 5. Offices

N.J.A.C. 14:18-5.1 Location and Closing

43. COMMENT: The proposed changes to the office closing rule found in N.J.A.C. 14:18-5.1(c) are appropriate and reflect a more rational approach to regulating the cable industry in today's competitive marketplace. Under the proposed changes to N.J.A.C. 14:18-5.1(c), cable operators would have an opportunity to better direct resources to serving customers' interests. Specifically, the amendment authorizes a cable operator to consolidate or relocate underutilized customer walk-in centers or otherwise make decisions about its storefront local office operations, without seeking formal approval from the Board in appropriate circumstances. The Board's rulemaking recognizes that where the office is not explicitly required by franchise agreement, would not be sending New Jersey residents outside the State or service territory, or is less than 35 miles away from another office served by that operator, then there should be no negative impact to the customer due to a closure or consolidation. This is particularly true in today's marketplace where cable operators offer customers many alternative options for performing the same services provided at these local walk-in centers. Paying bills online, exchanging set-top boxes and other equipment by mail, and utilizing the services of other third-party billing partners are all developments over the last decade or more that have made the importance of these local walk-in centers less significant.

Given these changes in how cable operators deliver customer service, this proposed amendment is reasonable and in keeping with the balance between the Board's desire to ensure customer service and consumer protection obligations while recognizing that walk-in service centers are no longer the only, or even primary, manner in which customers interact with their cable operator. NJCTA members have spent significant time, money, and effort developing a customer service process that uses the Internet, telephone, mail, truck-rolls, and local service centers as an integrated process. Customers prefer to use the service that works best for them under their particular circumstances. As such, NJCTA members have seen a continued drop in the metrics tracking walk-in center usage. Allowing cable operators to provide service centers where they are wanted and needed by customer demands, and not based upon a decades-old rule, ensures that each cable operator will place local service centers where they can provide the most value for the customer.

While NJCTA believes that the ability to close or relocate service centers should have no mileage restriction, 35 miles reflects a reasonable compromise. Given the choice of providers today, cable operators will need to continue to provide these walk-in center options in places where customers want them. If operators have developed new methods that better serve the customer, the flexibility to focus resources toward those opportunities should not be discouraged by outdated rules that do not account for them. For this reason, NJCTA supports the changes to N.J.A.C. 14:18-5.1(c). (NJCTA)

RESPONSE: The Board thanks NJCTA for its comments.

44. COMMENT: The Board is proposing to eliminate the requirement that cable companies file petitions to relocate an office, when such relocation is 35 miles or less, absent certain exceptions. A petition would be filed only when the relocation exceeds 35 miles, the relocation is outside of the service territory of the cable company, or the office is relocated outside of the State. For relocations not requiring a petition, the cable company need only notify the Board and its customers no later than 30 days prior to the closure or relocation of the office. Rate Counsel submits that the proposed rule is contrary to the public interest and will adversely affect ratepayers. Cable customers rely upon local offices for

many services including pick-up and drop-off of equipment. The proposed rule could require customers to go outside their local franchise area to another franchise area up to 35 miles away. Customers would not only be inconvenienced by the increased time to get to the new location, but would incur substantial costs, such as gas, tolls, and wear and tear on their vehicles or a previously avoidable truck roll. The proposed rule would adversely affect seniors and persons with disabilities. This rule would permit a cable company to close an office without filing a petition and permit them to require customers to use another office within 35 miles or less. That office could be outside of the local franchise area. In addition, this proposed rule could be used to consolidate cable offices within 35 miles or less, so that customers would lose the benefit of a local office. This proposed rule could force customers to request services that require a truck roll and customers would incur the additional costs associated with a service call.

In view of the foregoing, Rate Counsel asks that the proposed changes not be adopted. Rate Counsel would not object if the proposed rule was amended to apply to relocations within three miles of an existing office. Rate Counsel would also recommend that a new provision be added that states that any consolidation of offices must be done by filing a petition under N.J.A.C. 14:18-5.1(c). (Rate Counsel)

RESPONSE: While the Board recognizes that there may be some inconvenience to customers when an office is located at a distance from a customer's home, the Board has considered this rule carefully, over many years, before proposing this amendment. The cable television industry has repeatedly requested that the Board delete the rule in its entirety, citing costs to maintain two facilities while Board approval is pending, among other associated costs. As noted in the notice of proposal, given that there are many methods to satisfy customers' needs, including 24-hour telephonic customer service, direct shipment of set-top boxes, online bill payment, email correspondence with the cable television company, and bill payment centers, the Board believes the rule as proposed is appropriate and declines to make the recommended change.

45. COMMENT: Verizon believes that this is yet another example of a rule that should not apply to companies operating in a competitive video marketplace who maintain office locations and otherwise communicate with their customers based on the convenience preferences of those customers. However, to the extent that the Board decides to retain any such rule, Verizon supports the proposed modifications, which streamline the process for closing or relocating local offices and provide greater flexibility when a closure or relocation makes sense because of low customer usage or problems with leased properties. It will also help avoid forcing companies to maintain two offices while Board approval of a relocation or closure is pending, which takes away from investments that could be made in other ways to better serve customers.

Verizon states that Rate Counsel attacks even the incremental reform to this rule proposed by the Board by objecting to the provision that eliminates the requirement to file a petition to relocate an office when such relocation is 35 aerial miles or less from another existing office; instead Rate Counsel recommends a distance of three miles. The Board should reject Rate Counsel's recommendation as unreasonably restrictive and unduly burdensome with potentially negative consequences for consumers. For example, a cable company faced with closing or relocating an office due to safety issues would be forced to file a petition with the Board and await a decision. This process can take many months because it is highly unlikely that the cable company would have another existing office within three miles. Verizon states that Rate Counsel's proposal also misses the point on the numerous ways companies like Verizon offer customers to communicate with and transact business. For example, we offer several alternatives for bill payment, which include, but are not limited to, kiosks, online service, postal mail, and third-party agents that accept payments on our behalf from customers who wish to pay their bills in person. Customers may also receive new equipment or exchange or return equipment via mail. Comcast, Cablevision, and Time Warner also offer similar options. (Verizon)

RESPONSE: While the Board adopts the proposed amendments to N.J.A.C. 14:18-5.1(c), it does so with knowledge that this may inconvenience some customers who need to exchange equipment or transact business with a cable television company in person. However, the Board has determined that the rule as amended is appropriate given

that there are now many alternate methods of doing business with cable television companies.

Subchapter 6. Records

N.J.A.C. 14:18-6.5 Complaints Records

46. COMMENT: Verizon agrees with elimination of this provision for the reasons set forth in the Board's notice of proposal. (Verizon)

RESPONSE: The Board thanks Verizon for its comments.

N.J.A.C. 14:18-6.7 Complaint Recording and Reporting

47. COMMENT: Verizon supports the proposed modification to N.J.A.C. 14:18-6.7(a) from one to three years since it reasonably consolidates the record retention requirements in this provision and eliminates N.J.A.C. 14:18-6.5, Complaint Records. (Verizon)

RESPONSE: The Board thanks Verizon for its comments.

Subchapter 7. Reports and Filings

N.J.A.C. 14:18-7.1 Periodic Reports

48. COMMENT: The Board proposes to add new N.J.A.C. 14:18-7.1(d) and (e). N.J.A.C. 14:18-7.1(d) would permit cable companies to file certain financial or periodic reports on a system, legal entity, regional, or Statewide basis at their choosing. Certain other financial, statistical, and ownership information would be filed on a system-level, municipality, or other basis as prescribed in OCTV forms. N.J.A.C. 14:18-7.1(e) would permit cable companies to file unaudited financial statements with a certification from a company officer, in lieu of audited financial statements. Rate Counsel submits that these changes are appropriate and will not affect the public interest. (Rate Counsel)

RESPONSE: The Board thanks Rate Counsel for its comments.

49. COMMENT: Rate Counsel suggests that the Board add a new provision to N.J.A.C. 14:18-7.1(a) that requires on an annual basis that cable providers report on the number of video subscribers by tier of service, Internet subscribers, and voice subscribers, and require cable providers to report disconnects, to identify the number of disconnects each month and specify the reasons for disconnects: termination for non-payment, loss to a competitor, moved outside of service territory or outside the State. A copy of such annual report should be provided to Rate Counsel. The annual reporting would enable the Board and Rate Counsel to monitor the competitiveness of the cable market. Rate Counsel submits that these changes are appropriate and will not affect the public interest. (Rate Counsel)

RESPONSE: The Board does not see the benefit to requiring such additional information from the cable television industry at this time. Additionally, Internet and voice service is not regulated by the OCTV. The Board notes that if there is an issue with a cable television company's operations, the Board can require additional reports pursuant to N.J.A.C. 14:18-7.2.

50. COMMENT: Because cable television companies provide an array of services not under the Board's jurisdiction, these reports are of little value and should be eliminated. If the rule is not eliminated, the Board's proposed modification to N.J.A.C. 14:18-7.1(a) regarding the filing of the cable facts questionnaire is moderately helpful. The other proposed modifications, however, make little sense because they are administratively burdensome and divert company resources away from things that actually matter to customers. For these same reasons, Verizon believes that Rate Counsel's proposed amendments to this rule should be rejected. The additional information Rate Counsel believes the Board should collect from cable companies related to video subscribers by tier, Internet subscribers, voice subscribers, and the number of disconnects will be worthless since it will capture data from only some of the market participants. In addition, the Board has no jurisdiction over Internet or VoIP services. If the rule is not eliminated, it should be included in the Effective Competition provision, as modified above. (Verizon)

RESPONSE: See the Response to Comment 49 above. Additionally, proposed N.J.A.C. 14:18-7.1(d) and (e) do not propose any additional reporting burdens on the cable television industry. They simply allow cable television companies to file on whatever corporate level they wish to and file unaudited reports in lieu of audited ones. However, the Board declines to eliminate the reports required in N.J.A.C. 14:18-7.1, since the reports assist the OCTV in carrying out its day-to-day responsibilities.

N.J.A.C. 14:18-7.3 Other Filings

51. COMMENT: The Board proposes in N.J.A.C. 14:18-7.3 to permit electronic filing with the Board the current schedules of prices, rates, terms, and conditions of services offered. Rate Counsel submits that these changes are appropriate and will not affect the public interest. (Rate Counsel)

RESPONSE: The Board thanks Rate Counsel for its comments.

52. COMMENT: JAG objects to the proposed language changes that remove the right of the public to inspect complaints, records and filings, prices, rates, terms, and conditions. Public inspection is an important customer right and should be retained. The Board should be promoting transparency in the consumer information that is provided to New Jersey citizens. How is the public interest served by terminating the public's right to review this important information? (JAG)

RESPONSE: The only amendment proposed is to not require cable television companies to maintain public files of its schedule of prices, rates, terms, and conditions, which is consistent with amendments to the Cable Act enacted by the Legislature (P.L. 2013, c. 232). Each cable television company, pursuant to N.J.A.C. 14:18-3.4, must provide a copy of its schedule of prices, rates, terms, and conditions upon a customer's request. If a cable television company chooses to maintain its schedules of prices, rates, terms, and conditions online, and a customer opts to receive notice in such manner, a cable television company must provide notice to each customer at least quarterly of how to retrieve the information. The Board believes these provisions adequately protect the State's cable television customers.

With regard to complaints, the Board notes that it maintains and protects such information in accordance with both State and Federal cable television subscriber policy laws. Subject thereto, any party may request copies of public records in accordance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

N.J.A.C. 14:18-7.4 Notification of System Rebuilds, Upgrades, Hub, and Headend Relocations

53. COMMENT: The Board proposes in N.J.A.C. 14:18-7.4 to eliminate the requirement of giving 30 days advance notice of proposed changes covered by this section and only require advanced written notice to OCTV prior to implementing any major change covered by this section. Rate Counsel submits that this change is appropriate and will not affect the public interest. (Rate Counsel)

RESPONSE: The Board thanks Rate Counsel for its comments.

N.J.A.C. 14:18-7.6 Telephone System Information

54. COMMENT: Verizon believes this rule should be eliminated because it requires reporting of performance standards under N.J.A.C. 14:18-7.8, which should also be eliminated for the reasons set forth below. If this rule is not eliminated, it should be included among the rules listed in the Effective Competition provision. (Verizon)

RESPONSE: The Board declines to delete N.J.A.C. 14:18-7.6. However, the Board notes that this provision is already included in the "effective competition" section of the rules (N.J.A.C. 14:18-16.7), and Verizon has already received relief from the Board for compliance with this rule.

55. COMMENT: The Board proposes in N.J.A.C. 14:18-16.7(a) to have cable companies that fail to comply with the provisions of N.J.A.C. 14:18-7.8, file the information required in this section upon request. Rate Counsel submits that this change is appropriate and will not affect the public interest. (Rate Counsel)

RESPONSE: The Board thanks Rate Counsel for its comments.

N.J.A.C. 14:18-7.7 Telephone System Performance

56. COMMENT: Verizon submits that this rule is counterproductive in today's competitive environment and should be eliminated. If it is not eliminated, it should be modified, as indicated below, and included in the Effective Competition provision. Verizon has obtained a number of waivers of the filing time period under N.J.A.C. 14:18-7.7(c) due to its inability to obtain the necessary data within a 10-day period. In lieu of continually filing waiver requests, which are an inefficient use of Verizon's and the Board's time and resources, Verizon requests the time period be extended from 10 to 15 days. (Verizon)

RESPONSE: N.J.A.C. 14:18-7.7 is necessary to determine whether a cable television company is complying with N.J.A.C. 14:18-7.8. Therefore, the Board declines to eliminate this provision or add it to N.J.A.C. 14:18-16.7, Effective competition. The Board further declines to amend N.J.A.C. 14:18-7.7(c) in this rulemaking.

N.J.A.C. 14:18-7.8 Telephone Customer Service

57. COMMENT: Verizon submits that this rule should be eliminated to allow companies to focus on things that matter to their customers. This rule was adopted in a different environment in which customers did not have multiple options for video service, or the myriad of options that exist today to communicate with such providers in a way that best suits their needs. Particularly egregious is the arbitrary call answer time metric mandating that all calls must be answered by a customer service representative within 30 seconds 90 percent of the time. See N.J.A.C. 14:18-7.8(a)2.

Such an arbitrary standard makes little sense when technologies are evolving to meet customer preferences. For example, Verizon's state-of-the-art Voice Portal call system is employed to handle incoming call volumes. Virtually all calls received by the Voice Portal are answered within two seconds, and customers may then elect to complete their calls by being transferred to a representative or they can use a self-service option that presents various menu selections designed to care for specific service needs.

Often a customer's concerns or questions are resolved without the assistance of a live representative. This is one of the many benefits of the technology Verizon uses for answering and directing calls. Customers are asked to provide certain information pertinent to their service issue or inquiry through their telephone keypad or via voice commands. The call answer system then directs the customer's responses to the appropriate operational systems to help immediately resolve the issue by, for example, accessing the customer's account or testing their video circuit. In this way, action is being taken to address the service issue or inquiry prior to any contact with a representative and in many cases, the issue or inquiry is resolved without the assistance of a customer service representative. For instance, customers do not have to wait for a representative to check an account balance, to test the video signal into the home, or to reset a set top box. Customers who choose to speak to a representative are connected to the representatives best suited to address the stated issues.

Verizon has recently implemented another technological solution, which is currently being used by some electric utilities in the State, which enhances the customer experience with shorter wait times. Under this process, if a customer chooses to speak to a representative and the wait time exceeds a pre-configured threshold, the customer is provided the estimated wait time and offered three options: (1) to receive a call back as soon as an agent is available; (2) to receive a call back at a specific time; or (3) to hold for the next available representative. This provides the customer the flexibility and convenience of determining an acceptable wait time.

Accordingly, N.J.A.C. 14:18-7.8 is an anachronistic regulatory provision that micromanages cable company contacts with their customers. Such a rule is unnecessary, as cable companies have a myriad of ways of interacting with customers and do not need an arbitrary requirement to best serve customers. Indeed, any cable provider who fails to focus on the customer will not be successful in the competitive market that exists. By removing such arbitrary requirements, the Board can allow companies to focus their resources on what really matters: what the customer wants. (Verizon)

RESPONSE: Telephone customer service is important as it is a main method of contacting a cable television company. This rule is needed even more so, since the Board is allowing cable television companies latitude in closing or relocating its customer service locations without Board approval. Twenty-four-hour telephone contact is one of the main reasons cited by the State's cable television companies advocating for the proposed amendments to N.J.A.C. 14:18-5.1(c). Additionally, these metrics are consistent with the Federal standard found at 47 CFR 76.309, Customer service obligations at (c), and the Board as the local franchising authority can enforce this standard, pursuant to 47 CFR 76.309(a). Therefore, the Board declines to eliminate this rule.

Subchapter 11. Application by Cable Television Companies for Municipal Consent

N.J.A.C. 14:18-11.4 Hearing Date

58. COMMENT: The Board is proposing amending this section by adding a new provision that permits a municipality to choose to hold its hearing as a separate proceeding or as part of its normal scheduled meetings. Rate Counsel submits that these changes are appropriate and will not affect the public interest. (Rate Counsel)

RESPONSE: The Board thanks Rate Counsel for its comments.

Subchapter 15. System-wide Franchise Terms and Conditions

N.J.A.C. 14:18-15.3 Relief from Deployment Requirements

59. COMMENT: The Board is proposing amending N.J.A.C. 14:18-15.3(a) by imposing a new requirement that a cable company must give notice within 30 days after it makes a determination under this section. Rate Counsel submits that these changes are appropriate and will not affect the public interest. (Rate Counsel)

RESPONSE: The Board thanks Rate Counsel for its comments.

60. COMMENT: Rate Counsel requests that this provision be further amended to acknowledge that an exclusive contract with a building owner is no longer a ground to request a waiver under this section. The FCC has held that exclusive contracts are not enforceable. (Rate Counsel)

RESPONSE: The Board is aware that the FCC has held exclusive contracts to be unenforceable. However, pursuant to N.J.S.A. 48:5A-25.2.a(2), a determination of a "claimed exclusive arrangement" is grounds for filing a waiver. Therefore, the Board declines to amend this rule.

N.J.A.C. 14:18-14.2 Application for System-wide Franchise to Operate a Cable Television System

61. COMMENT: Revisions should be made to clarify that certain information need only be provided in conjunction with "initial" and not "renewal" applications. (Verizon)

RESPONSE: Sufficient instructions are currently provided on the application forms for system-wide franchises supplied by the OCTV that companies are required to use pursuant to N.J.A.C. 14:18-14.2, therefore the revisions are unnecessary.

N.J.A.C. 14:18-15.4 Public, Educational, and Governmental Access Channels; Return Lines; Interconnection

62. COMMENT: As currently written, Verizon submits that N.J.A.C. 14:18-15.4(c) is ambiguous and has led to uncertainty between Verizon and municipalities regarding the obligations of the parties. The rule should explicitly set forth what the cable operator and the municipality would be responsible for in connection with the provision of one return line, including distance limitations; timeframes for provision of the return line; requirement that the cable television company not have to provide the return line until and unless the company passes the location with plant; requirement that once provided, the municipality is responsible for relocation. (Verizon)

RESPONSE: N.J.S.A. 48:5A-28.m, from which the rule was written, requires system-wide franchise holders "to provide a return feed from any one location in the municipality, without charge, to the [cable television] company's headend or other location of interconnection to the cable television system for public, educational or governmental use, which return feed, at a minimum, provides the ability for the municipality to cablecast live or taped access programming, in real time, as may be applicable, to the [cable television] company's customers in the municipality." The Board declines to interpret the statute to limit the scope of what a municipality can request under a system-wide franchise.

N.J.A.C. 14:18-15.5 Provision of Free Services

63. COMMENT: To clear up confusion that has occurred between Verizon and municipalities regarding when free service must be provided to a municipality by Verizon under its system-wide franchise, a few minor modifications should be made to this provision. First, there has been confusion on the part of municipalities regarding the types of buildings used for "municipal purposes" that qualify for free services. For example, some municipalities have sought free services for such locations as unmanned water towers, which clearly do not fall within the legislative

intent for the provision of free basic cable television and Internet services. To clarify this provision, the Board should insert the clause "that are regularly staffed with government employees and used for governmental purposes, which do not include, for example, municipal garages, park concessions, gazebos, or day care centers." in N.J.A.C. 14:18-15.5(a). Second, there has been considerable confusion regarding when a cable television company actually "passes" a "municipal service property" with its facilities. Street patterns throughout the State vary considerably and this confusion can be clarified by inserting the clause "the address of" between "passes" and "the municipal service property" and "the location," and by inserting the term "distribution" between "television" and "facilities." (Verizon)

RESPONSE: N.J.S.A. 48:5A-28.m, from which the rule was written requires system-wide franchise holders "With regard only to applications for a system-wide franchise, a commitment to install and retain or provide, without charge, one service outlet activated for basic service to any and all fire stations, public schools, police stations, public libraries, and other such buildings used for municipal purposes." The Board declines to interpret the statute to limit the scope of what a municipality can request under a system-wide franchise.

Subchapter 16. Miscellaneous Provisions

N.J.A.C. 14:18-16.7 Effective Competition

64. COMMENT: Verizon supports the elimination of N.J.A.C. 14:18-6.6, Complaint records, from this provision for the reasons explained in the Board's notice of proposal. To align with the requirements of N.J.S.A. 48:5A-11.f, the Effective Competition provision should be modified to add N.J.A.C. 14:18-16.4, Discrimination in rates. N.J.A.C. 14:18-7.8, Telephone customer service, should be entirely eliminated from the rules, but, if it is not (and it should be eliminated), it should also be included in the Effective Competition provision. However, as noted previously, a number of other provisions should be included the Effective Competition provision, including but not limited to, each section from N.J.A.C. 14:18-3, Customer Rights. (Verizon)

RESPONSE: The Board does not find that competition eliminates the need for customer service. Therefore, the Board declines to add Subchapter 3 to this rule. Further, the addition of N.J.A.C. 14:18-16.4, Discrimination in rates, is counter to N.J.S.A. 48:5A-39, from which it is directly taken. See the Response to Comment 57 for discussion of N.J.A.C. 14:18-7.8. Therefore, the Board declines to modify this rule.

N.J.A.C. 14:18-16.8 Violations

65. COMMENT: The proposed changes to the enforcement standards in N.J.A.C. 14:18-6.8 are appropriate and reflect a more rational approach to regulating the cable industry in today's competitive marketplace. NJCTA also supports the proposed changes to N.J.A.C. 14:18-6.8, which create an opportunity to cure technical violations that have no direct impact upon customers. New Jersey is fairly unique in its enforcement; most states have no direct cable enforcement and rely on generally applicable customer service regulations to ensure appropriate conduct. In New Jersey, its cable enforcement rules apply only to wireline providers. Customers that receive their multi-channel video programming from satellite companies like DISH and DirecTV are not regulated under the State's rules. NJCTA believes that competition and the generally applicable State consumer protection rules offer sufficient protection for consumers. The rule changes should go further to ensure equal treatment between video providers, but this rulemaking is a good start. (NJCTA)

RESPONSE: The Board thanks the NJCTA for its comments

66. COMMENT: Some concerns have been raised with the inclusion of the term "willful" into N.J.A.C. 14:18-16.8(b) and (d)4. The "willful" term is used only in the context of the notice and cure provisions, and represents recognition by the Board that, when speaking of technical reporting violations or those that have a minor or limited impact upon 25 customers or less, the imposition of penalties is unnecessary to achieve the desired result. Ensuring that the cable operator has the opportunity to know about the violation and fix it as soon as possible, under the proposed regulation, creates a fairer process for operators and a better outcome for consumers.

The "willful" standard does play an important role in the event of bad intent on the part of a cable operator; if the Board believes that the failure

to comply goes beyond a good-faith technical violation, the Board can retain the ability to seek full enforcement, and the “willful” standard provides a fair and unambiguous trigger for such enforcement. (NJCTA)

RESPONSE: The Board appreciates this comment in support of its rule and stands by the proposed amendments as written.

67. COMMENT: The Board is proposing to add new N.J.A.C. 14:18-16.8 to provide how the OCTV may examine alleged non-compliance by a cable television company and how a penalty may be assessed on a cable television company. Proposed new N.J.A.C. 14:18-16.8(b) provides that a reporting or notice violation or one that affects 25 or fewer customers, as demonstrated by the company, shall not be subject to penalty if the cable television operator cures the alleged violation within 30 days of notice. The notice to cure opportunity shall not apply, however, where the Board determines that the alleged violator has demonstrated a pattern or practice of willful and repeated violations occurring within three years prior to the date of the written notice of the particular rule at issue.

Rate Counsel submits that inclusion and use of the term “willful” under subsection (b) of the proposed new rule is contrary to the public interest and will adversely affect ratepayers. Although there is no precise definition of the term willful because its meaning largely depends on the context in which it appears; it generally signifies intentional as opposed to the inadvertent, deliberate as opposed to unplanned, and the voluntary as opposed to the compelled.

The use of the word willful denotes a level of intent and therefore weakens the Board’s ability to enforce N.J.A.C. 14:18-16.8(b) of the proposed new rule. As currently worded it would permit a cable company to potentially escape liability arising from violations, under the guise that the violations were not willful. As such, inclusion of the term willful in proposed new N.J.A.C. 14:18-16.8(b) is superfluous and may confuse and frustrate the intended purpose behind the proposed new subsection’s construction.

Lastly, it would also place the burden on the Board and ratepayers to prove willful conduct. Rate Counsel opines that the shifting of the evidentiary burden would be contrary to the public interest and will adversely affect ratepayers, by removing the cable provider’s liability for mere negligence in the operation of its business, which may result in the interrupted and inadequate provision of cable services to ratepayers. In view of the foregoing, Rate Counsel asks that proposed new N.J.A.C. 14:18-16.8(b) not be adopted. Rate Counsel would not object if the proposed rule was amended to exclude the use of the term “willful” from N.J.A.C. 14:18-16.8(b). (Rate Counsel)

RESPONSE: EO No. 2 provides in relevant part that all future rulemakings, “[t]ake action to cultivate an approach “that values performance-based outcomes and compliance, over the punitive imposition of penalties for technical violations that do not result in negative impacts to the public health, safety or environment.” Further, EO No. 2 provides, “Before undertaking enforcement activity, and absent exceptional circumstances, the agency shall discuss the regulatory violation with the noncompliant individual or business in order to explore the possibility of resolving the matter without enforcement proceedings.” This furthers Governor Christie’s goal of reducing red tape and working with the industry to reduce punitive imposition of penalties for technical violations. Therefore, the Board will adopt the rule as proposed.

Federal Standards Statement

While many of the rules readopted with amendments, new rules, and a repeal are the subject of Federal laws, rules, regulations, and standards, including franchising statute (47 U.S.C. § 546), technical regulations (47 CFR Part 76, Subpart K) and rate regulations (47 CFR Part 76, Subpart N), upon review of the applicable Federal documents, the Board does not believe that any of the rules readopted with amendments, new rules, and a repeal conflict with or exceed Federal standards.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 14:18.

Full text of the adopted amendments and new rules follows:

SUBCHAPTER 1. GENERAL PROVISIONS

14:18-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Normal business hours” means 9:00 A.M. to 5:00 P.M. weekdays, except for days upon which the Board of Public Utilities is closed for business, including, but not limited to, New Jersey State holidays. A list of New Jersey State holidays can be obtained at <http://www.state.nj.us/nj/about/facts/holidays.html>.

SUBCHAPTER 3. CUSTOMER RIGHTS

14:18-3.3 Customer information

(a)-(d) (No change.)

(e) A cable television company shall not be required to provide its schedule of prices, rates, terms, and conditions as specified in (d) above if it elects to provide such information on its Internet website in a clear, concise, and readily accessible manner, using any reasonable means and format, that accurately conveys the content of the cable television company’s prices, rates, terms, and conditions, and that allows customers and potential customers to make informed decisions based on the information contained therein. However, upon request of a new customer who is unable to access the Internet or who is otherwise unable to obtain information from the cable television company’s website via the Internet, the cable television company shall provide its currently available prices, rates, charges, and services to such new customer.

(f) If a cable television company elects to provide its schedule of prices, rates, terms, and conditions on its Internet website, it shall, at least quarterly, provide instructions on each customer’s bill.

14:18-3.4 Information on company’s schedule of prices, rates, terms, and conditions

(a)-(d) (No change.)

(e) A cable television company shall not be required to provide notice and explanations specified in (a) through (d) above, if it elects to provide such information on its Internet website in a clear, concise, and readily accessible manner, using any reasonable means and format, that accurately conveys the content of the cable television company’s notices, and that allows customers and potential customers to make informed decisions based on the information contained therein.

(f) A cable television company that elects to provide notice and explanations on its Internet website shall provide quarterly notice to each customer of how a customer can obtain its current schedule of prices, rates, terms, and conditions in either electronic or paper form.

(g) If a customer is unable to access the Internet or is otherwise unable to obtain information from the cable television company’s Internet website, the cable television company shall provide a copy of its current schedule of prices, rates, terms, and conditions in paper form.

14:18-3.5 Outage credit

(a) The cable television operator shall credit customers for outages as follows:

1.-6. (No change.)

7. In lieu of credit or rebate, a cable television company may offer to provide a customer an alternate form of compensation for the outage. Nothing in this paragraph shall require a customer to accept an alternate form of compensation from the cable television company.

8. A customer that agrees to take a free promotional service in lieu of credit or rebate must affirmatively request to continue the promotion after the free period is over. No cable television company shall continue to charge a customer for a free promotional service provided in lieu of an outage credit or rebate after the promotional period is over, unless the customer requests that it be continued.

(b)-(e) (No change.)

(f) Each cable television company shall quarterly inform its customers of the procedures by which a customer may obtain a credit.

1. If a cable television company provides information in an electronic format on its Internet website in a manner that reasonably conveys the

content of the periodic written outage credit notices, and which allows its customers to make informed decisions concerning compensation for service outages, it shall not be required to provide quarterly outage credit notice to customers.

2. A cable television company that provides electronic notice on its Internet website shall offer each existing and every new customer the option to receive periodic outage credit notices in written form on at least an annual basis.

14:18-3.7 Bills for service; form of bill

(a) All bills shall show the following:

1.-2. (No change.)

3. If required by Federal law, the identification of each component for all service packages and the rate or price for each component;

4.-14. (No change.)

(b)-(e) (No change.)

(f) In lieu of the requirements of (a)3 above, a cable television company may provide to each customer the information required in (a)3 above at least quarterly and no less than four times a year, as a bill insert, bill stuffer, separate mailer, or on the front or back of the bill. Such notice shall be provided in clear and conspicuous language, font, and color.

(g) The provisions of (a)3 and (f) above shall go into effect in the method outlined below.

1. Each cable television company shall notify the Office in writing of the method to be used to provide notice: by way of notice on the bill, as outlined in (a)3 above, or by way of a quarterly bill insert, bill stuffer, separate mailer, or on the front or back of the bill, as outlined in (f) above.

2. Once a cable television company has chosen a method of providing notice, the method shall remain in effect until the cable television company files notice that it shall change the method of notification as provided in (g)1 above.

14:18-3.15 Trial and promotional services

(a) (No change.)

(b) Cable television operators shall maintain records of all such trial services clearly outlining the terms and scope of offering for inspection by the Office for a period of three years and shall provide copies of such records to the Office upon request.

(c) (No change.)

14:18-3.16 Notice of price change

(a) If the prices and charges of a cable television operator are not subject to prior approval by the Board:

1. A cable television company shall electronically file, no later than January 31 of each year, a current schedule of prices, rates, terms, and conditions. A cable television company implementing a change in its prices shall file electronically with the Office revised individual sheets of its schedule of prices, rates, terms, and conditions reflecting any price changes where there is an increase in prices and shall notify each affected customer at least 30 days prior to the effective date. Should a cable television company seek to file a revision in paper form, it shall file one copy of the individual sheet or sheets reflecting the revised changes to the current schedule of prices, rates, terms, and conditions in lieu of filing the entire document. Price decreases shall require notification within 10 days to the Office, and shall be reflected on the bill provided to the cable television company's affected customers in their next billing cycle that commences no earlier than 10 days after the price decrease.

2. (No change.)

14:18-3.17 Notice of alteration in channel allocation

(a) Each cable television company shall file with the Office notice of an alteration in channel allocation at least 30 days prior to the effective date for deletions or cutbacks in other services. For alterations in channel allocation for new additions, the cable television operator must provide electronic notice to the Office within 10 days of the effective date. Annually, within 15 days following January 1 of every year, each cable television company shall file with the Office an updated channel allocation list, on a form prescribed by the Director.

(b) Each cable television company shall notify its customers of an alteration in channel allocation for deletions or cutbacks in services at least 30 days prior to the effective date. Such notice may be provided

using any reasonable written means in accordance with 47 CFR 76.1603(e) and not inconsistent with any other applicable Federal or State statute.

(c) Each cable television company shall notify affected municipalities of an alteration in channel allocation for public, educational, and/or governmental access channels within 10 days of the effective date for new additions, and at least 30 days prior to the effective date of a change in channel location or deletion in a manner reasonably calculated to provide such information.

(d) For alterations in channel allocation for deletions or cutbacks not within the exclusive control of the cable television operator, the Office shall consider the cable television operator in compliance with the notice obligations where:

1. The cable television operator provides telephonic or electronic notice of the risk of alteration to the Office no less than 24 hours prior to the deletion or cutback, and notice is provided to customers as soon as practical;

2. The cable television operator has acted to provide the required notice at the earliest practical date and either reasonably believes that timely compliance with this subsection might subject the cable television operator to penalties under State, Federal, or local law or that a substantial benefit to customers would be irretrievably lost; or

3. In any other circumstance not enumerated in this subsection, upon a showing by the cable television operator that there is good cause and measures were taken to notify customers as soon as practical.

14:18-3.18 Periodic notices to customers

(a)-(c) (No change.)

(d) A cable television company that elects to provide the information required under this section to customers in electronic form, shall abide by the provisions of N.J.A.C. 14:18-3.27.

14:18-3.27 Furnishing information and notices to customers in electronic form

(a) For any customer who opts to receive electronic only delivery of monthly bills, notice on the electronic bill shall be the equivalent of notice on the paper bill.

(b) Except as otherwise specified in this chapter and not inconsistent with Federal law, any notice or information required to be provided by a cable television company to a customer under this chapter may be provided electronically, so long as the customer affirmatively provides explicit consent (segregated from the general terms and conditions of service) to receive such information or notice in electronic fashion. Receipt of service cannot be conditioned upon a customer's consent to receiving electronic notice.

(c) A customer shall have the right to opt-out or otherwise withdraw consent of receiving electronic notice at any time and for any reason.

(d) The provisions of this section shall not apply to any notice of discontinuance required to be furnished under N.J.A.C. 14:18-3.9 or 4.3.

SUBCHAPTER 5. OFFICES

14:18-5.1 Location and closing

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

(c) At least 60 days prior to the closing or relocation of an office described in (a) or (b) above, where such office is expressly required pursuant to a municipal consent ordinance and Board order to be located within the municipality or other specific location; or where the office to be closed or relocated is more than 35 aerial miles away from any other office of the cable television company within the State of New Jersey; or where the office is to be relocated outside the cable television company's service territory; or where the office is to be located outside the State of New Jersey, a cable television company shall file a petition for approval with the Board demonstrating such closure or relocation is not unreasonable, will not unduly prejudice the public interest, and setting forth the means upon Board approval of the petition, by which customers and other interested parties will be adequately notified of the closing or relocation and alternatives available in the case of a closed office. The cable television company shall simultaneously notify its customers and the clerk of each affected municipality of the pending application for permission to relocate or close the subject office by means of posting

notice at the office location and, within three days of filing the petition, by placing notice of the office closing or relocation in the newspaper(s) serving the affected area and providing a copy of the notice by mail to the clerk of each affected municipality. Said notice shall inform customers of the Office's toll free number and their right to present to the Board, in writing, any objections they may have to the office closure or relocation. The notice shall specify a date certain for submission of comments, which date shall not be less than 30 days after publication and posting. Such office shall not be closed or relocated until the cable television company has been informed, in writing, that the Board has approved such request.

(d) In all other instances, a cable television company must notify with the Board and its customers no later than 30 days prior to the closure or relocation of the office.

1. Notice to the Board shall include a certification from a company officer certifying that notice has been provided to its customers; that the company will provide all services available at the existing office at the new or alternate location; and that there will be no gap in service if the office is relocated.

SUBCHAPTER 6. RECORDS

14:18-6.5 (Reserved)

14:18-6.7 Complaint recording and reporting

(a) Each cable television company shall keep, for at least a period of three years beyond the close of the calendar year of the report in (g) below, a record of all complaints received at its offices, which shall include the name and address of the customer, the date, the nature of the complaint, any corrective action taken, and the final disposition of the complaint.

(b)-(i) (No change.)

SUBCHAPTER 7. REPORTS AND FILINGS

14:18-7.1 Periodic reports

(a)-(c) (No change.)

(d) Reports required in (b) and (c) above, as well as reports required pursuant to N.J.S.A. 48:5A-34.a, may be prepared on a system-level, legal entity-, regional-, or Statewide-level (that is, multi-system) basis except for certain financial, statistical, and ownership information, as specified in the form, which shall continue to be required on a system-level basis.

(e) Reports required by (b) and (c) above that are not independently audited may be provided on an unaudited basis, if accompanied by a certification by the operator's financial officer, attesting to the truth, completeness, and accuracy of the filed reports.

14:18-7.3 Other filings

(a) (No change.)

(b) Each cable television company shall file electronically with the Board its current schedule of prices, rates, terms, and conditions applicable to the services available, pursuant to the provisions of N.J.S.A. 48:5A-1 et seq., as applicable, with revised individual sheets to reflect any changes. Should the company seek to file the revision in paper form, one copy of the individual sheets reflecting the revised changes in the current schedule of prices, rates, terms, and conditions will be accepted in lieu of filing the entire document.

(c) (No change.)

14:18-7.4 Notification of system rebuilds, upgrades, hub, and headend relocations

(a) A cable television company shall provide advanced written notification to the Office prior to any major system rebuild, upgrade, headend, or hub relocation, and/or significant changes in system design as described in the cable television company's initial filing for certificate of approval or renewal thereof. As used in this section, "major system" refers to any system rebuild or upgrade that affects one or more municipalities; or where a headend or hub is relocated; or where significant changes to system design would affect the cable television company's infrastructure in an entire system (geographically contiguous), or region (several systems).

1.-2. (No change.)

14:18-7.6 Telephone system information

(a) When a cable television operator has failed to demonstrate compliance with the provisions of N.J.A.C. 14:18-7.8, the Board or Board staff may request in writing that the following information concerning the operation of the cable television company's telephone system be filed with the Office of Cable Television:

1.-21. (No change.)

SUBCHAPTER 11. APPLICATION BY CABLE TELEVISION COMPANIES FOR MUNICIPAL CONSENT

14:18-11.4 Hearing date

The municipal governing body shall, upon receipt of the first application, decide upon a date on which a hearing will be held concerning the first application and any other applications filed in accordance with N.J.S.A. 48:5A-23. Such date shall be not earlier than 60 days from the date of the first application, nor later than 90 days from the date the first application is filed. A municipality may choose to hold its hearing as a separate proceeding or as part of its normal schedule of meetings.

SUBCHAPTER 15. SYSTEM-WIDE FRANCHISE TERMS AND CONDITIONS

14:18-15.3 Relief from deployment requirements

(a) A cable television company operating under a system-wide franchise that is a local exchange carrier that serves more than 40 percent of the local exchange telephone market in the State must file with the Board if it believes it cannot deploy service as required under N.J.A.C. 14:18-15.2, within 30 days of the date it makes a determination, for one or more of the following reasons:

1.-3. (No change.)

(b)-(d) (No change.)

SUBCHAPTER 16. MISCELLANEOUS PROVISIONS

14:18-16.7 Effective competition

(a) Upon a finding by the Board that the Federal Communications Commission has decertified rate regulation for any cable television system, pursuant to 47 CFR 76.905, on a final finding of effective competition, after April 17, 2000, the following provisions may no longer apply to that system:

1.-6. (No change.)

7. N.J.A.C. 14:18-7.4, Notification of system rebuilds, upgrades, hub, and headend relocations; and

8. (No change in text.)

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

14:18-16.8 Violations

(a) In any enforcement action by the Office alleging non-compliance with any provision of N.J.S.A. 48:5A-1 et seq., N.J.A.C. 14:17, or this chapter, or Board order for which monetary penalties may be sought, the Office must provide a cable television operator written notice of the alleged violation within 90 days of becoming aware of it. Within 30 days of the written notice of any alleged violation, the cable television operator may file any documentation requested by the Office, including, but not limited to, explanation, mitigation, or evidence that no customers were harmed by such violation. The Office may, in its discretion, extend the time for the cable television company to respond up to 30 days. Failure to file responsive documentation within 30 days, or 60 days if extended, may result in the pursuit of an enforcement action as set forth in this section.

(b) For any offense involving an alleged notice or reporting violation, or any alleged violation where the company has demonstrated that it directly affects fewer than 25 customers, a 30-day notice and opportunity to cure shall be issued and if the alleged notice or reporting violation or alleged violation where the company has demonstrated that it directly affects fewer than 25 customers is cured within that time, the violation shall not be subject to a penalty. The notice and opportunity to cure may, but is not required to, be issued concurrently with the notice of alleged

violation. No extension of the notice and opportunity to cure shall be granted. An alleged notice or reporting violation, or any alleged violation where the company has demonstrated that it directly affects fewer than 25 customers is ineligible for the foregoing 30-day notice and opportunity to cure provision where the Board determines that the alleged violator has demonstrated a pattern or practice of willful and repeated violations occurring within three years prior to the date of the written notice of the particular rule at issue.

(c) Any penalty that may be assessed pursuant to N.J.S.A. 48:5A-51 may be waived or compromised by the Board. Prior to assessing a penalty, the Board or the Office shall provide the cable television operator with a written explanation, with specificity, of the proposed penalty for each violation and the particular rules alleged to have been violated.

(d) In determining the amount of penalty, if any, the Board and the Office shall consider:

1. The nature, circumstances, and gravity of the violation(s), including, but not limited to, the extent to which customers have been harmed, including the estimated number of customers affected by the alleged violation;

2. Any history of prior violations of that particular and specific rule within the past three years;

3. Any good faith effort by the operator to achieve compliance or cure the violation within a reasonable time period following notice;

4. Whether the violation was willful; and

5. Any other factors deemed relevant by the Office.

(e) Enforcement actions must be resolved within 180 days of the date of the written notice, except that the Office may extend the deadline up to an additional 90 days if additional time will serve the public interest. However, the time frame for completion of the enforcement action shall be inapplicable where a cable television operator fails to provide a response to the written notice within the 30-day time period, or 60-day period if extended, in (a) above. Any extension requested pursuant to (a) above will automatically extend the time frame for completion of an enforcement action by the equivalent number of the days of the extension.

(f) In assessing violations, the Board may not look back more than three years prior to the date of the written notice.

STATE

(a)

STATE DIVISION OF ARCHIVES AND RECORDS MANAGEMENT

Records Management

Electronic Submission of Land Title Documents for Recordation

Adopted New Rules: N.J.A.C. 15:3-9

Proposed: July 21, 2014, at 46 N.J.R. 1677(a).

Adopted: October 6, 2014, by Kathy Kisko, Assistant Secretary of State, Department of State.

Filed: October 6, 2014, as R.2014 d.165, **without change**.

Authority: P.L. 2011, c. 217 (N.J.S.A. 46:26A and 26C).

Effective Date: November 3, 2014.

Expiration Date: September 16, 2016.

Summary of Public Comment and Agency Response:

Comments were received from Edward C. Eastman, Jr., Executive Director, New Jersey Land Title Association.

COMMENT: The New Jersey Land Title Association supports the proposed new rules as written as it will provide a framework for the efficient, safe, and uniform recordation and storage of electronic land title records in New Jersey.

RESPONSE: The Department thanks the Association for its supportive comment.

Federal Standards Statement

The adopted new rules are not subject to and do not exceed Federal standards or requirements; therefore, a Federal standards analysis is not required.

Full text of the adopted new rules follows:

SUBCHAPTER 9. RULES REGARDING ELECTRONICALLY SUBMITTED DOCUMENTS AFFECTING REAL PROPERTY IN THE OFFICES OF NEW JERSEY COUNTY CLERKS AND REGISTERS OF DEEDS AND MORTGAGES

15:3-9.1 Purpose

The purpose of this subchapter is to establish electronic submission standards and practices for documents affecting real property and to provide for integrity and security of transmissions when county recorders accept and record real property documents using electronic methods.

15:3-9.2 Definitions

The following words and phrases, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“ACH” or “automated clearing house” means the network processing and delivery system that provides for the distribution and settlement of electronic credits and debits among financial institutions administered and subject to rules of National Automated Clearing House Association (NACHA) and the Federal Reserve Board.

“Authentication,” “authenticated,” or “authenticate” means the act or effect of tying an action or result to the person claiming to have performed the action. “Authentication” generally requires a password or encryption key to perform and the process will fail if the password or key is incorrect.

“Business requirements” means the information, steps, and process required by any individual county recorder for accepting submissions of electronic documents for recording.

“County recorder” means the county clerk or register of deeds and mortgages, as appropriate to each county.

“Cover sheet” means a physical document that provides summary information concerning a real property transaction and subject to the requirement described in this subchapter.

“Division” means the New Jersey Division of Archives and Records Management or its successor agency.

“Electronic document” means a document that is received by a county recorder, in an electronic form, meeting the document standards of this subchapter.

“Electronic document package” means a set of documents or information in electronic form that is transmitted to the county recorder; the package may be described as a technical specification of how the documents or information should be organized in electronic media for interchange between the county recorder and the trusted submitter or transmitting party.

“Electronic document submission system” means the computer program, and the hardware components that host it, that receives electronic documents and electronic document packages submitted for recording.

“Electronic recording” or “eRecording” means the indexing and insertion of electronic documents received and accepted by county recorders into the permanent repository of records of the counties of this State.

“Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

“Electronic submission” means the reception by the county recorder of an electronically transmitted document or electronic document package.

“Electronic synopsis” means information required and formatted in a manner specified in this subchapter that can be read by a county recorder’s electronic document submission system.

“Electronic transmission” means an electronic communication not directly involving the physical transfer of a document in a tangible medium and that may be retained, retrieved, and reviewed by the