

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 ADOPTING AMENDMENTS**

(Issued November 25, 2008)

Pursuant to Iowa Code §§ 17A.4 and 476.2 and 2008 Iowa Acts, Senate File 2248, the Utilities Board (Board) adopts the amendments described in the "Adopted and Filed" notice attached hereto and incorporated herein by reference. On September 24, 2008, a "Notice of Intended Action" with the proposed amendments was published in the Iowa Administrative Bulletin at IAB Vol. XXXI, No. 7 (9/24/2008) p. 815, as ARC 7168B. No oral presentation was scheduled or requested.

The 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, and add other provisions relating to notices from certificated service providers regarding service area revisions, transfer of certificates, and termination of certificates.

Item 1 of the published "Notice of Intended Action" contains an editorial change. Items 2 and 3 contain the amendments made in response to the changes in

the statute. 2008 Iowa Acts, Senate File 2248 (SF 2248), which became effective on July 1, 2008, 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 proposed in Item 2 to amend rule 44.2 by removing counties from the definition of "municipality."

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 amendment proposed in Item 3 revises Board subrule 44.3(1) to reflect the 60-day advance application window.

Item 4 contains amendments based on the Board's experience in receiving notices from certificated service providers regarding changes in service area and

transfers or terminations of certificates. 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. Based on the Board's experience in processing notices of service area revision received since the Board's rules at 199 IAC 44 went into effect on December 26, 2007, the Board proposed 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 proposed to amend subrule 44.3(5) to require the service provider to specify the effective date of the service area revision and to make similar changes to subrules 44.3(6) and (7) regarding notices of transfer and termination.

The Board received written statements of position in response to the proposed amendments from the Iowa Cable and Telecommunications Association, Inc., the Consumer Advocate Division of the Department of Justice, the Iowa Telecommunications Association, and the Rural Iowa Independent Telephone

Association. None of the commenters objected to the proposed amendments, and no revisions were suggested.

The Board will adopt the amendments as proposed. The amendments will become effective on January 21, 2009.

**IT IS THEREFORE ORDERED:**

1. A rule making identified as Docket No. RMU-08-5 is adopted.
2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin an "Adopted and Filed" 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 25<sup>th</sup> day of November, 2008.

## UTILITIES DIVISION [199]

### Adopted and Filed

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 November 25, 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 Adopting Amendments." The order adopted amendments which were published under Notice of Intended Action in IAB Vol. XXXI, No. 7 (9/24/2008), p. 815, as ARC 7168B, without revision.

The amendments revise the Board's rules at 199 IAC 44 regarding certificates of franchise authority for cable and video service providers to reflect recent legislative changes in 2008 Iowa Acts, Senate File 2248, and to add other provisions regarding notice from certificated service providers of service area revision, transfer of certificates, or termination of certificates.

The order adopting amendments contains a more thorough discussion of the amendments. The order is available on the Board's Web site at [www.state.ia.us/iub](http://www.state.ia.us/iub). The amendments will become effective on January 21, 2009.

The following amendments are adopted.

ITEM 1. Amend rules ~~199—44.2(17A,476,82GA,SF554)199—44.3(17A,476,82GA,SF554)~~, parenthetical implementation, by striking "82GA,SF554" and inserting "477A,82GA,SF2248" in lieu thereof.

ITEM 2. Amend rule ~~199—44.2(17A,476,477A,82GA,SF2248)~~, definition of "Municipality," as follows:

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

ITEM 3. 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 4. Amend subrules 44.3(5) to 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 (1) 14 business days after the date of filing of the notice of transfer with the board or (2) 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.

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

November 25, 2008

/s/ John R. Norris

John R. Norris  
Chairman