

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>REVISIONS TO RULES GOVERNING CERTIFICATES OF FRANCHISE AUTHORITY FOR CABLE AND VIDEO SERVICE [199 IAC 44]</p>	<p>DOCKET NO. RMU-08-5</p>
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ORDER COMMENCING RULE MAKING

(Issued September 3, 2008)

Pursuant to Iowa Code §§ 17A.4 and 476.2 and 2008 Iowa Acts, Senate File 2248, the Utilities Board (Board) proposes to adopt the amendments described in the "Notice of Intended Action" attached hereto and incorporated by reference. The proposed amendments revise the Board's rules at 199 IAC 44 to reflect recent legislative changes to Iowa Code chapter 477A, the statute that authorizes the Board to issue certificates of franchise authority to cable and video service providers. The proposed amendments also add provisions requiring certificated service providers to specify the effective date of any service area revision or certificate termination and explaining how the agency will respond to notices of service area revision, transfer, or termination.

Two of the proposed revisions correspond to 2008 Iowa Acts, Senate File 2248 (SF 2248), which became effective on July 1, 2008, and made two changes to Iowa Code chapter 477A, Code Supplement 2007. When Iowa Code chapter 477A was adopted in 2007, the statute defined the term "municipality" to include both cities and counties. Section 1 of SF 2248 amended Iowa Code § 477A.1(12) to remove

the words "county or" from the definition of "municipality," thereby eliminating any confusion over whether a county could be considered to be a local franchising authority. To be consistent with chapter 477A, the Board proposes an amendment to remove counties from the definition of "municipality" in rule 44.2.

Iowa Code § 477A.2(2)"b" provides that upon expiration of a municipal franchise, a person may choose to renegotiate a franchise with the municipality or may choose to obtain a certificate of franchise authority from the Board. Section 2 of SF 2248 added a provision to § 477A.2(2)"b" that allows a person to file an application for a certificate from the Board within 60 days prior to expiration of a municipal franchise agreement. Section 2 of SF 2248 also provides that if a certificate is obtained pursuant to an application filed before an existing franchise agreement expires, the certificate takes effect on the date the agreement expires. The proposed amendments revise Board subrule 44.3(1) to reflect the 60-day advance application window.

Iowa Code § 477A.3(1)"d" requires an applicant for a certificate of franchise authority to describe the service area to be served; to update the service area description before expanding cable or video service to a previously undesignated service area; and to notify the Board of any expansion of service area. Board subrule 44.3(5) provides that at least 14 days before expanding service to a previously undesignated service area or making any other change to a service area, a service provider must update the service area description on file with the Board and notify the Board of any modification. Since the Board's rules at 199 IAC 44 went into effect on December 26, 2007, one certificated service provider has expanded its

service area. Based on the Board's experience in processing that notice of service area revision, the Board proposes to amend subrule 44.3(5) to explain that the agency will respond to notices of service area revision by sending the service provider a letter acknowledging receipt of the notice, rather than by Board order. Also, in order to avoid any potential confusion about a service provider's rights and obligations with respect to a particular service area, the Board proposes to amend subrule 44.3(5) to require the service provider to specify the effective date of the service area revision. The Board also proposes to make similar changes to subrules 44.3(6) and (7) regarding notices of transfer and termination.

IT IS THEREFORE ORDERED:

1. A rule making proceeding identified as Docket No. RMU-08-5 is commenced for purposes of receiving comments on the proposed amendment in the notice attached hereto and incorporated by reference in this order.
2. 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/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 3rd day of September, 2008.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to Iowa Code sections 17A.4 and 476.2, and 2008 Iowa Acts, Senate File 2248, the Utilities Board (Board) gives notice that on September 3, 2008, the Board issued an order in Docket No. RMU-08-5, In re: Revisions to Rules Governing Certificates of Franchise Authority for Cable and Video Service [199 IAC 44], "Order Commencing Rule Making."

The proposed amendments revise the Board's rules at 199 IAC 44 regarding certificates of franchise authority for cable and video service providers. Two of the proposed revisions reflect recent legislative changes. 2008 Iowa Acts, Senate File 2248, became effective on July 1, 2008, and made two changes to Iowa Code chapter 477A, the statute authorizing the Board to issue certificates of franchise authority to cable and video service providers. Senate File 2248 removed counties from the definition of "municipality" in Iowa Code section 477A.1(12), and added a provision to Iowa Code section 477A.2(2)"b" to allow a service provider that is subject to an existing municipal franchise to file an application for a certificate of franchise authority from the Board within 60 days prior to the expiration of the municipal franchise. The proposed amendments revise Board rule 44.2 to reflect the amended definition of "municipality" and subrule 44.3(1) to add a provision allowing an application from a service provider

subject to an existing municipal franchise agreement to be filed prior to expiration of the franchise agreement.

The proposed amendments also revise subrules 44.3(5) and 44.3(7) to require a service provider to specify the effective date of a service area modification or certificate termination and revise subrules 44.3(5) through (7) to provide that the agency will acknowledge receipt of notice of service area modification, certificate transfer, or certificate termination by letter.

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 amendment. The statement must be filed on or before October 14, 2008, 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.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested of the Board on its own motion may determine that an oral presentation should be scheduled.

These amendments are intended to implement Iowa Code sections 17A.4 and 476.2 and 2008 Iowa Acts, Senate File 2248.

The following amendments are proposed.

ITEM 1. Amend rule 199—44.2(17A,476,477A,82GA,SF2248), definition of "municipality," as follows:

199—44.2(17A,476,477A,82GA,SF2248) Definitions.

"Municipality" means a ~~county~~ or a city.

ITEM 2. Amend subrule 44.3(1) as follows:

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 the requirement to obtain a franchise 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. An application for a certificate of franchise authority from a person subject to an existing municipal franchise agreement may be filed within 60 days prior to the expiration of the agreement and, if granted, shall take effect upon the expiration date of the agreement.

ITEM 3. Amend subrules 44.3(5) through 44.3(7) as follows:

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~~ of the effective date of the expansion or other change in service area using a form developed by and available from the board. The board will acknowledge receipt of a notice of service area modification by letter.

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 with direct authority over and responsibility for the successor's cable or video operations. A notice of transfer shall be effective on the date which is the later of (i) 14 business days after the date of filing of the notice of transfer with the board or (ii) the effective date of transfer as designated by the certificate holder, provided such date is not less than 14 business days after the date the notice of transfer is filed with the board, unless the certificate holder files a notice of rescheduling of the transfer and provides a copy of such notice to each affected municipality. As of the effective date of the transfer, the successor shall assume all regulatory rights and responsibilities of the holder of the certificate. The board will acknowledge receipt of a notice of transfer by letter.

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 the effective date of termination to the board and to each affected

municipality using a form developed by and available from the board. The board will acknowledge receipt of a notice of termination by letter.

September 3, 2008

/s/ John R. Norris
John R. Norris
Chairman