

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CERTIFICATES OF FRANCHISE AUTHORITY FOR CABLE AND VIDEO SERVICE	DOCKET NO. RMU-07-5
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ORDER COMMENCING RULE MAKING

(Issued July 13, 2007)

Pursuant to Iowa Code §§ 17A.4 and 476.10 and 2007 Iowa Acts, Senate File 554, the Utilities Board (Board) proposes to adopt the amendment described in the "Notice of Intended Action" attached hereto and incorporated by reference. The proposed amendment adds new chapter 199 IAC 44. The rules included in the new chapter are intended to implement 2007 Iowa Acts, Senate File 554 (S.F. 554 or "the Act"), which became effective upon enactment on May 29, 2007. Entitled "An Act Relating to Franchises for the Provision of Cable Service or Video Service Including Providing for Fees and Providing an Effective Date," the Act requires that, as of July 1, 2007, providers of cable or video service have a franchise and provides that the franchise can be issued either by the Board or a municipality. The Act specifies procedures for applying for a certificate of franchise authority from the Board, prescribes the content of a certificate of franchise authority, and provides that the certificates shall be for a term of ten years, renewable, nonexclusive, and transferable. The Act directs the Board to adopt rules to administer the new statute.

Proposed rule 44.2 includes definitions of terms relating to the certificates of franchise authority to be issued by the Board. Proposed subrule 44.3(3) prescribes the content of an initial application for a certificate of franchise authority. The Board proposes to request that applicants specify on the application a telephone number for customer service inquiries. As the state agency responsible for issuing certificates of franchise authority, the Board expects some consumers might contact the Board with inquiries relating to their cable or video service. With the customer service contact information provided on the initial application, the Board can refer consumers to the appropriate resource for assistance.

The proposed rules establish procedures for initial applications for certificates of franchise authority (see proposed rule 44.3); for modification of the cable or video service provider's service area (see proposed subrule 44.3(5)); for transfers of certificates of franchise authority (see proposed subrule 44.3(6)); and for termination of certificates of franchise authority (see proposed subrule 44.3(7)). Proposed subrule 44.3(8) requires certificate holders to notify the Board of any changes to information included on their initial application. Proposed rule 44.6 establishes filing fees for applications, modifications, and terminations.

Consistent with the Act, proposed subrule 44.4(1) requires a competitive service provider to notify affected municipalities and the incumbent cable provider at least 30 days before providing service in a particular part of the provider's certificated service area. The Board anticipates that an applicant will designate its entire expected service area in the initial application and will gradually initiate service

throughout that service area (although nothing in the proposed rules would mandate that approach). The 30 days' notice will alert affected municipalities and incumbent providers of the expected entry of competitive providers into particular markets. Proposed subrule 44.4(2) requires the competitive provider to file a copy of the 30 days' notice with the Board so that the Board is able to monitor timing issues associated with its duties under the Act.

The Act allows an incumbent cable provider to convert its existing municipal franchise to a Board-issued franchise.¹ Proposed rule 44.5 provides that the Board shall automatically grant an incumbent cable service provider's application on the same day a competitive provider gives the required 30 days' notice of offering service if the incumbent provider files its application within 30 days of the day the competitive provider provides the 30 days' notice. If the incumbent cable service provider files its application more than 30 days after the competitive provider gives the 30 days' notice, the Board will grant the application on the day it is filed with the Board. The purpose of this proposed rule is to avoid practical problems that might arise if an incumbent's application were to be granted retroactively well past the time the incumbent has received notice of a competitive provider's entry into the market. For example, if an incumbent waits six months after receiving the 30 days' notice from the competitive provider to file its application with the Board and its certificate were to go into effect retroactively on the date of the 30 days' notice, some seven months

¹ The Act does not explicitly provide the same rights to an incumbent video service provider. The Board is not aware of any situation in which this may make a difference, but comment on the question is invited.

earlier, there could be disputes over the incumbent's obligations under an existing municipal franchise during the seven-month period.²

The Board has developed an application form; a form to be used in the event of service area revision, transfer, or termination; and certificate forms. These forms will be posted on the Board's Web site before the date comments are due in this proceeding. The forms will not be included in the rules, but the Board invites parties to include comments about the forms in their comments regarding the proposed rules.

Finally, in order to provide the Legislature, the industry, and the public with information about the status of cable and video service in Iowa, the Board plans to publish on the Board's Web site a directory of cable and video service providers with certificates of franchise authority issued by the Board. Therefore, parties should expect that the information provided on the various forms will not be entitled to confidential treatment.

IT IS THEREFORE ORDERED:

1. A rule making proceeding identified as Docket No. RMU-07-5 is commenced for purposes of receiving comments on the proposed amendment in the notice attached hereto and incorporated by reference in this order.

² Section 3 of the Act provides that an incumbent cable provider's franchise agreement with a municipality is terminated on the date the Board issues a certificate of franchise authority to the incumbent.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Krista K. Tanner

Dated at Des Moines, Iowa, this 13th day of July, 2007.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to Iowa Code sections 17A.4 and 476.10, and 2007 Iowa Acts, Senate File 554, the Utilities Board (Board) gives notice that on July 13, 2007, the Board issued an order in Docket No. RMU-07-5, In re: Certificates of Franchise Authority for Cable and Video Service, "Order Commencing Rule Making."

The proposed amendment adds new chapter 199 IAC 44 to implement the provisions of Senate File 554, "An Act Relating to Franchises for the Provision of Cable Service or Video Service Including Providing for Fees and Providing an Effective Date." Senate File 554 requires that, as of July 1, 2007, providers of cable or video service must have a franchise issued either by the Board or a municipality. The proposed rules establish procedures and filing fees for initial applications for, and subsequent modifications of, certificates of franchise authority issued by the Board. The order commencing rule making contains a more thorough discussion of the proposed rule making. The order is available on the Board's Web site at www.state.ia.us/iub.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before August 21, 2007, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written

statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to present oral comments on the proposed amendments will be held at 10 a.m. on September 20, 2007, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

This amendment is intended to implement Iowa Code sections 17A.4 and 476.10 and 2007 Iowa Acts, Senate File 554.

The following new chapter is proposed.

CHAPTER 44
CERTIFICATES OF FRANCHISE AUTHORITY
FOR CABLE AND VIDEO SERVICE

199 – 44.1(17A, 476,82GASF554) Authority and purpose. These rules are intended to implement the provisions of 2007 Iowa Acts, Senate File 554, relating to certificates of franchise authority issued by the board for the provision of cable service or video service. The purpose of these rules is to establish procedures and filing fees for initial applications for and subsequent modifications, transfers, terminations, or updates of certificates of franchise authority issued by the board.

199 – 44.2(17A, 476,82GASF554) Definitions. The following words and terms, when used in this chapter, shall have the meanings shown below:

"Board" means the utilities board within the utilities division of the department of commerce.

"Cable operator" means the same as defined in 47 U.S.C. section 522.

"Cable service" means the same as defined in 47 U.S.C. section 522.

"Cable system" means the same as defined in 47 U.S.C. section 522.

"Certificate of franchise authority" means the certificate issued by the board authorizing the construction and operation of a cable system or video service provider's network in a public right-of-way.

"Competitive cable service provider" means a person who provides cable service over a cable system in an area other than the incumbent cable provider providing service in the same area.

"Competitive video service provider" means a person who provides video service other than a cable operator.

"Franchise" means an initial authorization, or renewal of an authorization, issued by the board or a municipality, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a cable system or video service provider's network in a public right-of-way.

"Franchise fee" means the fee imposed pursuant to 2007 Iowa Acts, Senate File 554, Section 8.

"Incumbent cable provider" means the cable operator serving the largest number of cable subscribers in a particular franchise service area on January 1, 2007.

"Municipality" means a county or a city.

"Public right-of-way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which the municipality has an interest, including other dedicated rights-of-way for travel purposes and utility easements. "Public right-of-way" does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcast services or utility poles owned by a municipality or a municipal utility.

"Video programming" means the same as defined in 47 U.S.C. section 522.

"Video service" means video programming services provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including internet protocol technology. "Video service" does not include any video programming provided by a provider of commercial mobile service as defined in 47 U.S.C. section 332, or cable service provided by an incumbent cable provider or a competitive cable service provider or any video programming provided solely as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public internet.

199 – 44.3(17A, 476,82GASF554) Certificate of franchise authority. As provided in 2007 Iowa Acts, Senate File 554, Section 3, after July 1, 2007, a person shall not provide cable service or video service in Iowa without a franchise. The franchise may be issued by either the board pursuant to this chapter or by a municipality pursuant to Iowa Code section 364.2.

44.3(1) Existing franchise agreements. A person providing cable service or video service pursuant to a franchise agreement with a municipality in effect before July 1, 2007, is not subject to this requirement with respect to such municipality until the franchise agreement expires or, in the case of an incumbent cable provider, until the franchise is converted to a certificate of franchise authority issued by the board. Upon expiration of a franchise, a person may choose to renegotiate a franchise agreement with a municipality or may apply for a certificate of franchise authority from the board.

44.3(2) Municipal utilities. A municipal utility that provides cable service or video service in Iowa is not required to obtain a certificate of franchise authority in the municipality in which the provision of cable service or video service by the municipality was originally approved.

44.3(3) Initial application. Within 15 business days after receiving an application and affidavit from an applicant using a form developed by and available from the board, the board shall issue a certificate of franchise authority or notify the applicant that the application is incomplete. The application must be signed by an officer or general partner of the applicant and shall provide the following information:

a. a statement that the applicant has filed or will timely file with the Federal Communications Commission (FCC) all forms required by the FCC in advance of offering cable service or video service in Iowa;

b. a statement that the applicant agrees to comply with all applicable federal and state statutes, regulations, and rules;

c. a statement that the applicant agrees to comply with all applicable state laws and nondiscriminatory municipal ordinances and regulations regarding the use and occupation of a public right-of-way in the delivery of the cable service or video service, including the police powers of the municipalities in which the service is delivered;

d. a description of the service area to be served and the municipalities to be served by the applicant, including descriptions of unincorporated areas, if applicable;

e. the address of the applicant's principal place of business and the names and titles of the applicant's principal executive officers; and

f. the telephone number for customer service contact.

The service area description must be sufficiently detailed to enable the board to ascertain the boundaries of the applicant's proposed service area. Applicants certificated by the board as local exchange carriers pursuant to Iowa Code section 476.29 may choose to refer to descriptions (including maps) of local exchange service areas on file with the board.

44.3(4) Content of certificate. A certificate of franchise authority issued by the board shall contain all of the following:

a. a grant of authority to provide cable service or video service in the service area designated in the application;

b. a grant of authority to use and occupy the public right-of-way in the delivery of cable service or video service, subject to the laws of Iowa, including the police powers of the municipalities in which the service is delivered.

c. a statement that the grant of authority provided by the certificate is subject to the lawful operation of the cable service or video service by the applicant or the applicant's successor; and

d. a statement that the franchise is for a term of ten years, is renewable, and is nonexclusive.

44.3(5) Modification of service area. At least 14 days before expanding cable service or video service to a previously undesignated service area or making any other change to its previously designated service area, the holder of a certificate of franchise authority shall update the description of its service area on file with the board and shall notify the board upon expansion or other change in service area using a form developed by and available from the board.

44.3(6) Transfer of certificate of franchise authority. The holder of a certificate of franchise authority may transfer the certificate to any successor by filing a notice of transfer with the board and each affected municipality using a form developed by and available from the board. The notice of transfer shall include the address of the successor's principal place of business and the names and titles of the successor's principal executive officers. A notice of transfer shall be effective 14 business days after filing the notice of transfer with the board, unless the certificate holder files a notice of rescheduling the transfer and provides a copy of such notice to each affected municipality. The successor shall assume all regulatory rights and responsibilities of the holder of the certificate.

44.3(7) Termination of certificate of franchise authority. The holder of a certificate of franchise authority may terminate the certificate by providing written notice of termination to the board and to each affected municipality using a form developed by and available from the board.

44.3(8) Updates. The holder of a certificate of franchise authority shall notify the board of any change in the name of the entity holding the certificate, contact personnel, principal executive officers, address of principal place of business, telephone number, and customer service contact information by sending a letter to the board specifying the change and certificate number. The notice shall be provided within 14 days after the effective date of the change.

199 – 44.4(17A, 476,82GASF554) Notice to municipality and incumbent cable provider. A competitive service provider shall notify affected municipalities and incumbent cable providers of its plan to offer service as provided in this rule.

44.4(1) At least 30 days before providing service in any part of a competitive cable or video service provider's certificated service area in which the provider has not yet offered service, a competitive cable service provider or competitive video service provider shall notify each municipality with authority to grant a franchise in the part of the competitive provider's service area to be served and the incumbent cable provider in that area that the competitive provider will provide service within the jurisdiction of the municipality and when such service will begin. A competitive cable service provider or competitive video service provider shall not provide service without having provided the notice required by this rule.

44.4(2) The competitive cable service provider or competitive video service provider shall file a copy of the notice required by this rule with the board.

44.4(3) If the competitive cable service provider or competitive video service provider determines that its entry into the market will be delayed, no further notice will be required unless market entry is delayed for more than 30 days after the date service was expected to begin.

199 – 44.5(17A, 476,82GASF554) Conversion of municipal franchise by incumbent cable provider. If a competitive cable service provider or a competitive video service provider applies for a certificate of franchise authority to operate within a municipality, the incumbent cable provider in that municipality may apply for a certificate of franchise authority for that same municipality using an application form developed by the board and providing the information required in 44.3(3). The board shall automatically grant the incumbent's application, if complete, effective on the same day a competitive cable service provider or competitive video service provider files the 30 days' notice of offering service as required pursuant to 44.4, if the incumbent cable provider files its application within 30 days of the day the competitive service provider provides the 30 days' notice. If the incumbent cable provider files its application more than 30 days after the date the competitive service provider provides the 30 days' notice, the board shall grant the incumbent's application, if complete, to be effective on the date the application is filed with the board.

199 – 44.6(17A, 476, 82GASF554) Filing fees. Each applicant shall submit one or more of the following fees, as applicable:

44.6(1) A filing fee of \$100 with an initial application; and

44.6(2) A filing fee of \$50 with a notice of modification or transfer; and

44.6(3) A filing fee of \$25 with a notice of termination.

July 13, 2007

/s/ John R. Norris

John R. Norris
Chairman