

CHAPTER 44
CERTIFICATES OF FRANCHISE AUTHORITY FOR
CABLE AND VIDEO SERVICE

199—44.1(17A,476,477A) Authority and purpose. These rules are intended to implement Iowa Code chapter 477A, 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 for initial applications for and subsequent modifications, transfers, terminations, or updates of certificates of franchise authority issued by the board.

[ARC 9494B, IAB 5/4/11, effective 6/8/11]

199—44.2(17A,476,477A) 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 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.

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199—44.3(17A,476,477A) 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 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.

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 30 calendar 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 board shall not issue a certificate of franchise authority to an applicant unless the board finds that all of the following requirements have been met. If the board needs additional information to determine whether the requirements in paragraphs “g,” “h” and “i” are met and that determination cannot be made within the initial 30-day period, the board may docket the application for further review and take an additional 60 calendar days to make that determination. 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. 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.

e. The address of the applicant’s principal place of business and the names and titles of the applicant’s principal executive officers with direct authority over and responsibility for the applicant’s cable or video operations.

f. The telephone number for customer service contact.

g. Documentation that the applicant possesses sufficient managerial, technical, and financial capability to provide the cable service or video service proposed in the service area. An applicant or its subsidiary which has a board-issued certificate of public convenience and necessity to provide telephone service pursuant to Iowa Code section 476.29 shall be exempt from the provisions of this paragraph.

h. Copies of advertisements or news releases announcing the applicant’s intent to provide cable service or video service in the service area intended for release if the certificate of franchise authority is granted. If such items are not available at the time the application is filed, the applicant shall file copies with the board when they become available.

i. A schedule of dates by which the applicant intends to commence operation in each municipality proposed to be served within the service area. The applicant shall file timely updates to this schedule to maintain accuracy.

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 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.

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.

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199—44.4(17A,476,477A) 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) *Notice of intent to provide service.* 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 pursuant to a board-issued certificate of franchise authority, 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. All notices required by this subrule shall be sent by certified mail. A competitive cable service provider or competitive video service provider shall not provide service without having provided the notice required by this rule.

- a. The competitive cable service provider or competitive video service provider shall file a copy of the notice required by this rule with the board on the date that the notice is provided.

b. 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.

44.4(2) Notice of application. In addition to the notice of intent to provide service, an applicant shall notify each municipality with authority to grant a franchise in the applicant's proposed service area that the applicant has filed an application with the board for a certificate of franchise authority. This notice shall be mailed on the date the application is filed with the board and shall be sent by certified mail.
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199—44.5(17A,476,477A) 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(17A,476,477A) 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.

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199—44.6(17A,476,477A) Revocation of certificates, termination of service, reinstatement of previously terminated municipal franchises.

44.6(1) Certificate holder fails to commence operation. If a certificate holder fails to commence operation of the cable service or video service proposed in its application within 12 months from the date the board granted the certificate holder's application, the board may determine that the certificate holder is not in compliance with the certificate and may revoke the certificate. The board shall notify any incumbent cable operator affected by the revocation.

44.6(2) Reinstatement of previously terminated municipal franchise upon revocation. In the event a certificate is revoked as provided in subrule 44.6(1), the municipal franchise agreement which was in effect between the incumbent cable provider and municipality before being terminated pursuant to Iowa Code section 477A.2(6) and rule 199—44.5(17A,476,477A) after the certificate holder filed its notice of intent to provide service shall be reinstated for the remaining duration of the municipal franchise agreement, provided that the agreement would have remained in effect for at least 60 days prior to termination and provided that the municipal franchise agreement was terminated after April 12, 2010. Within 90 days of receiving notice from the board that a certificate has been revoked as provided in subrule 44.6(1), the incumbent cable provider shall comply with the terms of the previous municipal franchise agreement.

44.6(3) Certificate holder ceases to provide service. In the event a certificate holder ceases to engage in construction or ceases operation of a cable system or video service network and is no longer providing service, the certificate holder shall notify the affected municipality, the board, and the incumbent cable provider on the date that construction or service is terminated. If the municipal franchise agreement which was in effect between the incumbent cable provider and the municipality before being terminated pursuant to Iowa Code section 477A.2(6) and rule 199—44.5(17A,476,477A) after the certificate holder filed its notice of intent to provide service would have remained in effect for at least 60 days prior to termination and was terminated after April 12, 2010, the agreement shall be reinstated and shall be in effect for the remaining term of that agreement. The incumbent cable provider shall comply with the terms of the previous municipal franchise agreement within 90 days of notification by the certificate holder that it has ceased construction of a cable system or video service network or is no longer providing services.

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199—44.7(17A,476,477A) Assessment of board costs. The board may allocate and charge the expenses attributable to its duties pursuant to Iowa Code chapter 477A directly to the person filing an application for a certificate of franchise authority or subsequent notice regarding a certificate issued by the board or any other proceeding relating to a certificate of franchise authority.

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These rules are intended to implement Iowa Code sections 17A.4 and 476.10 and chapter 477A.

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