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PUBLIC UTILITIES  
BOARD OF PUBLIC UTILITIES

Regulations of Cable Television

Proposed Amendment: N.J.A.C. 14:18-16.7

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, Nicholas Asselta, Commissioner and Elizabeth Randall, Commissioner).

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

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

BPU Docket Number: CX08080591

Proposal Number: PRN 2008-

A public hearing concerning the proposal will be held on January 9, 2009 at 10:30 A.M. at:

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

Comments may be submitted through January 16, 2009 through either of the following methods:

Comments may be submitted on paper to:

Celeste M. Fasone, Director  
Office of Cable Television  
ATTN: Docket No. CX08080591  
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. Those amendments were adopted and published in the New Jersey

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Register (see 40 N.J.R. 5052(a)). In the course of proposing and adopting the amendments, Verizon New Jersey, Inc. (Verizon) noted its concerns with the Board's rule regarding effective competition, N.J.A.C. 14:18-16.7, which provides that in the event a cable television operator is found to be subject to effective competition pursuant to federal rules, it could apply to the Board for relief from certain rules contained in Chapter 18. Verizon argued that since it was never rate regulated, it could not apply to the Federal Communications Commission (FCC) to be subject to effective competition, and was therefore unable to request relief from certain Board requirements contained in Chapter 18. The Board agreed and stated in the amendments adoption notice that it would amend the rules so that cable television companies that are not rate regulated can also apply for a waiver of certain rules.

The substantive provision of the proposed amendment is summarized as follows:

#### 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 adoption of amendments to Chapter 18 (see 40 N.J.R. 5052(a)) that it would amend this provision to allow cable television companies such as Verizon, which was never rate regulated to apply for a waiver of the rules. Therefore, the Board proposes to amend N.J.A.C. 14:18-16.7(a) to provide a mechanism for Verizon and other cable television companies that were never rate regulated to seek relief from the rules listed in section 16.7. Specifically, if the cable television company has not been certified by the Board as subject to rate regulation, it may still seek relief from the provisions of section 16.7 without need for FCC decertification.

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

The proposed amendment to N.J.A.C. 14:18-16.7 would allow cable television operators who have never been subject to rate regulation to seek relief from the rules listed in section 16.7. 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 requires 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 amendment because of the reduction in reporting.

The proposed amendment 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.

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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.

#### Federal Standards Statement

The proposed amendment is not subject of Federal laws, rules, regulations and standards.

#### Agriculture Industry Impact

The proposed amendment will have no impact on the agricultural industry.

#### Jobs Impact

It is not anticipated that the proposed amendment will result in the creation of new jobs or the loss of existing jobs. The proposed 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 proposed amendment would apply. The businesses affected all have more than 100 full-time employees and/or are based out-of-State.

#### Smart Growth Impact

The proposed amendment 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.

#### Housing Affordability Impact

The proposed amendment will have no impact on the cost of housing or number of housing units. The proposed amendment concerns regulatory relief for cable television operators.

#### Smart Growth Development Impact

The proposed amendment will have no impact on the cost of housing, the number of housing units, or new construction within Planning Areas 1 and 2, or Development Centers, under the State Development and Redevelopment Plan. The proposed amendment concerns regulatory relief for cable television operators.

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

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## 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. – 9. (No change.)

(b) A cable television company that has not been certified by the Board as subject to rate regulation may seek relief from (a)1 through 9 without the need for decertification from the FCC.

[(b)] c. (No change in text.)