

CHAPTER 17

RULES OF PRACTICE AND PROCEDURE OF THE OFFICE OF CABLE TELEVISION

Authority

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

Source and Effective Date

R.1999 d.108, effective March 5, 1999.
See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 17, Rules of Practice and Procedure of the Office of Cable Television, expires on September 1, 2004. See: 36 N.J.R. 641(a).

Chapter Historical Note

Chapter 17, Rules of Practice and Procedure of the Office of Cable Television, was adopted as R.1973 d.117, effective April 27, 1973. See: 5 N.J.R. 54(d), 5 N.J.R. 200(a).

Subchapter 18 was adopted as R.1978 d.125, effective April 17, 1978 (to expire April 17, 1981). See: 10 N.J.R. 124(a), 10 N.J.R. 207(a).

Subchapter 18 was repealed and Subchapter 18, CATV Rate Regulation Under a Common Tariff, was adopted as new rules by R.1983 d.435, effective October 3, 1983. See: 15 N.J.R. 1356(a), 15 N.J.R. 1673(a).

Public Notice. See: 16 N.J.R. 2849(b).

Pursuant to Executive Order No. 66(1978), Chapter 17, Rules of Practice and Procedure of the Office of Cable Television, was readopted as R.1989 d.266, effective April 24, 1989. See: 21 N.J.R. 440(a), 21 N.J.R. 1374(a).

Pursuant to Executive Order No. 66(1978), Chapter 17, Rules of Practice and Procedure of the Office of Public Television, was readopted as R.1994 d.194, effective March 21, 1994, and Subchapter 3, Appearance and Practice Before the Board or Office, was repealed, Subchapter 3, Appearance and Practice Before the Board or Office was adopted as new rules, Subchapter 4, Parties, was repealed, Subchapter 4, Pleadings, was adopted as new rules, Subchapter 5, Pleadings Generally, was repealed, Subchapter 7, Complaint Procedure, was repealed, Subchapter 8, Answers and Replies, was recodified as Subchapter 7, Subchapter 8, Conferences, Subchapter 9, Contested Case Hearings and Subchapter 10, Uncontested Case Proceedings, were adopted as new rules, Subchapter 9, Motions and Subchapter 10, Intervention, were repealed, Subchapter 11, Hearing Examiners, Subchapter 12, Hearings, Subchapter 13, Conferences, Subchapter 14, Reopening of Hearings, Subchapter 15, Rehearing, Reargument or Reconsideration and Subchapter 16, Briefs, were repealed, Subchapter 17, Compliance with Orders, Decisions and Recommendations, was recodified as Subchapter 11, and Subchapter 18, CATV Rate Regulation Under a Common Tariff, was repealed by R.1994 d.194, effective April 19, 1994. See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

Pursuant to Executive Order No. 66(1978), Chapter 17, Rules of Practice and Procedure of the Office of Cable Television, was readopted as R.1999 d.108, effective March 5, 1999. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

14:17-1.1 Scope

These rules shall govern practice and procedure before the Office of Cable Television and within the Board of Public Utilities.

Amended by R.1989 d.266, effective May 15, 1989.
See: 21 N.J.R. 440(a), 21 N.J.R. 1374(a).

Contested case hearing provisions added.
Amended by R.1994 d.194, effective April 18, 1994.
See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).
Amended by R.1999 d.108, effective April 5, 1999.
See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

Substituted "Public Utilities" for "Regulatory Commissioners".

14:17-1.2 Construction and amendment

(a) These rules shall be liberally construed to permit the Office to effectively carry out its statutory functions and to secure just and expeditious determination of issues properly presented to the Office.

(b) In special cases and for good cause shown, the Office with the concurrence of the Board may relax or permit deviations from these rules.

1. The Office, with the concurrence of the Board, shall, in accordance with the general purposes and intent of its rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the customers of a cable television company, the ability of said cable television company to render safe, adequate and proper service, or the interests of the general public;

2. Any person or entity seeking waiver of any of the Office's rules or parts thereof, shall apply in writing to the Director. A written request for waiver shall include the following:

- i. The specific rule(s) or part(s) thereof for which waiver is requested;
- ii. The reasons for the request of waiver, including a full statement setting forth the type and degree of hardship or inconvenience that would result if full compliance with the rule(s) would be required; and
- iii. Documentation to support the request for waiver.

3. The Office reserves the right to request additional information before reaching a determination regarding the application for waiver.

(c) The rules may be amended by the Office with the approval of the Board, from time to time.

Amended by R.1994 d.194, effective April 18, 1994.
See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).
Amended by R.1999 d.108, effective April 5, 1999.
See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).
In (b), added 1, 2, and 3.

14:17-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Board" means the Board of Public Utilities.

"Certificate" means a certificate of approval issued by the Board pursuant to the provisions of N.J.S.A. 48:5A-1 *et seq.*

"Commissioner" means a member of the Board of Regulatory Commissioners.

"Director" means the Director of the Office of Cable Television.

"Office" means the Office of Cable Television.

"Presiding Officer" means any member of the Board, the Director, or an Office staff member who is designated as a hearing examiner in an uncontested case.

"Secretary" means and shall include the Secretary, Assistant Secretary to the Board or any other person duly authorized to act in such capacity by the Board.

Amended by R.1994 d.194, effective April 18, 1994.
See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).
Amended by R.1999 d.108, effective April 5, 1999.

See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).
In "Board", substituted "Public Utilities" for "Regulatory Commissioners".

14:17-1.4 Offices

The statutory offices of the Board, the office of the Secretary of the Board, and the Office of Cable Television are located at Two Gateway Center, Newark, New Jersey 07102.

Public Notice: Change of address.

See: 19 N.J.R. 890(a).

Amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

14:17-1.5 Hours

(a) All offices of the Board are open on weekdays from 9:00 A.M. to 5:00 P.M., unless otherwise authorized by the Board.

(b) The offices are closed on legal holidays, Saturdays and Sundays.

Amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

14:17-1.6 Communications

(a) All pleadings, correspondence and other papers should be addressed to the Secretary, Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102.

(b) All such papers and correspondence shall be deemed to be officially received when delivered at the office of the Board, but the Director, a Commissioner, the Secretary or an Assistant Secretary of the Board may in his or her discretion receive papers and correspondence for filing.

(c) Additional copies of such pleadings and correspondence for the Director and staff may be sent to the Director, Office of Cable Television, Two Gateway Center, Newark, New Jersey 07102.

Public Notice: Change of address.

See: 19 N.J.R. 890(a).

Recodified from 14:17-1.7 and amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

Former text at 14:17-1.6, Sessions, repealed.

Amended by R.1999 d.108, effective April 5, 1999.

See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

In (a), substituted "Public Utilities" for "Regulatory Commissioners".

14:17-1.7 Official records

(a) The Secretary shall have custody of the Board's seal and its official records, including the minutes of all action taken by the Board.

(b) Copies of rules and regulations and orders and decisions of the Board will be furnished by the Secretary upon payment of appropriate fees.

(c) The Chair of the Cable Television Advisory Council shall have custody of the Council's official records, including the minutes of all meetings held.

Recodified from 14:17-1.8 and amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

14:17-1.8 Cameras and recording devices

(a) Proceedings before the Board or Office shall be conducted with fitting dignity and decorum.

(b) The use of cameras and recording devices, including still cameras, movie cameras, television cameras, tape recorders and stenotype machines (hereinafter referred to as "equipment"), in open meetings or other public proceedings conducted by the Board or Office is permitted.

(c) Any accredited member of a news media desiring to use such equipment shall first contact the Board's Office of Communications to arrange for the set-up and removal of equipment so as not to interfere with the orderly conduct of the proceedings.

(d) No such equipment shall be placed on the counsel tables, witness stand or on the Board or the presiding officer's bench, without the approval of the Board or presiding officer; equipment which would require the user to move about the room during the proceedings is prohibited. Moving about the meeting or hearing room in order to more advantageously use such equipment is prohibited, while the meeting is in session.

(e) Except for portable equipment which is used at an individual's seat in the audience, such equipment must be in place and ready for use prior to the start of the meeting or set-up during a recess thereof. Such equipment may be removed only at the conclusion of the meeting or during a recess. A pre-arranged recess for the set-up or removal of such equipment may be requested through the Office of Communications.

(f) The Board or presiding officer may suspend the operation of all or part of this rule with respect to a particular meeting.

(g) The Board or the presiding officer may at any time limit or prohibit the use of any or all of such equipment in meetings where in the opinion of the Board or the presiding officer use of such equipment may obstruct the conduct of the meeting.

Amended by R.1989 d.266, effective May 15, 1989.

See: 21 N.J.R. 440(a), 21 N.J.R. 1374(a).

Provisions for the use of cameras or recording devices in open meetings or hearings added.

Recodified from 14:17-1.9 and amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

Amended by R.1999 d.108, effective April 5, 1999.

See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

In (c) and (e), substituted "Communications" for "Public Information".

SUBCHAPTER 2. FEES AND CHARGES

14:17-2.1 Amount of fees and charges

(a) The fee required to defray administrative expenses of hearings held pursuant to N.J.S.A. 48:5A-16, 17 and 18, where applicable, shall be \$50.00 per day of hearing or portion thereof, to be paid by the petitioner or other moving party.

(b) All other fees and charges which the Office has been empowered, authorized and required by law to charge and collect are set forth in N.J.S.A. 48:5A-1 et seq. and N.J.S.A. 47:1A-1 et seq.; however, collection of such fees and charges shall be inapplicable to cable television companies subject to assessment as provided by N.J.S.A. 48:5A-32.

Amended by R.1989 d.266, effective May 15, 1989.

See: 21 N.J.R. 440(a), 21 N.J.R. 1374(a).

Citation changed.

Amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

Amended by R.1999 d.108, effective April 5, 1999.

See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

In (a), changed N.J.S.A. reference: and rewrote (b).

14:17-2.2 Payment of fees and charges

(a) No petition, report notice, document or other paper will be accepted for filing, and no request for copies of any forms, pamphlets, documents or other papers will be granted, nor action taken by the Board or Office unless such filings and requests are accompanied by the required fees or charges, as provided by law and these rules.

(b) All checks for payment of such fees and charges shall be made payable to the order of "Treasurer, State of New Jersey" and delivered or mailed to the Director of the Office, Two Gateway Center, Newark, New Jersey 07102.

Public Notice: Change of address.

See: 19 N.J.R. 890(a).

SUBCHAPTER 3. APPEARANCE AND PRACTICE
BEFORE THE BOARD OR OFFICE**14:17-3.1 Appearances**

Any person appearing before or transacting business with the Board or Office in a representative capacity may be required by the Board or Office to file evidence of his or her authority to act in such capacity.

14:17-3.2 Ethical conduct and ex parte communications

All attorneys appearing in proceedings before the Board or Office in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of the State of New Jersey.

14:17-3.3 Former employees

Except with the written permission of the Board, no former member or employee of the Board or member of the Attorney General's staff assigned to the Board may appear in a representative capacity or as an expert witness on behalf of other parties at any time within six months after severing his or her association with the Board, nor may he or she appear after said six-month period in any proceeding where-in he or she previously took an active part when associated with the Board.

SUBCHAPTER 4. PLEADINGS

14:17-4.1 Pleadings enumerated and defined

(a) Pleadings before the Board or Office shall be petitions, answers, and replies which for purposes of these rules are defined as follows:

1. "Petition" means the pleading filed to initiate a proceeding invoking the jurisdiction of the Board or Office;
2. "Answer" means the pleading filed by a respondent or other party against whom a petition is directed or who is affected by the filing of a petition; and
3. "Reply" means the pleading filed by the petitioner or others in response to an answer.

14:17-4.2 Number of copies

(a) Unless otherwise required by the Board or Office, there shall be filed with the Board for its own use, an original and 10 conformed copies of each pleading or other paper and amendment thereof.

(b) Where a pleading originating a proceeding is filed by a party other than a cable television company subject to the jurisdiction of the Board, one additional conformed copy shall be filed for each respondent named therein for service by the Secretary in accordance with the provisions of N.J.A.C. 14:17-4.5.

14:17-4.3 Attachments to pleadings

All balance sheets, income statements and journal entries submitted with pleadings must conform to generally accepted accounting principles and generally accepted auditing principles, or if adopted under State or Federal law, any applicable uniform system of accounts.

14:17-4.4 Defective pleadings

Pleadings will be liberally construed with the view to effect justice. The Board or Office may disregard errors or defects in pleadings which do not affect the substantial rights of the parties. However, if the defect in a pleading prejudices a substantial right of any party the Board or Office may, on notice, strike the pleading or take such other action as it deems appropriate.

14:17-6.7 Petition for approval of the modification or amendment of the terms or conditions of a municipal consent upon which a certificate of approval is based

(a) Petitions for the approval of the modification or amendment of the terms or conditions of a municipal consent upon which a certificate of approval is based shall conform to the provisions of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof or attached exhibits, also provide the following information:

1. A certified copy of the existing municipal consents including the terms and conditions related thereto;
2. A statement describing the proposed modifications or amendments to the said terms or conditions with reasons for the changes proposed;
3. Proof of service of notice to all cable television companies operating in the areas either contiguous or in the same franchise territory to that served by the petitioner; and
4. A copy of the agreement between the municipality and the petitioner stating that the changes are acceptable.

(b) For purposes of this section, proof of service of notice shall include a copy of the notice and certification of service upon the indicated party.

(c) The petitioner shall provide copies of the petition to noticed parties upon request.

Amended by R.1994 d.194, effective April 18, 1994.
See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).
Amended by R.1999 d.108, effective April 5, 1999.
See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

In (a), rewrote 3 and deleted a former 5; and added new (b) and (c).

14:17-6.8 Petitions for approval of the transfer of certificates of approval

(a) Petitions for approval of the transfer of certificates of approval shall conform to the requirements of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in the attached exhibits, also provide the following information:

1. Evidence by affidavit from both parties that each certificate has been provided by transferor and that transferee has received said documents;
2. Evidence by affidavit from both parties that each municipal consent has been provided by transferor and that transferee has received said documents;
3. A map showing current service being supplied;
4. The names of all cable television companies operating in areas contiguous to that served by transferor under the consent involved in the application under this Section;

5. The schedule of rates charged for the service involved.

6. The names of the officers of the transferee or the names of its owners or partners, and the extent of their interest;

7. A copy of the assignment, contract, lease or other agreement by which the transfer is proposed to be made;

8. Affidavits by the transferor and the transferee as to the existence of any judgments, tax claims, of Federal, State, municipal governments or liens against the transferor or property, or equipment involved in, or associated with the proposed transfer;

9. A statement of the financial condition of the transferee and of its technical qualifications to operate and maintain the cable television operation and to provide safe, adequate and proper service;

10. Proof of service of notice of the proposed transfer to subscribers by way of bill insert or by publication in at least one newspaper circulated in the cable television company's service area.

(b) Proof of service of notice of the proposed transfer to all the electric and telephone utilities serving the area, and upon all cable television companies referred to in (a)4 above shall be included with the petition.

(c) Proof of service of notice of the proposed transfer to the clerk of each municipality being served by the cable television company shall be included with the petition.

(d) Proof of service of notice of the proposed transfer to all the other owners or managers of the public rights-of-way shall be included with the petition.

(e) For purposes of this section, proof of service of notice shall include a copy of the notice and certification of service upon the indicated party.

Amended by R.1985 d.449, effective September 3, 1985.
See: 17 N.J.R. 1062(b), 17 N.J.R. 2142(b).

(a)10 amended to expand notice requirements.
Amended by R.1989 d.266, effective May 15, 1989.
See: 21 N.J.R. 440(a), 21 N.J.R. 1374(a).

Requirement for proof of service added.
Amended by R.1994 d.194, effective April 18, 1994.
See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).
Amended by R.1999 d.108, effective April 5, 1999.
See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

In (a), rewrote 1, 2 and 10; inserted new (b); recodified former (b) as (c); and added new (d) and (e).

14:17-6.9 Petitions for renewal of certificate of approval

(a) Petitions for renewal of a certificate of approval shall conform to the provisions of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. A copy of the original municipal consent and evidence of the renewal or reissuance thereof;

2. In cases where the municipality has not acted on an application for renewal, the petitioner shall include a statement to that effect together with proof that application has been made;

3. Proof that petitioner has been operating its cable television system in conformance with the rules, regulations and orders of the Office, and is able to continue to do so;

4. Petitioner's acceptance of the ordinance;

5. A copy of the application for cable television franchise, as amended to reflect any changes in facts, terms, conditions or circumstances resulting from negotiations or agreements with the municipality; and

6. The location and address of the company's local office or agent pursuant to N.J.S.A. 48:5A-26(d) and N.J.A.C. 14:18-5.1.

(b) The petition shall also contain the information as required by the provisions of N.J.A.C. 14:17-6.6, Petitions for certificate of approval, and shall indicate that the petitioner has complied with N.J.A.C. 14:18-13, Renewals.

Amended by R.1989 d.266, effective May 15, 1989.
See: 21 N.J.R. 440(a), 21 N.J.R. 1374(a).

Petition requirements added at (b).

Amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

Amended by R.1999 d.108, effective April 5, 1999.

See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

In (a), deleted a former 1, recodified former 2 through 4 as 1 through 3, and added 4 through 6.

14:17-6.10 Petitions for the approval of the sale or lease of property

(a) Petitions for the approval of the sale, conveyance or lease of real or personal property, or the granting of an easement, or like interest therein as required by law shall conform to the provisions of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Ten copies of a separate sheet or sheets designated Schedule "A" containing a description of the property. For real property, show the location by municipality and county, a metes and bounds or other adequate description of the property and rights of any, reserved by the cable television company. For personal property include sufficient information to identify the property adequately;

2. Name of transferee or lessee, the consideration or rental and method of payment thereof, and rights reserved by the transferor or lessor;

3. A copy of the written agreement;

4. A certified copy of the resolution of the Board of Directors or other authority authorizing the transfer or lease;

5. Purpose for which property was originally acquired, the date of acquisition, the use made of the property, the date when and circumstances under which it ceased to be useful for cable television purposes, the present use, the possible prospective use, if any, and the identity of the official or officials who determined that the property is not now nor prospectively required or useful for cable television purposes;

6. The basis of the price or rental: Assessed valuation, appraisal, comparable sales, or other basis; whether it is the best price or rental obtainable (attach appraisals, if any, as exhibits);

7. Does the proposed consideration or rental represent the fair market value of the property to be conveyed or leased?

8. What steps were taken to put this property on the market and accomplish its sale or lease? Was it advertised? How? If bids were solicited, give names of bidders and the consideration or rental offered;

9. Is there any relationship between the parties other than transferor and transferee, or lessor and lessee? What is that relationship, if any?

10. The actual cost at date of acquisition, and the cost and nature of any improvements;

11. The amount at which the property is now carried on the cable television company's books;

12. Copies of proposed journal entries to record the transaction when the consideration is more than \$20,000;

13. If property is income producing, give details. Does petitioner pay all carrying charges, including taxes? What is the assessed valuation?

14. If the property is encumbered by any mortgage, describe the mortgage, state the amount thereof, and the time required to obtain a release;

15. When the property to be sold or leased has a net book cost or fair market value of more than \$500,000 the petitioner must attach to the petition copies of the advertisement required by (a)2 above, and proof of publication.

(b) Where the Board's approval of sale or lease is required by law and the property has a net book cost or fair market value of more than \$500,000 the property shall be advertised for sale or lease at least twice, one week apart, in a daily newspaper published or circulated in the county in which the property is located, within 90 days immediately prior to the filing of the petition for the approval of the sale or lease, except that advertising shall not be required for sale or lease of property for cable television purposes to another cable television company or other person or company subject to any jurisdiction of this Office or Board, and the advertisement shall contain the following:

1. A description of the property to be sold or leased and improvements thereon. In the case of land, this shall include the street address, if any, and a description sufficient to identify the location of the property and its approximate size, which may be a description by metes and bounds or lot and block numbers;

2. The place where the property is located or may be inspected, together with the street address, if any;

3. Conditions of the sale or lease, if any, together with a provision that the cable television company may reject any or all bids;

4. A statement that the sale or lease is subject to the approval of the Office of Cable Television, Board of Public Utilities;

5. A statement of the place and final date of submitting sealed bids which shall not be less than ten days after publication of the second advertisement together with a statement of the time and place of the opening of said bids, which shall not be more than five days following the final date submitting bids, at a place in New Jersey.

6. A sealed bid, in accordance with the requirements of paragraph 5 of this subsection, must be submitted by a prospective purchaser or lessee, except that an offer or agreement to purchase or lease in writing received by the cable television company or executed before the first date of advertising, and still in effect at such date, shall be considered as if it were a sealed bid, provided such offer or agreement in writing meets all other conditions of sale or lease, if any, included within the advertising.

(c) In addition to any other transactions not requiring approval or which on their merits may be deemed to be in the ordinary course of business, any lease, grant or permission by a cable television company to occupy or use its real property or any interest therein, which is terminable at the option of the cable television company upon notice not to exceed 90 days, and any release, by quitclaim deed or otherwise by any cable television company of any lease, easement or permission to occupy or use real property, shall be deemed to be in the ordinary course of its business and neither notice to the Office, nor petition for its approval, shall be required with respect thereto.

(d) In addition to any other transactions which on their merits may be deemed to be in the ordinary course of business, the sale, lease, encumbrance or other disposition by any cable television company of such of its property or an interest therein as is hereinafter set forth, may be consummated without petition to the Office for approval, provided the cable television company shall have given written notice thereof to the Office, to be received not less than 30 days prior to the effective date of the proposed sale, lease, encumbrance or other disposition of such property:

1. The sale of personal property having a net book cost and sale price not in excess of \$100,000 and which is no longer used by or useful to the cable television company;

2. Except as hereinabove provided, the lease or permission to use or occupy real property or any interest therein having a net book cost not in excess of \$500,000 and a net rental not in excess of \$25,000 per annum;

3. The sale or release of real property, or any interest therein, not used by or useful to the cable television company and having a net book cost and sale price not in excess of \$500,000.

(e) On expiration of the notice period and on payment of the required fee the Secretary will certify on a true copy of the notice, to be furnished to the Board, that such sale, lease or release is deemed by the Board to be in the ordinary course of business and within the statutory proviso. Such notice shall contain, to the extent applicable, the following:

1. Name of transferee or lessee, the consideration or rental and method of payment thereof, and rights, of any reserved by the transferor or lessor;

2. A copy of the agreement or lease and a map of the real property;

3. A statement that the proposed consideration or rental represents the fair market value of the property to be conveyed, or the fair rental value of the property to be leased, giving the basis for the conclusion reached;

4. A statement of any relationship between the parties other than transferor and transferee, or lessor and lessee, or a statement that there is no such other relationship, as the case may be;

5. The amount at which the property is carried on the cable television company's books;

6. A statement as to whether or not the property is income producing and if so, details as to whether the petitioner pays all carrying charges, including taxes. In addition, such statement shall include the assessed valuation of the property;

7. A statement, in the case of proposed sale, that the property is not used by or useful to the cable television company, and in the case of a proposed lease, grant or permission, that the transaction will not compromise the ability of the cable television company to render service;

8. A verification by a properly authorized officer, partner or proprietor of the statements contained in the notice;

9. A blank space of three inches shall be provided at the bottom of the first page of the notice for the Board's certification.

(f) The Board or Office may, within the aforesaid 30-day notice period, or at any time prior to the actual consumma-

tion of the transaction, suspend the provisions of (d) above and require the filing of a petition for the approval of the sale, lease, encumbrance or other disposition.

Amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

Amended by R.1999 d.108, effective April 5, 1999.

See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

In (a), in 1, substituted "Ten copies" for "A copy", and in 15, substituted "\$500,000" for "\$100,000"; in (b), in the introductory language, substituted "\$500,000" for "\$100,000", and in 4, substituted "Public Utilities" for "the Regulatory Commissioners"; in (d), in the introductory language, substituted "30 days" for "15 days", in 1, substituted "\$100,000" for "\$50,000", in 2, substituted "\$500,000" for "\$100,000" and substituted "\$25,000" for "\$10,000", and in 3, substituted "\$500,000" for "\$100,000"; and rewrote (f).

14:17-6.11 (Reserved)

Amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

Repealed by R.1999 d.108, effective April 5, 1999.

See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

Section was "Petitions for authority to change depreciation rates".

14:17-6.12 Petitions for reconsideration of assessment

(a) Petitions for reconsideration of the assessment levied in accordance with N.J.S.A. 48:5A-1 et seq., where applicable, shall conform to the provisions of N.J.A.C. 14:17-4, and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or the exhibits attached thereto, provide the following information:

1. A certified copy of a statement showing gross operating revenues derived from intrastate operations during the preceding calendar year;
2. Reasons why the petitioner feels the assessment is excessive, erroneous, unlawful or invalid.

Amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

14:17-6.13 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute mortgages

(a) Petitions for authority to issue any stocks, bonds, notes, or other evidence of indebtedness, payable in more than one year from the date thereof, and to execute mortgages shall conform to the provisions of N.J.S.A. 48:5A-1 et seq., and N.J.A.C. 14:17-4, and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, provide the following:

1. A statement of the amount and terms of the proposed issue including the nature of the security therefor, if any; the purposes for which the proceeds are to be used; and the nature of all rights and limitations applicable to the security;

2. Where one of the purposes is the acquisition of property, a general description of the property, the name of the transferor, and a copy of the contract, if any, for such acquisition. In the case of property to be acquired for right-of-way purposes, a general description of the proposed route and a map or plot plan will be sufficient.

3. Where one of the purposes is the construction, completion, extension or improvement of facilities, a general description of the work proposed to be done, and an estimate of the cost thereof in reasonable detail. Where one of the purposes is the improvement or maintenance of service, there shall be included a description of the existing service as well as of the improvements or betterments proposed;

4. Where one of the purposes is the refunding of securities, a description of the securities and obligations to be refunded, including the kind, amount, date of issue and date of maturity, together with the terms of refunding and all other material facts affecting the same must be set out;

5. Where one of the purposes is the issuance of capital stock based upon the investment of earnings in plant, which might have been distributed in dividends a complete and reasonably detailed enumeration of petitioner's property, priced at original cost, estimated if not known. The petitioner shall produce at the hearing, evidence in support of such enumeration and pricing;

6. Where one of the purposes is to reimburse the treasury for expenditures not theretofore capitalized by the issuance of securities, the petitioner shall also show the exact period and amount for which reimbursement is desired, comparative financial statements which shall include, at a minimum, balance sheets and utility plant by accounts as at the beginning and end of the period, as well as changes in the period (in the case of cable television plant, additions and retirements shall be stated separately for each year); a statement indicating the source and application of funds during the period; a statement indicating the manner in which petitioner proposes to use the proceeds from the security issue; and the necessity and reasonableness of the proposed transaction;

7. Where one of the purposes is for the issuance of common capital stock in connection with the organization of a new corporation to operate as a cable television company, the petition must contain the following:

- i. Copy of certificate of incorporation;
- ii. Names and address of the elected or proposed officers, directors and stockholders of the company and the number of shares of capital stock to be held by each;
- iii. The required number of stockholders and directors and the state in which they reside pursuant to the statute under which the corporation will be organized;

- iv. Corporate resolution or proposed resolution of directors of the cable television company authorizing the issuance of the stock;
 - v. Copy of a pro forma balance sheet of the new corporation and a copy of a pro forma income statement of estimated operating results anticipated for the first two years of its proposed operations, unless a different period is specified by the Office;
 - vi. The name of the municipality and the street and number therein:
 - (1) In which the principal office in this State is to be located and the name of the agent in charge of such principal office upon whom process against the corporation may be served;
 - (2) In which the principal business office is to be located;
 - (3) At which the records, books, accounts, documents and other writings referred to in N.J.S.A. 48:5A-1 et seq., to be kept and the name, place of residence within this State and place of business of the agent who shall have custody of said corporate records and upon whom process for the production of the same before the Board or Office may be served. (The books of account must be kept in conformity with the appropriate Uniform System of Accounts prescribed by the Office.) Books and records must be kept within this State unless authority to do otherwise is obtained from the Board.
 - vii. A detailed list of organization expenditures;
 - viii. A copy of a pro forma balance sheet giving effect to the issuance of the proposed securities;
 - ix. Copy of a pro forma income statement giving effect to the issuance of the proposed securities;
 - x. The effective rate of interest or of the cost of money to the petitioner, and the reasonableness thereof, if authority is requested to issue stocks, bonds, notes or other evidence of indebtedness by means of private placement and not a public offering, and the financial sources that the petitioner has contacted in this connection. Petitioner should submit information as to the computation of the effective rate of interest or of the cost of money as distinguished from the nominal rates which may be indicated.
8. Where one of the purposes is the issuance of bonds to be secured by an existing mortgage a statement showing the amount and use made of the proceeds of the bonds, if any, already issued under such mortgage;
 9. Information relating to the current financial condition of the petitioner setting forth:
 - i. As to each class of capital stock of the petitioner, the amount authorized and the amount issued and outstanding;
 - ii. As to each class of preferred stock of the petitioner, a summary statement of the terms of preference thereof;
 - iii. As to each issue or series of long-term indebtedness of the petitioner, the principal amount authorized to be issued, date of issue, date of maturity, rate of interest and principal amount outstanding, and as to each such issue secured by a mortgage upon any property of the petitioner, the date of said mortgage, name of trustee, principal amount authorized to be secured, and a brief description of the mortgaged property;
 - iv. Other indebtedness of all kinds, giving same by classes and describing security, if any;
 - v. Amount of interest charged to income during previous fiscal year upon each kind of indebtedness and rate thereof, and, if different rates were charged, amount charged at each rate;
 - vi. The amount of dividends paid upon each class of stock during the previous calendar year and rate thereof;
 - vii. A detailed income statement for the previous calendar year and balance sheet showing conditions at the close of that year.
 10. A statement whether any franchise or right is proposed to be capitalized directly or indirectly. In case it is proposed to capitalize any franchise. A copy of such franchise and a statement, together with an affidavit showing the amount actually paid for said franchise shall be attached to the petition;
 11. Where any contract, agreement or arrangement, verbal or written has been to sell the securities proposed to be issued, a description of such contract, agreement or arrangement and, if in writing, a copy thereof;
 12. If no contract, agreement, or arrangement has been made for the sale or other disposition of the securities proposed to be issued, the proposed method of sale or other disposition must be set forth together with an affidavit of a competent person showing the amount which can probably be realized from the sale and disposition thereof, and the reasons for the opinion of the affiant;
 13. Petitions filed under this rule shall contain a certified copy of the resolution of the Board of Directors or other authority authorizing the proposed issuance of securities and shall be verified. The verification shall include a statement that it is the intention of the petitioner in good faith to use the proceeds of the securities proposed to be issued for the purposes set forth in the petition; and
 14. Information which under this rule is required to be set forth in a petition or any exhibit attached thereto and which is contained in any report, document, pleading or other instrument previously filed with the Office pursu-

ant to any requirement of any statute or any rule of the Office, may be incorporated in such petition or exhibit by reference to the official filing thereof with the Office provided that said information is still correct in all respects.

Amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

Petition for Rulemaking.

See: 30 N.J.R. 2532(a), 30 N.J.R. 2789(a).

Amended by R.1999 d.108, effective April 5, 1999.

See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

Rewrote (a)9vi and vii.

14:17-6.14 Petitions for authority to transfer capital stock

(a) Petitions for authority to transfer upon the books and records of any cable television company, pursuant to N.J.S.A. 48:5A-1 et seq., where applicable, any share or shares of its capital stock, shall conform to the provisions of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The name and address of the proposed transferor and transferee;
2. A description of the proposed transferee including information as to whether the proposed transferee is a cable television company, a holding company either separately or by affiliation in a cable television holding company system, or a person or other domestic or foreign corporation;
3. A description of the capital stock proposed to be transferred including the class of shares, number of shares and the par or stated value thereof;
4. The per cent in interest of the outstanding voting capital stock of the cable television company which the proposed transfer, either by itself or in connection with other previous sales or transfers, will vest in the transferee;
5. The reason for the proposed transfer;
6. Details and explanation of any changes expected to be made, if petition is approved, in:
 - i. Board of Directors;
 - ii. Officers and active managers;
 - iii. Company policies with respect to its operations, financing, accounting, capitalization, rates, depreciation, maintenance, services and other matters affecting the public interest.
7. The qualifications and the business or technical experience of the proposed officers, directors and stockholders, or other principal management and operating personnel with particular respect to their ability to carry out the cable television company's obligation to render safe, adequate, efficient and proper service.

8. Proof of service of notice of the proposed transfer to the municipalities being served by the cable television company.

(b) For purposes of this section, proof of service of notice shall include a copy of the notice and certification of service upon the indicated party.

Amended by R.1985 d.449, effective September 3, 1985.

See: 17 N.J.R. 1062(b), 17 N.J.R. 2142(b).

Proof of service of notice to municipalities added at (a)8.

Amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

Amended by R.1999 d.108, effective April 5, 1999.

See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

Added (b).

14:17-6.15 Petitions for permission to lend money or property

(a) Petitions for permission to lend money or property pursuant to N.J.S.A. 48:5A-1 et seq., shall conform to N.J.A.C. 14:17-4, and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in exhibits thereto, provide the following additional information:

1. Name, address, per cent of stock ownership and affiliation with petitioner or other cable television company of lender;
2. Amount of money or description of property proposed to be lent;
3. A copy of the proposed agreement including the terms and conditions related thereto;
4. Reasons for the proposed loan;
5. Proof that the loan will not impair the petitioner's ability to provide safe, adequate, efficient, economical and proper service.

Amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

14:17-6.16 Tariff filings which do not propose increases in charges to customers

(a) Tariff filings for the purpose of making effective initial tariffs or of revisions, changes or alterations of existing tariffs and which are not filed because of the need for additional revenue from products or services covered by existing tariffs, and which do not propose increases in charges to customers, shall conform to the provisions of N.J.A.C. 14:17-4, and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Four copies of the proposed tariff or revision, change or alteration thereof, together with an explanation of the manner in which the tariff or change differs from the existing or a prior tariff, and the effect, if any, upon revenues;

2. A statement of the reasons why the said tariff or change is proposed to be filed;
3. A statement of notices given, if any, together with a copy of the text of each of said notices;
4. A statement as to the date on which it is proposed to make the tariff or change effective, which date shall not be earlier than 30 days after the filing unless otherwise permitted by the Office with the approval of the Board; and
5. In the case of initial tariffs pro forma income statements for each of the first two years of operation and actual or estimated balance sheets as at the beginning and end of each year of said two-year period.

(b) Review of petitions and tariffs under this section shall conform and comply with the regulations and procedures established by the Federal Communications Commission for the regulation of cable television rates.

Amended by R.1994 d.194, effective April 18, 1994.
See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

14:17-6.17 Tariff filings or petitions which propose increases in charges to customers

(a) Tariff filings or petitions for the purpose of making effective revisions, changes or alterations of existing tariffs which propose to increase any rate, rental or charge or so to alter any classification, practice, rule or regulation as to result in such an increase, shall conform to the provisions of N.J.A.C. 14:17-4, and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, contain all applicable information and data set forth in N.J.A.C. 14:17-6.16 and, in addition, shall contain the following information and financial statements prepared in accordance with generally accepted accounting and auditing principles, or the applicable uniform system of accounts:

1. A comparative balance sheet for the most recent three-year (calendar year or fiscal year) period;
2. Comparative income statement for the most recent three-year (calendar year or fiscal year) period;
3. A balance sheet at the most recent date available;
4. A statement of the amount of revenue derived in the calendar year last preceding the institution of the proceedings from the intrastate service rendered, the rates or charges which are the subject matter of the filing;
5. A pro forma income statement reflecting operating income at present and proposed rates and an explanation of all adjustments thereon, as well as calculation showing the indicated rate of return on the average net investment for the same period as that covered by the pro forma income statement that is, investment in plant facilities plus supplies and working capital to the extent claimed,

less the reserve for depreciation and advances and contributions for facilities.

6. In providing the information required by (a)5 above, a company may also file, in addition to the new rates proposed to become effective, alternative rate changes designed to produce the full revenue request, which alternatives are illustrative of the application of other possible rate designs to the filing.

7. An itemized schedule showing all payments or accruals to affiliated companies or organizations and to those who own in excess of five per cent of the cable television company's capital stock regardless of the form or manner in which such charges are paid or accrued and an explanation of the service performed for such charges;

8. A copy of the form of notice to customers.

(b) Each cable television company that makes a filing under (a) above shall, at the same time, unless otherwise ordered or permitted by the Board, give notice thereof as follows:

1. Serve a notice of this filing which includes a statement of the municipality's procedural rights under N.J.S.A. 48:5A-18(b) and N.J.A.C. 1:1-12.1, to elect to intervene as a party presenting evidence or to participate by written and/or oral statements or briefs under N.J.A.C. 1:1-12.6, and a copy of the proposed tariff or a copy of the petition or a statement of the effect of the proposed filing upon the municipal clerk in each of the municipalities in which there is rendered cable television service, the charge for which is proposed to be increased.

2. Serve a notice of the filing and two copies of the petition or tariff on the Department of Law and Public Safety, 124 Halsey Street, PO Box 45029, Newark, New Jersey 07102 and on the Director, Division of Ratepayer Advocate, 31 Clinton Street, PO Box 46005, Newark, New Jersey 07102; and

3. Serve a notice of the filing and a statement of the effect on subscribers of various classes on all current subscribers who are billed on a recurring basis and who will be affected by said filing. Such notice may be by bill insert or by publication in newspapers published and circulated in the cable television company's service area.

(c) Each cable television company that makes a filing under (a) above shall, after being advised by the Office of the time and place fixed for hearing, if any, and unless otherwise ordered or permitted by the Board or Office, serve notice at least 20 days prior to such time on those persons specified in (b) 1 and (b)2 above and shall give such notice to those persons designated in N.J.A.C. 14:17-6.17(b)3 as current subscribers billed on a recurring basis, by bill insert or by publication 20 days prior to the date set for hearing, in newspapers published and circulated in the cable television company's service area.

(d) The notices provided for in (b) and (c) above may be given simultaneously.

(e) Where notice is prescribed under this Section it shall be at the cost and expense of the party obligated to give or serve the notice.

(f) Proof of service and/or notice required by this rule shall be filed with the Office at least five days before the date set for hearing.

(g) An opportunity for public comment shall be afforded affected subscribers. In the discretion of the presiding hearer, public comment may take the form of a hearing in the service territory or other reasonably convenient location and/or the submittal of written comments, if doing so is in the interest of prompt disposition and judicial economy.

1. The presiding officer shall also have the discretion to combine any public comment hearings to encompass more than one service territory served by a single cable operator or similar rate requests filed by more than one cable operator, if doing so is in the interest of prompt disposition and judicial economy.

2. Notwithstanding the provisions of N.J.A.C. 1:1-14.10(k)6 and (1), interlocutory appeals from a hearer's decision on public comment pursuant to this subsection shall be made to the Board in accordance with the terms of N.J.A.C. 1:1-14.10.

(h) Review of petitions and tariffs under this section shall conform and comply with the regulations and procedures established by the Federal Communications Commission for the regulation of cable television rates.

Amended by R.1985 d.449, effective September 3, 1985.
See: 17 N.J.R. 1062(b), 17 N.J.R. 2142(b).

Notice requirements added to (b); hearing requirement added at (g).
Amended by R.1994 d.194, effective April 18, 1994.
See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

Amended by R.1995 d.173, effective March 20, 1995.
See: 27 N.J.R. 46(a), 27 N.J.R. 1194(a).

Amended by R.1999 d.108, effective April 5, 1999.
See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

In (b)2, substituted "Ratepayer" for "Rate Counsel, Department of the Public".

Case Notes

Financial disclosures in notice; denial of objections to Board decision to deny cable television rate increase petition. *Teleprompter Cable Communications Corp. v. Bd. of Public Utility Commissioners*, 154 N.J.Super. 1, 380 A.2d 1140 (App.Div.1977).

14:17-6.18 Petitions for approval of a merger or consolidation

(a) Petitions for approval of a merger or consolidation of one cable television company of New Jersey with that of another cable television company, shall conform to the provisions of N.J.A.C. 14:17-4, and N.J.A.C. 14:17-6.1 through 6.4, and 6.13, as well as N.J.A.C. 14:11-1.17, to the extent applicable, and shall contain in the petition, or as attached exhibits, the following information:

1. Copy of agreement of merger or consolidation;
2. Copies of corporate resolutions of the stockholders of each of the corporations authorizing the transaction;
3. Copies of recent balance sheets of each company and a pro forma balance sheet of the continuing company;
4. Copies of recent income statements of the operations of each of the companies involved and a pro forma income statement of the continuing corporation, in sufficient detail;
5. Copies of certificates of incorporation of each corporation to be merged and amendments thereto, if not heretofore filed with the Office;
6. Total number of shares of each of the various classes of capital stock proposed to be issued, if any, by the surviving corporation, the par or stated value per share and the total amount of new capital stock to be issued;
7. The percentage, and the manner in which, if any, the presently outstanding capital stock of the corporations involved, will be exchanged for the new stock of the surviving corporation;
8. Is any franchise cost proposed to be capitalized on the books of the surviving corporation? If so, explain the reasons therefor, and in what manner and over what period the items are proposed to be amortized;
9. The names and addresses of the new officers, directors and principal stockholders and the number of shares to be held by each in the surviving corporation;
10. The various benefits to the public and the surviving corporation which will be realized as the result of the merger;
11. Proposed changes, if any, by the surviving corporation, in company policies with respect to finances, operations, accounting, rates, depreciation, operating schedules, maintenance and management, affecting the public interest;
12. Proof of service of notice of the proposed merger to the public, the municipalities being served by the companies to be merged, and the public utilities serving in the area, pursuant to N.J.A.C. 14:17-4.5;
13. Proof of compliance with rules, regulations and statutes requiring approval from other State and Federal regulatory agencies having jurisdiction in the matter;
14. A statement of the fees and expenses to be incurred in connection with the merger, and the accounting disposition to be made thereof, on the books of the surviving corporation.

Amended by R.1994 d.194, effective April 18, 1994.
See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

14:17-6.19 Petitions for permission to keep books and records outside the State of New Jersey

(a) Petitions for authority to keep books, records, accounts, documents and other writings outside the State of New Jersey, filed with the Board, as required under N.J.S.A. 48:5A-1 et seq., where applicable, shall conform to the provisions of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Complete description of the specific books, records, accounts, documents and other writings proposed to be kept outside the State of New Jersey;
2. The exact location where the books and records will be kept;
3. If all books and records will not be kept outside the State, what remaining records will be kept at the New Jersey location;
4. The reason for proposing to keep its books and records at a location outside the State;
5. The availability of adequate required space, facilities and experienced personnel at the new location;
6. The cost to the petitioner of maintaining the books and records at the new location as compared with that of maintaining the records at the New Jersey location;
7. The extent of the financial advantage to the subscribers and other benefits to the cable television company which will result from keeping the books and records outside the State;
8. Whether the books and records which will be kept at the location outside the State will be, on notice in writing by the Office or Board, produced at such time and place within this State as the Board or Office may designate;

9. Whether the petitioner will pay to the Office any reasonable expenses or charges incurred by the Office for any investigation or examination, if the Board grants said permission;

10. The location at which the petitioner will continue to maintain an office or agent within the State of New Jersey for the convenience of its customers to pay bills, receive, investigate and resolve complaints and conduct other business with the cable television company;

11. The name and address of the petitioner's statutory agent.

Amended by R.1994 d.194, effective April 18, 1994.

See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

Amended by R.1999 d.108, effective April 5, 1999.

See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

Rewrote (a)10.

14:17-6.20 Petitions by municipalities for permission to charge franchise fee above that prescribed in N.J.S.A. 48:5A-1 et seq.

(a) Petitions by municipalities for permission to charge a franchise fee above that prescribed in N.J.S.A. 48:5A-1 et seq., shall be filed in one of two forms:

1. A municipal consent, included by a cable television company in its petition for Certificate of Approval, will be considered a petition for permission to charge a franchise fee in excess of that prescribed in N.J.S.A. 48:5A-1 et seq.; or
2. A petition in conformity with the requirements of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, may be filed separately by a municipality.
3. Additionally, a municipality shall be required to provide the following information:
 - i. Proof that the expenses to the municipality with respect to the regulation or supervision caused by the existence and operation of the cable television company is warranted;

- ii. Proof that the municipality has given notice of its filing to the affected cable television company.

Amended by R.1994 d.194, effective April 18, 1994.
See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

14:17-6.21 Petition to set aside refusal pursuant to N.J.S.A. 48:5A-17(e)

(a) Petition for an order setting aside municipal or county refusal for zoning variance, or other act or necessary authorization pursuant to N.J.S.A. 48:5A-17(e), shall conform to N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4 to the extent applicable, and shall include, but not be limited to the following:

1. A map or site plan for the proposed facility showing the location of any other potential alternative sites or existing CATV facilities in relation to the one in question;
2. A listing of alternative sites, if any, investigated or considered;
3. A copy of the decision or order below denying the requested approval;
4. Proof of concurrent service and a copy of the petition upon each of the following:
 - i. The municipal and, where applicable, the county governing body;
 - ii. The agency, authority, board or other entity which denied the requested approval;
 - iii. Any adjoining property owners within 200 feet of the property for which approval is sought.

(b) The petition pursuant to this section must be filed with the Office within 60 days of written notice of the denial to the petitioner.

(c) The Board or administrative law judge shall hold a hearing on the matter in the community affected.

R.1984 d.167, effective May 7, 1984.
See: New Rule. 16 N.J.R. 125(a), 16 N.J.R. 1096(a).
Amended by R.1987 d.316, effective August 3, 1987.
See: 19 N.J.R. 504(a), 19 N.J.R. 1455(b).
Expanded scope to include county government.
Amended by R.1994 d.194, effective April 18, 1994.
See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).

SUBCHAPTER 7. ANSWERS AND REPLIES

14:17-7.1 Form and content

(a) Any party against whom a petition is directed and who desires to contest the same or make any representation to the Office in connection therewith shall file an answer in writing thereto with the Office.

(b) The answer shall be so drawn as to apprise the parties and the Office fully and completely of the nature of the defense and shall admit or deny specifically and in detail all material allegations of the petition.

(c) Matters alleged by way of affirmative defense shall be separately stated and numbered.

(d) Answers shall not be required in any rate proceeding instituted by a cable television company.

14:17-7.2 Time for filing

(a) Unless otherwise provided in these rules or ordered by the Office with the approval of the Board, an answer, if made, must be filed within 20 days after the service of the pleading against which it is directed. A party desiring to reply to an answer shall file the same with the Board within 10 days after service of the answer.

(b) Whenever the Office or the Board believes the public interest requires expedited procedure, it may shorten the time for any answer or reply.

(c) Upon motion on notice to all parties to the proceeding, the Office with the approval of the Board may, in its discretion, extend or shorten the time to file an answer or reply.

SUBCHAPTER 8. CONFERENCES

14:17-8.1 Purposes

(a) The purpose of this subchapter is to foster early settlement of cases pending before the Board or Office prior to the case being transmitted to the Office of Administrative Law and to provide a vehicle for the parties to file pre-transmittal motions with the Board for retention and disposition of certain issues. Pre-transmittal settlement conferences of parties or their attorneys may be held to provide opportunity for a settlement, subject to approval of the Board, of a proceeding or any of the issues therein, and for the submission and consideration of facts, argument, offers of settlement or proposals of adjustments, as time, the nature of the proceeding and the public interest may permit.

(b) Pre-transmittal conferences of parties or their attorneys may be held to expedite the disposition of any hearing. At such conferences there may be considered, in addition to the matters set forth in (a) above, the following:

1. Identification and simplification of the issues;
2. Admissions or stipulations of facts;
3. Identification of those matters or issues which should either be retained for disposition by the Board or be transmitted to the Office of Administrative Law; and

4. Such other matters as may be properly dealt with to aid in expediting the proceeding.

14:17-8.2 Initiation of conferences

(a) The Board, Office or a designated officer, with or without motion, may direct that a conference be held at any stage prior to transmittal to the Office of Administrative Law or at any time when the Board certifies a case unto itself pursuant to N.J.S.A. 52:14F-8(b).

(b) On motion of a party, the Board or Office-designated officer may direct the parties or their attorneys to appear for a conference to consider the matters set forth in N.J.A.C. 14:17-8.1(b).

14:17-8.3 Stipulation of conference results

(a) Upon conclusion of the pre-transmittal conference, the parties or their attorneys shall reduce the results thereof to the form of a written stipulation reciting the matters agreed upon, and three copies thereof shall be filed with the Board within 10 days of the date of the conference. If no stipulations are reached, the matter shall be immediately transmitted to the Office of Administrative Law.

(b) Such stipulations shall be signed by the parties or their attorneys, may be received in evidence as part of the record and when so received shall be binding on the parties with respect to the matters therein stipulated.

(c) Such stipulations are subject to review by the Board at a regularly scheduled agenda meeting.

14:17-8.4 Authority of Board or Office-designated officers

(a) Any Board or Office-designated officer shall have the authority to conduct and preside over pre-transmittal conferences in the interest of fostering resolution of issues.

(b) When appropriate, a Board or Office-designated officer may submit a pre-transmittal order which shall be reviewed by the Board at an agenda meeting and, if acceptable, shall be adopted as its own order.

SUBCHAPTER 9. CONTESTED CASE HEARINGS

14:17-9.1 Contested case procedures

The hearing in any matter which is determined by the Board to be a contested case shall be conducted pursuant to the procedures in the Administrative Procedures Act, N.J.S.A 52:14B-1 and 52:14F-1, the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the Board of Regulatory Commissioners Rules of Special Applicability, N.J.A.C. 1:14.

14:17-9.2 Argument on exceptions

After receipt of the initial decision, the exceptions and answers thereto, if any, will be disposed of by the Board based on the exceptions, answers and briefs filed unless the Board, in its discretion, requires or permits oral argument, in which case the Board will schedule the matter for argument before it.

14:17-9.3 Review of initial decision by the Board on its own motion

The Board may institute on its own motion a review of any aspect of the initial decision and it may call for oral argument, the filing of briefs, or both, or the taking of additional testimony.

14:17-9.4 Method of reopening

(a) At any time after the conclusion of a hearing in a proceeding or adjournment thereof sine die, but before the entering and issuance by the Board of its final decision or order, any party to the proceeding may file with the Board a motion to reopen the hearing for the purpose of taking additional evidence. Such motion shall set forth clearly the reasons for reopening of the hearing, including any material changes of fact or of law alleged to have occurred since the last hearing.

(b) If, after the hearing in a proceeding, the Board shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such hearing, the Board will issue an order for the reopening of same.

14:17-9.5 Motions to reopen

(a) After issuance of the final decision, a party may file for the reopening of the proceeding. Upon filing by any party of a motion for the reopening of a proceeding, appropriate notice thereof shall be given forthwith by the moving party to all other parties, or their attorneys of record, by service of a copy of the motion for reopening.

(b) Within 10 days following the service of a motion to reopen, any party to the proceeding may serve upon the moving party and file with the Board an answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such motion.

(c) As soon as practicable after the filing of answers to a motion to reopen or default thereof, as the case may be, the Board will grant or deny such motion. The action by the Board may be conditioned on reasonable terms.

14:17-9.6 Rehearing, reargument or reconsideration

(a) A motion for rehearing, reargument or reconsideration of a proceeding may be filed by any party within 15 days after the issuance of any final decision or order by the Board.

1. Such motion shall state in separately numbered paragraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Board or other relief.

2. Where opportunity is also sought to introduce additional evidence, the evidence to be adduced shall be stated briefly together with reasons for failure to previously adduce said evidence.

(b) The Board at any time may order a rehearing, reargument or reconsideration on its own motion and extend, revoke or modify any decision or order made by it.

14:17-9.7 Motions and answers on rehearing

(a) A copy of the motion shall be served by the moving party upon all other parties or their attorneys of record, forthwith upon the filing hereunder. The moving party shall also give such notice, as the Board may direct, of the filing of the motion to all other persons to whom notice of the original hearing had been given.

(b) Any answer to the motion shall be filed within 10 days following the service of the motion. Failure to file an answer shall be deemed to be a waiver of any objection to the granting of the motion.

(c) Any motion hereunder which is not granted or otherwise expressly acted upon by the Board within 60 days after the filing thereof, shall be deemed denied.

(d) The filing or granting of any motion under this rule shall not operate as a stay of the Board's decision or order. A stay will be granted only for good cause shown.

SUBCHAPTER 10. UNCONTESTED CASE PROCEEDINGS

14:17-10.1 Uncontested case proceedings

This subchapter applies only to a matter which the Board or Office determines to constitute an uncontested case. Where the Board or Office determines to hold a hearing in an uncontested case, said hearing shall be conducted pursuant to this section and, in the absence of a specific provision herein, pursuant to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the Board of Public Utilities Rules of Special Applicability, N.J.A.C. 1:14.

Amended by R.1999 d.108, effective April 5, 1999.

See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

Substituted "Public Utilities" for "Regulatory Commissioners".

14:17-10.2 Designation

The Board or Director, may by general order in writing designate as a presiding officer such person or persons, as provided by statute, as its representative or representatives in and on its behalf to conduct any hearing in any uncontested proceeding now or hereafter pending before the Board or Office.

14:17-10.3 Filing

Pleadings, correspondence or other documents pertaining to an uncontested case shall be filed pursuant to N.J.A.C. 14:17-4. Copies of such correspondence shall be filed with the presiding officer and with the parties of record.

14:17-10.4 Cameras and recording devices

Cameras or recording devices may be used at uncontested case proceedings in accordance with the standards and procedures of N.J.A.C. 14:17-1.8.

14:17-10.5 Appearances

Any person appearing in a representative capacity in any uncontested case proceeding shall conform to the requirements of N.J.A.C. 14:17-3.

14:17-10.6 Service

Whenever a party has the right or is required to do some act within a prescribed period after the serving of a notice or other paper upon said party, and the notice or paper is served upon said party by mail, three days from the date of mailing shall be added to the prescribed period.

14:17-10.7 (Reserved)

Repealed by R.1999 d.108, effective April 5, 1999.

See: 30 N.J.R. 4131(a), 31 N.J.R. 898(a).

Section was "Motions".

SUBCHAPTER 11. COMPLIANCE WITH ORDERS, DECISIONS AND RECOMMENDATIONS

14:17-11.1 Orders and decisions

Upon the issuance of an order or decision of the Board, the party to whom the same is directed must notify the Board through the Office on or before the date specified in said order or decision whether or not compliance has been made in conformity therewith.

14:17-11.2 Recommendations

(a) Upon the making of any recommendation by the Board the party to whom the same is directed must within 15 days after the making of the recommendation, unless otherwise specifically required, notify the Board through the Office of the acceptance or rejection thereof.

(b) Failure to comply with this rule will be deemed an acceptance of the recommendation.

14:17-11.3 Extension of time limits

In instances where the Board's decision or order contains a specific time or date for compliance, and the petitioner desires extension of such time limit, petition to the Board through the Office shall be made in writing at least five days before the expiration of the time limit.

14:17-11.4 Answers to communications

(a) Unless otherwise specified, any letter or telegram from the Board through the Office directing investigation of any matter under its jurisdiction must be complied with by the cable television company and a report received by the Office within 15 days from the date of the letter or telegram.

(b) If circumstances prevent compliance with this rule, the cable television company must advise the Board through the Office, in writing within the above prescribed period, of its inability to comply and the reasons therefor.

Amended by R.1994 d.194, effective April 18, 1994.
See: 26 N.J.R. 96(a), 26 N.J.R. 1683(a).