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PUBLIC UTILITIES  
BOARD OF PUBLIC UTILITIES

Proposed Amendments: N.J.A.C. 14:18-1.2, 3.2, 3.5, 3.7, 3.9, 3.12, 3.17, 3.23, 7.6, 11.3, 15.4, 15.7, 16.7

Regulations of Cable Television

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with approval of the Board of Public Utilities: Jeanne M. Fox, President; Frederick F. Butler, Commissioner; Joseph L. Fiordaliso, Commissioner and Christine V. Bator, Commissioner).

Authority: N.J.S.A. 48:5A-10

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: CX07120920

Proposal Number: PRN 2008-

A public hearing concerning the proposal will be held on April 24, 2008 at 10:00 A.M. at:

Board of Public Utilities  
Hearing Room, 8th Floor  
Two Gateway Center  
Newark, NJ 07102

Comments may be submitted through May 16, 2008 through either of the following methods:

Comments may be submitted on paper to:

Celeste M. Fasone, Director  
Office of Cable Television  
ATTN: Docket No. CX07120920  
Two Gateway Center  
Newark, NJ 07102

Comments may be submitted in Microsoft Word format, or in a format that can be easily converted to Word, by e-mailing them to the following e-mail address:

[rule.comments@bpu.state.nj.us](mailto:rule.comments@bpu.state.nj.us)

The agency proposal follows:

Summary

Upon readoption of N.J.A.C. 14:18 with amendments and new rules on May 7, 2007 (see 39 N.J.R. 1766(a)), the Board of Public Utilities (Board) noted that it would consider certain amendments to the rules. This rulemaking proposes some of those amendments. Other

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amendments have not been proposed because the Board has not had an opportunity to fully examine the effects that such proposed rules would have on the citizens of the state and the functions of the Office of Cable Television (OCTV). Subsequent to adoption, the New Jersey Cable Telecommunications Association (NJCTA) also requested that the OCTV make certain amendments to the rules. On May 30, 2007, August 2, 2007, November 21, 2007, November 28, 2007, the NJCTA submitted written comments on amendments it was asking the Board to propose. Those comments and the Board's responses are discussed within this document.

The substantive provisions of the rules proposed for amendment by the Board are summarized as follows:

#### Subchapter 1. General provisions

N.J.A.C. 14:18-1.2 contains the definitions used in Chapter 18. The Board proposes to delete the term "cable communications system" or "cable communications service" as these terms are not used within Chapter 18, with the exception of a reference in N.J.A.C. 14:18-11.3, which is also proposed for amendment herein.

The Board proposes to add a term "cable television service" to comport with L. 2006, c. 83, N.J.S.A. 48:5A-3j, which redefines the term. The statute redefined the term to mirror the Federal definition found at 47 C.F.R. § 76.5 with the exception of the phrase found in the statute, "regardless of the technology utilized by a cable television company to enable such selection or use." The proposed change incorporates the statutory definition.

The Board proposes to amend the term "cable television company or cable television operator" to comport with L. 2006, c. 83, N.J.S.A. 48:5A-3g, which redefines the term. The statute redefined the term to mirror the Federal definition found at 47 C.F.R. § 76.5. The proposed change incorporates the statutory definition. Specifically, the proposed definition more fully defines a cable television company or operator. The current definition of a cable television company or operator is limited to a person owning, controlling, operating or managing a cable television system. The proposed definition, in keeping with the statutory amendment, expands the current definition so that a person or group of persons is defined as a cable television company or operator even if they are an affiliate owning significant interest in the system or if they are a responsible party through an arrangement for the management and operation of a cable television system.

The Board proposes to amend the definition of "promotional service" to remove reference that promotions usually do not exceed a month. Many promotions offered currently exceed this timeframe, and it is appropriate to allow cable television companies to offer promotions to customers which may provide significant benefit to them but which may require a longer term commitment on the part of the customer.

#### Subchapter 3. Customer Rights

The Board proposes to amend N.J.A.C. 14:18-3.2(d) to comport with the Federal standard. Currently, the rule requires a cable television company to perform 75 percent of installations within five business days. In its comments to the readoption of Chapter 18 (see 39 N.J.R. 1766(a)), Verizon requested that the Board amend this to conform with the Federal standard which requires a cable television company to perform 95 percent of installations within

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seven business days. Since the proposed amendment will conform the Board's rule to the Federal standard, it is reasonable and appropriate.

The NJCTA requested that the Board amend N.J.A.C. 14:18-3.5 to revert the rule to the statutory language, found at N.J.S.A. 48:5A-11a, which requires that an outage last six or more hours before the cable television company is required to provide a credit for loss of service. Although the Board notes that the NJCTA had voluntarily agreed to a three hour threshold in the readoption Chapter 18 in 2003 (see 35 N.J.R. 5294(a)), since the cable television industry has now withdrawn its consent, the Board believes that the six-hour threshold in the statute should be restored. Therefore, the Board is proposing to amend this section at paragraphs (a)1, (a)3, (b)1 and (b)2 to note that a customer must experience an outage six hours or longer in order to be eligible for credit under this section. The NJCTA also requested that the Board reinstate the requirement that a customer must call or write the cable television company or the OCTV within 30 days following an outage in order to obtain an outage credit. The Board declines to propose amendments to the rule. As noted in the readoption of Chapter 18 on May 7, 2007 (see 39 N.J.R. 1766(a)), the Board does not believe that this requirement conflicts with the Board's statutory authority under N.J.S.A. 48:5A-11a. As noted therein, the requirement that a "subscriber shall notify by telephone or in writing the cable television company, the Office of Cable Television or other designated complaint officer within 30 days after any such outage" in order to obtain a credit, does not explicitly state that this notification shall be made after the *conclusion* of the outage. The Board believes that the statutory provision can be interpreted to mean after the *commencement* of an outage which qualifies for a credit.

N.J.A.C. 14:18-3.7 pertains to bills for service, and the required information that must be included. The Board proposes to amend paragraph (a)14 to provide that a cable television company is not required to list on its bill any promotion that is under six months in length. In addition, the cable television company has the option of either listing the expiration date of the promotion or the number of months left in the promotion. These amendments were requested by the NJCTA and are appropriate. If a promotion is less than six months and a cable television company cannot post the information on a customer's bill in a timely fashion due to its billing system, the rule could put the cable television company in violation of the rule even though the promotion may have expired. The Board agrees that the rule could put an onerous burden on the state's cable television operators. Furthermore, listing the expiration date or the number of months left in the promotion accomplishes the desired objective. Cable television companies should be allowed to decide how to provide this information to customers. As long as the information is provided, customers can make informed decisions.

The Board proposes to amend subsection (g), which requires a cable television company to elect how it intends to provide notice by November 15th of each year; otherwise, the monthly requirement is enforced. In its comments on the readoption of Chapter 18 (see 39 N.J.R. 1766(a)) and its letter dated August 2, 2007, the NJCTA stated that once elected, a cable television company should be permitted to continue to provide notice in the same manner unless it decides to change the manner in which it does so. The Board agrees and has proposed this change.

N.J.A.C. 14:18-3.9 pertains to the due date of payment and notice of discontinuance. The Board proposes to amend subsection (f) to provide that a customer that wishes to disconnect its service with a cable television company may provide notice of that intent by way

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of telephone call, written notice or electronic message. This amendment is proposed to remove the ambiguity in the language.

The Board proposes to amend N.J.A.C. 14:18-3.12 regarding service call scheduling to conform the rule to the Federal standard. In the readoption of Chapter 18 (see 39 N.J.R. 1766(a)), the NJCTA requested that the Board include the language from the Federal standard which provides for instances when a cable television representative is running late. In that adoption notice, the Board noted that it would review the matter. The amendment proposed herein would incorporate the Federal standard language found at 47 C.F.R. § 76.309 and would delete any requirement that goes beyond that included in the Federal standard. The Federal standard requires cable television operators to meet or exceed the standards for service calls contained in proposed paragraph (a)1 and (a)2 ninety-five percent of the time as measured quarterly. Therefore, this requirement has been proposed for inclusion in subsection (a). Proposed subsection (b) references the specific language found in the Federal standard found at 47 C.F.R. § 76.309 and for the most part, mirrors current subsection (b) with the exception of the requirement to reschedule the appointment within 24 hours. Since the 24-hour requirement is not found in the Federal standard, proposed subsection (b) does not require it but still requires rescheduling at a time convenient to the customer. Proposed subsection (c) contains language that is now found in subsection (a). Since notification of a cable television company's offering of morning, afternoon and evening service calls is not found in the Federal standard, the requirement to notify the customer of the availability of service calls in the morning, afternoon or evening is proposed to be moved to its own subsection.

The Board proposes to amend N.J.A.C. 14:18-3.17(a) to provide that a cable television company need only file notice when making channel changes, and file the currently required channel allocation form twice a year, on January 1 and on July 1. This amendment was requested by the NJCTA and is reasonable in light of increasing channel capacity and the number of channels continually being added in transition to a digital platform.

The Board proposes to amend N.J.A.C. 14:18-3.23(a) to provide that a cable television company may charge the replacement cost of a converter to a customer when seeking reimbursement for lost, stolen or damaged equipment, and would no longer have to track the initial cost of the converter installed at a customer's premises. This request was made by both Verizon and NJCTA in their comments on the readoption of Chapter 18 (see 39 N.J.R. 1766(a)) and by NJCTA again in its August 2, 2007 letter. Because the rule allows the cable television company to charge the greater of the cost of the original equipment or its replacement cost, and the cable television industry has stated it is willing to forego any recovery if the cost of the equipment has decreased, it is appropriate to propose this amendment.

## Subchapter 5. Offices

In its August 2, 2007 letter, the NJCTA requested that the Board amend N.J.A.C. 14:18-5.1(c) to provide that if a local office is within 15 miles of the current office, is within the State of New Jersey, and would provide continuous uninterrupted service to customers, there would be a presumption that the office could be relocated. In addition, the NJCTA requested that the Board add a new subsection (d) to provide that the petition would be deemed granted if the Board did not act upon the office closing or relocation petition within 45 days. The office closing rule found at subsection 5.1(c) was promulgated to ensure that all closings and relocations were in compliance with all state and local requirements, including municipal consent ordinances and

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Board orders. The Board declines to propose this amendment because it cannot make a presumption of fact that the closing or relocation is not unreasonable and will not prejudice the public interest without knowing each of the variables which could affect a closing and/or relocation. For example, some municipalities have specific language in their consent ordinances which require local offices to be located within the municipality or within a certain distance from the municipality. Also, a relocation of 15 miles does not guarantee that the office will be within the cable television company's service territory, which is generally required. Furthermore, if the office is relocated to an area that is not accessible by mass transit and private vehicle, the Board may have concerns. The Board also declines to propose amendments which provide that a petition will be deemed granted if not acted upon within 45 days. The Board's review may take additional time to process and if a timeframe such as this were imposed, it might force the Board to deny legitimate office closing or relocation petitions.

In its comments on the readoption of Chapter 18 (see 39 N.J.R. 1766(a)), Verizon requested amendment of subsection 5.1(c) to state that system-wide franchisees would not be required to provide written notification to municipalities of an office closing or relocation. Even though the Board is the complaint officer for any system-wide franchise issued, the Board is not convinced that municipalities should be eliminated from the process. Since the municipality has the right to act on behalf of its citizenry, even where it has not issued cable television municipal consent, such as in the case of a system-wide franchise, notice should be provided to each municipality affected by the office closing.

#### Subchapter 7. Reports and filings

Section 7.6 requires cable television operators to file information about their customer service and internal telephone systems on an annual basis. In the readoption of Chapter 18 (see 39 N.J.R. 1766(a)), the NJCTA requested elimination of this rule if the cable television company is meeting the Federal customer service response standard, adopted by the Board and found at N.J.A.C. 14:18-7.8. The purpose of this section is to enable Board staff to determine where problems may exist, in the event of non-compliance with N.J.A.C. 14:18-7.8. Upon review of relevant information on file with the OCTV, the Board finds that this amendment is reasonable and proposes to add a new subsection (d) to provide that if a cable television company has met the requirements of N.J.A.C. 14:18-7.8 for four or more consecutive quarters, including timely filing of the reports, it will not be required to provide this information. The Board also proposes to add a new subsection (e) to require that if a cable television company does not meet the requirements of 7.8 for three or more consecutive quarters, as determined by OCTV review of filings, including not filing in a timely manner, the cable television company will once again be required to file this information on an annual basis until such time as it achieves compliance with N.J.A.C. 14:18-7.8 for four or more consecutive quarters.

#### Subchapter 11. Application by cable television companies for municipal consent

The Board proposes two technical amendments to N.J.A.C. 14:18-11.3 regarding appointment of a citizen's advisory committee: one, to change the term "cable communications" to "cable television service" and two, to add the word "television" between "cable" and "system."

#### Subchapter 15. System-wide franchise terms and conditions

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N.J.A.C. 14:18-15.4 provides the rules for the provision of public, educational and governmental (PEG) access channels; return lines; interconnection of the cable television companies' PEG access channels within a particular municipality, and for disputes between municipalities and cable television companies, and disputes between cable television companies regarding interconnection. The Board proposes to amend subsection (b) to add a phrase which will allow a municipality to seek resolution from the OCTV in any PEG access channel dispute, not solely where there is a dispute over the provision of additional PEG access channels. The Board also proposes to amend subsection (c) to allow a municipality to seek resolution from the OCTV in any dispute over provision of return lines. These amendments are in keeping with the Board's statutory responsibility under N.J.S.A. 48:5A-28.1, which requires the Board to adopt rules for procedures for resolving disputes between cable television companies and municipalities. A technical amendment to subsection (c) is proposed to change the word "service" to "return line" to more appropriately describe what is being required in this section.

N.J.A.C. 14:18-15.7 governs franchise fees, and how and when an existing municipal consent ordinance-based franchise holder is required to collect and pay the additional franchise fee required under N.J.S.A. 48:5A-30d. Upon adoption of this rule (see 39 N.J.R. 1766(a)), the Board added a new paragraph (b)2 which provided that, upon the filing of a petition for approval of certification under this section, the Board would notify the existing cable television company, the affected municipality and the Department of Public Advocate, Division of Rate Counsel. It is more appropriate that the petitioner for approval of certification under this section be responsible for notifying the interested parties. This is in keeping with notice requirements for other petitions filed with the Board. Therefore, the Board proposes to amend subsection (b)2 to require that the cable television company operating under a system-wide franchise provide notice to the existing cable television company, the affected municipality and the Department of Public Advocate, Division of Rate Counsel of its filing of a petition for approval of certification under this section..

The Board also proposes to amend subsection (d) to provide up to 90 days for a cable television company operating under municipal consent to institute the additional required franchise fee collection as requested by the NJCTA. The four percent fee will result in a considerable increase on a customer's bill and if, added to that, the cable television company also recovered the franchise fees for the month(s) needed to institute changes to its billing system, the result could be a substantial additional monthly fee imposed on customers until such time as the total accrued but uncollected amount is recovered. Furthermore, recent orders issued by the Board approving 60 percent certifications have allowed cable television operators up to 90 days to implement the fee increase. Therefore, the Board proposes to grant up to 90 days for existing cable television companies to institute collection of the four percent franchise fee payable to the municipalities and the State Treasurer without an obligation to collect for the interim period.

#### Subchapter 16. Miscellaneous provisions

N.J.A.C. 14:18-16.7 provides that in the event a cable television operator is found to be subject to effective competition pursuant to 47 CFR § 76.905, certain provisions of N.J.A.C. 14:18 may not apply. The Board noted in the re adoption of Chapter 18 (see 39 N.J.R. 1766(a)) that it would consider amending this provision to include additional sections from which a cable television company might seek relief. In its November 21, 2007 correspondence, the NJCTA

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requested that the Board relieve cable television companies subject to effective competition from complying with the following rules: N.J.A.C. 14:18-3.4 Information on company's schedule of prices, rates, terms and conditions; N.J.A.C. 14:18-3.7 Bills for service; form of bill; N.J.A.C. 14:18-3.8 Method of billing; N.J.A.C. 14:18-3.9 Due date of payment and notice of discontinuance; N.J.A.C. 14:18-3.18 Periodic notices to customers; N.J.A.C. 14:18-6.5 Complaint records; N.J.A.C. 14:18-6.6 Reporting and records of interruptions and outages; N.J.A.C. 14:18- 7.6 Telephone system information; and N.J.A.C. 14:18- 7.7 Telephone system performance. The NJCTA also requested that the Board consider any petition filed pursuant to this section within 180 days.

The Board proposes to add N.J.A.C. 14:18-3.8 Method of billing; N.J.A.C. 14:18-6.5 Complaint records; and N.J.A.C. 14:18- 7.6 Telephone system information to the list of rules from which a cable television company may seek relief upon a finding of effective competition. For relief from N.J.A.C. 14:18-3.8, submission and approval of the form of bill would be necessary prior to approval of a waiver of this subsection. For all three items added to this section, it is appropriate to provide the ability for cable television operators to seek some relief where there has been a finding of effective competition. However, with regard to the remainder of the rules for which the NJCTA requested the ability to seek waiver, the Board has not proposed inclusion in this section. The term "effective competition" insofar as it is defined by the FCC, provides only economic relief to cable television companies that face competition; that is, the cable television operators would be relieved of rate regulation and could raise or lower its rates as they saw fit. Under existing Federal standards, local franchise authorities are afforded the ability to protect the public interest, and are not precluded in doing so by enacting customer service requirements that exceed or cover customer service standards not included in Federal standards (47 CFR 76.309(b)). As the local franchising authority for the State of New Jersey, the Board is the entity charged with protecting the public interest with regard to cable television services. In Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992, Second Report and Order, FCC Docket No. 07-190, published in the Federal Register on November 23, 2007 (Vol. 72, No. 225, at 65674, paragraph 26), the FCC states:

We find that the explicit statutory language of section 632 of the Act prohibits the Commission's preemption of state or local cable customer service laws that exceed the Commission's standards.

N.J.A.C. 14:18-3.4 Information on company's schedule of prices, rates, terms and conditions; N.J.A.C. 14:18-3.7 Bills for service; form of bill; N.J.A.C. 14:18-3.9 Due date of payment and notice of discontinuance; and N.J.A.C. 14:18-3.18 Periodic notices to customers, are all customer service requirements and provide necessary information by which a customer can make informed decisions about what they are paying for and whether to continue the services. These provisions also provide protection for customers, such as in the case of 3.9, where specific notice must be served on a customer before disconnection is permitted.

N.J.A.C. 14:18-6.6 Reporting and records of interruptions and outages, and N.J.A.C. 14:18- 7.7 Telephone system performance, are necessary filing requirements which allow the OCTV to monitor the performance of the cable television operator and determine whether there are issues with service quality. The NJCTA's argument for relaxation of these provisions—that customers can vote with their feet—is, in some ways, less applicable today. While some customers may now have a choice of multiple landline cable television providers to subscribe to,

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in order to get the most advantageous rate, the customer may be required to lock into a long term contract (one to two years) with significant early termination penalties. Therefore, the Board must ensure that service quality is maintained by the state's cable television operators.

The Board proposes to remove N.J.A.C. 14:18-3.16, Notice of rate change, from the list of rules from which a cable television operator may seek relief. This rule contains Federal requirements for advanced notification of rate increases, and therefore it would not be appropriate for the Board to grant relief of those requirements.

The Board declines to propose modification to the rule which provides that a petition must be acted upon within 180 days. This requirement places an artificial deadline for action upon the Board, and may result in denial of a petition that has merit if the Board does not have sufficient time to evaluate the effects of the petition on customers.

The Board proposes to add a subsection (b) to this rule to state that the OCTV may request information for any area where relief has been granted pursuant to its authority under N.J.A.C. 14:18-7.2

The NJCTA had requested that the Board add a section to the rules which would limit the initiation of enforcement actions by the Board to no more than three years from the date of the alleged violation. While the Board believed that some relief was warranted, it was not prepared to limit enforcement actions to three years. The Board offered a compromise of a seven year limitation of enforcement actions but the NJCTA withdrew its request because it did not believe that a seven year timeframe would be of assistance to its member companies.

A 60-day comment period is provided and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the notice of proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and N.J.A.C. 1:30-3.2 governing rulemaking calendars.

#### Social Impact

Some of the rules proposed for amendment will benefit cable television companies, municipalities and the citizens of New Jersey. Others will have little or no impact at all.

The proposed amendment to N.J.A.C. 14:18-3.2 will conform the Board rule for installations to the Federal standard. It is not expected that this will have any direct impact on customers but it should benefit cable television companies by providing them a longer time period in which to perform installations. However, the standard for completion is higher.

The proposed amendments to N.J.A.C. 14:18-3.5, which restores the statutory six-hour threshold for a customer to be eligible for an outage credit will have a direct impact on customer who experience outages that last between three and six hours, but since the NJCTA has withdrawn its consent to keep the threshold at the agreed-upon three hours in favor of the statutory six hours, the rule is proposed to be amended. The amendment will benefit cable television companies in that they will no longer be required to provide outage credits for any outage of less than six hours in duration. The Board notes, however, that there is nothing in the rule or its amendments that would preclude a cable television company from offering outage credits for outages that last less than six hours.

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The proposed amendments to N.J.A.C. 14:18-3.7 requested by the NJCTA, will benefit cable television companies in the state, and should not adversely affect customers. The proposed amendment to 3.7(a)14 will establish a baseline number of months (six) for which it must provide notice of promotion. Customer complaints received by the OCTV regarding promotional service deal largely with the termination of longer term contracts. Therefore, the Board does not believe that this amendment will adversely affect customers. The proposed amendments will not require cable television companies to put the expiration date of a short-term promotion on the customer's bill.

The NJCTA requested that the Board amend N.J.A.C. 14:18-3.12 to conform to the Federal standard for service calls. The NJCTA's request did not include the Federal requirement to meet the standards 95 percent of the time under normal operating conditions. However, the Board has proposed to add that provision. While most of the proposed amendments to N.J.A.C. 14:18-3.12 will benefit cable television companies in the state, the proposed amendments requiring cable television companies, under normal operating circumstances, to perform service calls as scheduled 95 percent of the time as measured on a quarterly basis should benefit customers. However, it may cause some additional paperwork for cable television companies to indicate that they are complying with the required standards.

The proposed amendment to N.J.A.C. 14:18-3.23 will benefit cable television companies in that they will no longer have to track costs of all converter equipment in use, even if no longer in use. The proposed amendment will have no impact on customers.

The proposed amendments to N.J.A.C. 14:18-7.6 will benefit cable television companies and will not adversely affect customers because this is simply a reporting requirement.

The proposed amendments to N.J.A.C. 14:18-15.4 will conform the section to the statute, and will have no direct impact on customers. The proposed amendments will, however, more clearly define the responsibilities of municipalities and cable television companies with regard to any disputes for requests for PEG access channels and return lines.

The proposed amendments to N.J.A.C. 14:18-15.7(b)2 will affect system-wide franchisees insofar as they will be required to provide notice to municipalities, other cable television companies operating in a municipality, and to Rate Counsel. Currently, the Board is required to provide this notification. The Board understands that the only system-wide franchisee currently operating in the state, Verizon New Jersey, already provides notice to these parties. The proposed amendments to subsection (d) will benefit customers and existing cable television companies because a period of up to 90 days for implementation of the higher franchise fee will allow the existing cable television companies time to modify their billing systems to accommodate the change while customers will not be forced to pay back recovery of the fees. The system-wide franchisee may believe that there is some competitive disadvantage because it is required to collect and pay the four percent franchise fee from the time it receives its franchise. However, it is for a minimal time period and the Board does not believe the disadvantage will be significant.

The proposed changes to N.J.A.C. 14:18-16.7 would allow cable television operators to seek relief from certain rules. The Board believes that these changes will not harm customers insofar as only one is a customer protection rule (N.J.A.C. 14:18-3.8), and the Board is requiring

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that a cable television company that seeks relief under this section provide a sample form of bill for approval by the OCTV prior to being granted relief.

#### Economic Impact

There are costs savings afforded to cable television companies under the proposed rules because of the reduction in reporting.

The proposed amendments to N.J.A.C. 14:18-3.5, which restores the statutory six-hour threshold for a customer to be eligible for an outage credit may have a direct monetary impact on customer who experience outages that last between three and six hours. Customers who experience shorter term outages, especially if they recur on a frequent basis, may ask the Board's OCTV to investigate and resolve this matter in accordance with subsection (e) of this section which provides that the OCTV shall use the complaint procedure specified in N.J.A.C. 14:17-6.5. The amendment will benefit cable television companies in that they will no longer be required to provide outage credits for any outage of less than a six hour duration.

The proposed amendments to N.J.A.C. 14:18-3.7 at (a)14 and (g) should reduce costs for cable television companies because (a)14 would only apply to promotions that are six months or longer—currently there is no minimum threshold. N.J.A.C. 14:18-3.7(g) only requires a cable television company that is changing its method of notification to customers of billing components to provide notice to the Office—currently, cable television companies must provide notification on a yearly basis even if they are not changing the method of notification.

The proposed amendments to N.J.A.C. 14:18-3.12 are not anticipated to have any economic impact on cable television companies. While most of the proposed amendments to N.J.A.C. 14:18-3.12 were proposed by the NJCTA to conform the rule to the Federal standard, the proposed amendments will require cable television companies, under normal operating circumstances, to perform service calls as scheduled 95 percent of the time as measured on a quarterly basis and therefore will benefit customers. This is included in the Federal standard but was not in the NJCTA's proposal. This amendment will cause some additional paperwork for cable television companies in preparation and submission of reports to indicate that they are complying with the required standards.

The proposed amendment to N.J.A.C. 14:18-3.23 will benefit cable television companies in that they will no longer have to keep track of the costs of all equipment in use, even if no longer deployed. The proposed amendment will have no impact on customers because the cable television companies are permitted to collect the higher of either the replacement cost or the original cost.

The proposed amendments to N.J.A.C. 14:18-7.6 will benefit cable television companies that are complying with N.J.A.C. 14:18-7.8 by reducing the preparation and submission of paperwork associated with the cable television company's telephone system.

The proposed amendment to N.J.A.C. 14:18-15.7(b)2 may cause some additional expense to cable television companies operating under system-wide franchises. However, the Board believes that these costs are reasonable, and it is appropriate that they be assumed by the applicant.

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The proposed amendment to N.J.A.C. 14:18-15.7(d) will have a positive impact on cable television companies and their customers. While the franchise fee payment is mandatory, the allowance that a cable television company be granted 90 days to begin to collect the franchise fees from its customers will result in no back recovery of these fees from customers. Municipalities will be required to forego three months of additional franchise fees but the overall impact will benefit the municipalities' residents since cable television companies are permitted by Federal law to recover franchise fee costs from customers.

The amendments to N.J.A.C. 14:18-16.7 will provide some relief for cable television operators insofar as it allows a cable television operator to seek relief from certain provisions of the rules where there is a finding of effective competition.

As with regulated public utilities, all reasonable levels of expenses incurred by cable television operators in complying with these requirements will be considered to be business expenses, recoverable through rate proceedings and cost of service regulations. All fees and charges associated with practice and procedure before the Board and OCTV are set by statute pursuant to N.J.S.A. 48:2-56 and 48:5A-1 et seq., respectively.

As a whole, the amendments should be economically beneficial to both cable television companies and the citizens of the state.

#### Federal Standards Statement

Two of the rules proposed for amendment herein are subject of Federal laws, rules, regulations and standards: customer service standards, (47 C.F.R. Part 76, Subpart H). The Board is permitted by Federal law to adopt customer service standards that exceed or deal with matters not addressed by the FCC. Specifically, 47 C.F.R. 309(b)(4) states, "Nothing in this rule should be construed to prevent or prohibit...[t]he establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section." However, the amendments proposed to N.J.A.C. 14:18-3.2(d) and 3.12 will conform these rules to the Federal standards. Upon review of the applicable Federal documents referenced, the Board does not believe that any of the rules adopted herein conflicts with or exceeds Federal standards.

#### Agriculture Industry Impact

The rules proposed for amendment have no impact on the agricultural industry.

#### Jobs Impact

It is not anticipated that the rules proposed for amendment will result in the creation of new jobs or the loss of existing jobs. The rules proposed for amendment will not have an impact on any other sector of the economy of the State of New Jersey.

#### Regulatory Flexibility Statement

There are no small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to which the rules proposed for re-adoption with amendments and new rules

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would apply. The businesses affected all have more than 100 full-time employees and/or are based out-of-State.

### Smart Growth Impact

The rules will not function to achieve the goal of smart growth and the implementation of the State Development and Redevelopment Plan. L. 2006, c. 83, N.J.S.A. 48:5A-28h(2), specifically provides that as of November 2, 2006, the Board's smart growth rules no longer apply to cable television companies.

Full text of the rules proposed for amendment follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

#### 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:

...

["Cable communications system" or "cable communications service" means any communications service other than cable television reception service delivered through the facilities of a cable television system and for which charges in addition to or other than those made for cable television reception service are made or proposed to be made.]

...

"Cable television company or cable television operator" means any person or group of persons [owning, controlling, operating or managing a cable television system] who provides cable television service over a cable television system and directly or through one or more affiliates owns a significant interest in such cable television system, or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

...

"Cable television service" means (1) the one-way transmission to subscribers of (a) video programming, or (b) other programming service; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, regardless of the technology utilized by a cable television company to enable such selection or use.

...

"Cable television system" means [any facility within this State which is operated or intended to be operated to perform the service of receiving and amplifying the signals broadcast by one or more television stations and redistributing such signals by wire, cable, microwave transceiver, satellite or other device or means for accomplishing such redistribution to members

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of the public who subscribe to such service, or distributing through its facility any television signals whether broadcast or not; or any part of such facility] a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide cable television service which includes video programming, without regard to the technology used to deliver such video programming, including Internet protocol technology or any successor technology, and which is provided to multiple customers within a community, but such term does not include: (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves customers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to regulation by the Board pursuant to Title 48 of the Revised Statutes, except that such facility shall be considered a cable television system to the extent such facility is used in the transmission of video programming directly to customers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that has been certified by the Federal Communications Commission as being in compliance with the provisions of Part 76, "Multichannel Video and Cable Television Service," of Title 47 of the Code of Federal Regulations; (5) any facilities of any electric public utility used solely for operating its electric utility systems; or (6) a facility of an electric public utility which is subject, in whole or in part, to regulation by the Board pursuant to Title 48 of the Revised Statutes, except that such facility shall be considered a cable television system solely to the extent that such facility is used in the transmission of video programming directly to the customers. The term "facility" as used in this section is limited to the optical spectrum wavelengths, bandwidth, or other current or future technological capacity used for the transmission of video programming directly to [subscribers] customers.

...

"Promotional service" means the offering of an existing product, service, group of services or capability at a reduced introductory charge for a limited, specified period of time, [usually not exceeding one month,] during which the cable television company attempts to encourage new or additional customers to the product service.

...

#### 14:18-3.2 Requests for service

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

(d) Cable television operators shall complete [75]95 percent of standard service installations, as specified in the cable television operator's filed schedule of prices, rates, terms and conditions, within [five]seven business days, unless a later date is requested by the customer.

(e) – (f) (No change.)

#### 14:18-3.5 Outage credit

(a) The cable television operator shall credit customers for outages, as defined in these rules, as follows:

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1. In the event of an outage lasting [three] six or more hours, the cable television company shall make an appropriate credit on the customer's bill.

2. (No change.)

3. For outages which extend more than 24 hours, customers shall receive a credit for each calendar day or part thereof if greater than [three]six hours, during which service is out.

4. – 6. (No change.)

(b) A cable television company shall not be required to provide a credit or rebate under (a) above if:

1. The cable television company can demonstrate that restoration of service was not possible within the [three]six-hour period due to factors beyond the reasonable control of their company; and

2. If service is restored within [three]six hours after the restoration of service becomes possible.

(c) - (f) (No change.)

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

(a) All bills shall show the following:

14. The number of months that a promotional price is in effect, if any, and the date on which the promotion is scheduled to end or the number of months remaining until the end of the promotion. A cable television company shall not be required to comply with this paragraph for any promotion that is under six months in length.

(b)-(f) (No change.)

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

1. Each cable television company shall [declare] notify the Office in writing [its intention to the Office, no later than November 15,] 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 bi-monthly bill insert, bill stuffer, separate mailer or on the front or back of the bill, as outlined in (f) above[ for the following year. The cable television company shall provide notice to customers in this manner beginning with the billing cycle starting on January 1 for the remainder of the calendar year].

2. [If the Office fails to receive written notice of a cable television company's intention by the dates specified in (g)1 above, the requirements of (a)3 above shall be imposed on that cable operator for the following calendar year.] 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 paragraph (1) above.

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#### 14:18-3.9 Due date of payment and notice of discontinuance

(a) - (e) (No change.)

(f) A customer wishing to discontinue service must give notice to that effect, either verbally, in writing, or by way of electronic message, if the company has the capability to accept such electronic notice. Where such notice is not received by the cable television company, the customer shall be liable for service until such notice is received by the cable television company.

(g) - (h) (No change.)

#### 14:18-3.12 Service call scheduling

(a) Under normal operating conditions, both of the following standards shall be met no less than 95 percent of the time measured on a quarterly basis:

[(a) When a service call is scheduled to a customer's home, the cable television operator shall inform the customer upon request whether the service call is scheduled for morning, afternoon, or, if provided, evening.] 1. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specified time or, at a maximum, a four-hour time block during normal business hours. The cable television operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

[(b) If the cable television operator is unable to keep the scheduled appointment, the cable television operator shall inform the customer no later than the close of business on the business day before the appointment, under normal operating conditions, and the appointment shall be rescheduled as necessary within 24 hours, or at a time which is convenient for the customer.]

[c] Under normal operating conditions, a] 2. A cable television operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(b). If a cable television operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(c). When a service call is scheduled to a customer's home, the cable television operator shall inform the customer upon request whether the service call is scheduled for morning, afternoon, or, if provided, evening.

(d) (No change.)

#### 14:18-3.17 Notice of alteration in channel allocation

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(a) Each cable television company shall file with the Office written notice of an alteration in channel allocation[, on a form prescribed by the Director,] prior to the effective date for new additions which do not require rate or price changes, deletions or cutbacks in other services. For all other changes the cable television operator must provide notice at least 30 days prior to the effective date. Semi-annually, within 15 days following January 1 and July 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) - (c) (No change.)

#### 14:18-3.23 Reimbursement for lost, stolen or damaged equipment

(a) The cost charged to customers by cable television operators to replace lost or stolen converters or other auxiliary equipment shall be in an amount not to exceed [the actual cost or] the cable television operator's current replacement cost[, whichever is greater,] of the equipment[ at the time the equipment was installed in the customer's home].

(b) – (f) (No change.)

### SUBCHAPTER 7. REPORTS AND FILINGS

#### 14:18-7.6 Telephone system information

(a) – (c) (No change.)

(d) A cable television company shall be relieved of filing under this section if it is in full compliance with the provisions of N.J.A.C. 14:18-7.8 for four or more consecutive quarters. In order to be relieved of filing under this section, the cable television company must file a letter with the Office indicating that it believes it is in compliance with this section. The Office shall inform the cable television company of its decision, based on review of the cable television company's filings, within 45 days of receipt of the letter requesting relief under this section.

(e) If the Office determines that a cable television company is not in full compliance with the provisions of N.J.A.C. 14:18-7.8 for three or more consecutive quarters, the Office shall notify the cable television company in writing that it must again file the telephone system information required under this section.

### SUBCHAPTER 11. APPLICATION BY CABLE TELEVISION COMPANIES FOR MUNICIPAL CONSENT

#### 14:18-11.3 Appointment of citizens' committee; duties

(a) The municipal governing body, prior to or upon receipt of the first application for municipal consent to operate a cable television system, may appoint a citizen's committee which shall be responsible for obtaining and disseminating information concerning [cable communications] cable television service generally, analyzing those services which a cable television system may be required or able to provide, investigating the backgrounds of the applicants or parties to the application, ascertaining the desires of the citizens of the municipality concerning the cable television applicant and studying those sections of the

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application concerning which they, as residents of the municipality, have special knowledge for example, the acceptability of the construction schedule in the areas proposed.

(b) (No change.)

## SUBCHAPTER 15. SYSTEM-WIDE FRANCHISE TERMS AND CONDITIONS

14:18-15.4 Public, educational and governmental access channels; return lines; interconnection

(a) (No change.)

(b) If the municipality and the cable television company operating under a system-wide franchise are unable to agree upon the terms and conditions for the provision of the required access channels or the provision of additional access channels as requested by the municipality, the municipality or the cable television company operating under a system-wide franchise may request that the Office of Cable Television intervene to resolve the matter. The Office shall utilize the procedures specified in N.J.A.C. 14:17-8.

(c) Upon written request of a municipality served by a system-wide franchise, the cable television company shall provide one return line from one location in the municipality to a point of interconnection in its cable television system in order to allow live or taped cablecasting of programming by the municipality. Such [service] return line will be provided within such time mutually agreed upon by the cable television company and the municipality. If the parties are unable reach an agreement with regard to the provision of the return line, the municipality or the cable television company operating under a system-wide franchise may request that the Office of Cable Television intervene to resolve the matter. The Office shall utilize the procedures specified in N.J.A.C. 14:17-8.

(d) (No change.)

14:18-15.7 Franchise fee payment

(a) (No change.)

(b) A cable television company operating under a system-wide franchise may petition the Board for certification that it is capable of serving 60 percent or more of the households within a particular municipality in the following manner.

1. (No change.)

2. [Upon receipt of a petition for certification specified in (a)1 above, the Board] The cable television company operating under a system-wide franchise that has applied for certification shall notify the affected municipality, the existing cable television company or companies serving the municipality, and the Department of Public Advocate, Division of Rate Counsel at the same time that it files for certification with the Board.

3. (No change.)

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(c) (No change.)

(d) Upon Board approval of a certification that a cable television company operating under a system-wide franchise is capable of serving 60 percent or more of the households in the same municipality as the cable television company with municipal consent, the cable television company operating under a municipal-consent-ordinance-based franchise shall pay fees to the municipality and the State Treasurer in accordance with (a)1 and 2 above. The cable television company shall begin collection and payment of the fees specified in (a)1 and 2 above no later than 90 days after the date of the Board order approving the certification.

(e) – (i) (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. N.J.A.C. 14:18-3.8 Method of billing, provided that the cable television company provides a sample bill to be utilized in lieu of compliance with this section for approval by the Office;

[1.]2. N.J.A.C. 14:18-3.15 Trial services at subsection (b);

[2. N.J.A.C. 14:18-3.16 Notice of rate change;]

3. N.J.A.C. 14:18-3.17 Notice of alteration in channel allocation;

4. N.J.A.C. 14:18-3.20 Discounts for senior and/or disabled citizens at paragraphs (a)2 and 3;

5. N.J.A.C. 14:18-3.22 Notice of planned interruptions;

6. N.J.A.C. 14:18-3.23 Reimbursement for lost, stolen or damaged equipment;  
and

7. N.J.A.C. 14:18-6.6 Complaint records;

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

9. N.J.A.C. 14:18-7.6 Telephone system information.

(b) A cable television company receiving relief from the Board under subsection (a) above shall, upon request of the Office, provide information regarding any area of relief, in accordance with N.J.A.C. 14:18-7.2.