IN THE COURT OF APPEALS OF IOWA

No. 2-1014 / 12-0789
Filed January 9, 2013

CITY OF DUBUQUE, an Iowa Municipal Corporation,
Petitioner-Appellee,

vs.

IOWA UTILITIES BOARD, a Division of the Department of Commerce, State of Iowa,
Respondent-Appellant,

and

MCC IOWA, LLC d/b/a MEDIACOM,
Intervenor-Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas A. Bitter, Judge.

MCC Iowa, LLC d/b/a/ Mediacom and the Iowa Utilities Board appeal the district court's reversal and remand of the board's declaratory order. **REVERSED AND REMANDED.**

Mary F. Whitman, Des Moines, for appellant board.

Mark McCormick of Belin McCormick, P.C., Des Moines, for appellant MCC Iowa.

Barry Lindahl, Dubuque, and Philip E. Stoffregen and James L. Pray of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C., Des Moines, for appellee.

Heard by Potterfield, P.J., and Danilson and Tabor, JJ.

TABOR, J.

This appeal raises procedural issues involving declaratory orders under Iowa Code section 17A.9 and substantive issues regarding cable franchises under Iowa Code chapter 477A (2009). Specifically, the question is whether the city of Dubuque—as an intervenor—was entitled to present evidence in advance of the Iowa Utilities Board (the board) deciding a petition for declaratory order filed by a cable service provider. In response to questions from MCC Iowa, LLC d/b/a/ Mediacom (Mediacom), the board concluded Mediacom's service area under its state-issued certificate included the city of Dubuque and that the previous municipal franchise between Mediacom and the city was terminated.

On judicial review, the district court reversed the board's order and remanded to allow the parties to present evidence at a contested hearing. The board and Mediacom now appeal.

Because the board's declaratory ruling did not seek to resolve a contested factual dispute, the district court erred in reversing and remanding for an evidentiary hearing. Accordingly, we reverse the district court's remand order. We affirm the board's declaratory order in its legal determinations that, based on statutes in effect at the time of the relevant events, a competing cable provider's failure to provide notice to the city of its intent to offer services was not a condition precedent to an incumbent provider's expansion of its state franchise and an incumbent provider who already had a board-issued certificate of franchise could use the service area revision process rather than filing a separate application for a new certificate.

I. Background Facts and Proceedings

The city of Dubuque issued a cable franchise to Mediacom that was effective June 5, 2005, and scheduled to remain in effect until 2020. In 2007 our legislature enacted Iowa Code chapter 477A to encourage competition in providing cable or video services and to encourage new providers to offer consumers additional cable and video services. 2007 Iowa Acts ch. 201 § 1. Section 477A.2(1) forbids any person from providing cable or video services in the state without a franchise issued by either the Iowa Utilities Board or a municipality.[1]

In 2008, Mediacom applied to the board for a state franchise to provide cable service. In the same year, the board issued Certificate C-0002 to Mediacom; the certificate authorized the company to provide cable service in various Iowa municipalities, not including Dubuque. Because of the 2005 municipal franchise, Mediacom was already Dubuque's incumbent cable provider.[2]

On February 20, 2009, Phalanx Technology Holdings, LLC d/b/a/ fyreSTORM Cable & Fiber, Inc. (Phalanx) notified Mediacom of its intent to compete with Mediacom's cable services, including those offered in Dubuque. The city contends it did not receive notice from Phalanx of its intent to obtain a state franchise to compete in Dubuque, while Mediacom asserts in its petition to

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[1] The 2009 version of the Iowa Code governs the instant appeal. In 2010, the legislature amended certain notice provisions within chapter 477A.

[2] An incumbent cable provider is "the cable operator serving the largest number of cable subscribers in a particular franchise service area on January 1, 2007." Iowa Code § 477A.1(10).

the board that Phalanx provided the city with notice. Phalanx applied for the certificate of franchise authority on March 16, 2009, and the board approved Phalanx's application on April 6, 2009, issuing Certificate VC-0005 to the provider. The certificate includes a list of 302 Iowa cities covered by the franchise, including Dubuque.

On October 9, 2009, Mediacom filed a "notice of service area revision" with the board to expand its state franchise to include Dubuque. A letter from Mediacom accompanying the notice cited the application by the competitor Phalanx for a certification of authority to operate within the city of Dubuque as permitting Mediacom's conversion of its municipal franchise to its state certification of franchise.

On November 16, 2009, the manager of the board's telecommunications section informed Mediacom that its application was accepted for filing. Four days later, Mediacom advised the city that it regarded its municipal franchise as terminated under section 477A.2, but that the company would continue providing services to the city through its state franchise certificate C-0002.

On December 7, 2010, the city filed a petition for declaratory judgment in the district court asserting Mediacom's board-issued state franchise did not include Dubuque and that the city-issued municipal franchise remained in effect. Mediacom countered that the city failed to exhaust its administrative remedies and the action should be addressed by the board.

Mediacom petitioned the board on January 31, 2011, seeking a declaratory ruling addressing the following two questions:

> (1) Does the service area of Mediacom's state cable service franchise, Certificate Number C-002, include the City?
> (2) Has Mediacom's municipal franchise with the City been terminated?

Back in district court, Mediacom filed a motion to stay proceedings, which the court granted in March 2011.

The city filed a petition to intervene in the agency proceeding to decide the board's petition for declaratory ruling. The city requested "the opportunity to participate fully in [the] proceeding" and expressed its intent to submit testimony and exhibits, and to cross-examine witnesses. Although the board granted the city's petition to intervene and allowed it to file a brief, it denied the city's request to present testimony.

On April 1, 2011, the board issued a declaratory order finding Mediacom's state franchise certificate C-0002 included the city of Dubuque and that Mediacom's municipal franchise was terminated. It interpreted section 477A.2 as providing for the automatic grant of an incumbent's application for a state-issued certificate rather than being subject to a municipality's challenge. The board further found section 477A.3(1)(d) allowed service providers to revise previously issued certificates of franchise by notifying the board, and did not require filing a separate application to receive a certificate of franchise for an additional city.

On May 2, 2011, the city filed a petition for judicial review of the board's decision, in which Mediacom successfully intervened. In its March 28, 2012 order, the district court concluded that the city was a necessary party to the administrative proceeding and that the board's declaratory order substantially prejudiced the city's rights by terminating its municipal franchise agreement with

Mediacom. The court believed “the underlying factual findings which are, or may be, necessary in order to properly issue a declaratory order must be fairly and soundly determined.” The court reversed the board’s order and remanded for a hearing “at which the parties shall be permitted to present testimony and evidence.”

Both Mediacom and the board appeal the district court’s decision.

II. Scope and Standard of Review

We review agency decisions to correct legal error. *Kohlhaas v. Hog Slat, Inc.*, 777 N.W.2d 387, 390 (Iowa 2009). If we believe an agency action—including declaratory relief—results in prejudice to the substantial rights of the party seeking review, we will reverse, modify, or grant other appropriate relief. Iowa Code § 17A.19(10) (listing grounds under which a party’s substantial rights may be prejudiced). We review the judicial review order by applying the Iowa Administrative Procedure Act to the agency action to decide whether we reach the same conclusions as the district court did. *Ayers v. D & N Fence Co.*, 731 N.W.2d 11, 15 (Iowa 2007).

To properly review an agency’s statutory interpretation, we first determine whether the legislature vested the agency with the authority to interpret the relevant statute. *NextEra Energy Resources LLC v. Iowa Util. Bd.*, 815 N.W.2d 30, 36 (Iowa 2012). If the legislature vests the authority to interpret the act, we defer to that agency’s interpretation and may reverse only if the interpretation is “‘irrational, illogical, or wholly unjustifiable.’” *Renda v. Iowa Civil Rights Comm’n*, 784 N.W.2d 8, 10 (Iowa 2010) (quoting section 17A.19(10)(*l*)). But if the

legislature has not vested the agency with this authority, we may substitute our judgment de novo for that of the agency. Iowa Code § 17A.19(10)(c); *see also Renda*, 784 N.W.2d at 10. Even when the enabling statute does not provide an express delegation of interpretative authority, we will defer to the agency's interpretation if the legislature clearly vested authority to define terms with the agency. *Renda*, 784 N.W.2d at 11; *see also Doe v. Iowa Dep't of Human Servs.*, 786 N.W.2d 853, 857 (Iowa 2010) (requiring the court hold a firm conviction from the precise language, context, and purpose of the statute, along with the practical considerations involved, that the legislature "actually intended (or would have intended had it thought about the question) to delegate to the agency interpretative power with the binding force of law over the elaboration of the provisions in question").

Chapters 17A and 477A are relevant to our review in this case. Because chapter 17A applies to administrative proceedings in general and does not vest specific interpretative authority with the board, we give no deference to the board's interpretation of provisions in that chapter. Because chapter 477A involves cable and video service franchises, which the board is charged with enforcing, the proper standard of review is a closer question.

Lobbying for a deferential standard, Mediacom points to language in section 477A.12 granting the board authority to "adopt rules necessary to administer this chapter." While relevant to deciding if the legislature vested discretion in the board, this statutory grant is not conclusive. *See Waldinger Corp. v. Mettler*, 817 N.W.2d 1, 5 (Iowa 2012). We must also look to the precise

terms interpreted by the agency as well as the agency's duties and authority in enforcing particular statutes. *Id.*; *compare Office of Consumer Advocate v. Iowa Util. Bd.*, 744 N.W.2d 640, 643 (Iowa 2008) (holding legislature's requirement that board "adopt rules prohibiting an unauthorized change in telecommunication service" showed clear legislative intent to vest board with interpretative authority) *with Mettler*, 817 N.W.2d at 7 (finding directive to "adopt and enforce rules necessary to implement" the chapter, without more, was insufficient to employ the deferential standard, despite many undefined terms within the statute).

We find the instant situation to be more in line with *Mettler*. Aside from the general language in section 477A.12 directing the board to adopt rules necessary to administer the chapter, nothing about chapter 477A's context or purpose provides the agency with clear authority to interpret its provisions. *See NextEra*, 815 N.W.2d at 38 (holding legislative grant of authority to carry out purposes and enact rules under chapter 476 does not necessarily indicate a clear vesting of authority to interpret); *see also Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 519 (Iowa 2012); *Evercom Sys., Inc. v. Iowa Util. Bd.*, 805 N.W.2d 758, 763 (Iowa 2011) (differentiating between "substantive term within the area of expertise of the agency" and broad legislative grant of rulemaking authority). The terms appearing in the subsections at issue are either defined in the chapter or deal with concepts which extend beyond the context of this case. *See* Iowa Code §§ 477A.2, .3 (using terms such as "franchise", "incumbent cable provider", and "notice").

The board argues a reviewing court should defer to an agency's expertise when the agency interprets statutes affecting its work unless the agency interpretation is clearly erroneous, citing *Weibenga v. Iowa Department of Transportation*, 530 N.W.2d 732, 734 (Iowa 1995). The court in *Madrid Home for the Aging v. Iowa Department of Human Services*, 557 N.W.2d 507, 510–11 (Iowa 1996) relied on *Weibenga* for the same assertion. In 2009, our supreme court in *Eyecare v. Dept. of Hum. Servs.*, 770 N.W.2d 832, 835–36 (Iowa 2009) "disavow[ed] the concept of limited deference for agency interpretations within the agency's expertise as set forth in [*Madrid*,]" reasoning, "[t]hat concept is no longer viable under the current version of the Iowa Administrative Procedure Act." The board also cites the special concurrence in *NextEra Energy Resources*, which criticizes the majority's abandonment of the historical deference accorded the utilities board in the interpretation of complex and technical laws. *See* 815 N.W.2d at 50 (Mansfield, J., concurring specially). Despite the persuasive nature of the special concurrence, we are bound to follow the majority decision which held that under *Renda* the legislature "did not delegate to the Board interpretative power with the binding force of law." *NextEra Energy Resources*, 815 N.W.2d at 38.

Accordingly, we examine the board's interpretation of provisions in chapter 477A for correction of errors at law. Iowa Code § 17A.19(10)(c).

When reviewing whether an agency abused its discretion, we will "reverse, modify, or grant other appropriate relief from agency action" if we determine a party's substantial rights have been prejudiced based on the grounds listed in

section 17A.19(10). *Mavorec v. PMX Indus.*, 693 N.W.2d 779, 782 (Iowa 2005). Abuse of discretion is synonymous with unreasonableness, and a decision is unreasonable when it is based on an erroneous application of law or not based on substantial evidence. *Sioux City Cmty. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 563, 566 (Iowa 2003).

III. Analysis

A. Did the District Court Err by Reversing the Board's Decision and Remanding the Matter for an Evidentiary Hearing?

Both Mediacom and the board contend the district court misinterpreted section 17A.9 as requiring an evidentiary hearing before the agency issued a declaratory order.

Section 17A.9(1)(a) authorizes any person to petition an agency "for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency." Section 17A.9(1)(b) directs the agency to issue a declaratory order in response to a petition unless it would be contrary to agency rules or would "substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding."

Subsection 2 directs agencies to implement a framework for the orders:

> Each agency shall adopt rules that provide for the form, contents and filing of petitions for declaratory orders, the procedural rights of persons in relation to the petitions, and the disposition of the petitions. The rules must describe the classes of circumstances in which the agency will not issue a declaratory order and must be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agency issuance of reliable advice.

A declaratory order must contain the names of each party to the proceeding, the facts on which the order is based, and the reasoning supporting its conclusion. Iowa Code § 17A.9(7).

The board's administrative rules outline the information a party must include to file a petition for a declaratory order and a petition to intervene. *See* 199 Iowa Admin. Code r. 4.1, 4.3.[3] The rules also explain the impact of a declaratory order:

> A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the utilities board, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the utilities board. The issuance of a declaratory order constitutes final agency action on the petition.

Id. r. 4.12.; *see also* Iowa Code § 17A.9(7) (according a declaratory order the same status and binding effect as a final order issued in a contested proceeding). Neither chapter 17A nor the board rules require evidentiary hearings for declaratory orders.

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[3] The board's rules require a petition for declaratory order to include "[a] clear and concise statement of all relevant facts on which the ruling is requested;" citation to relevant language in specific rules, statutes, decisions, policies, or orders in question; the questions the petitioner wants answered and the petitioner's desired answers; its reasons for request; and interest in the outcome. 199 Iowa Admin. Code r. 4.1. A petition to intervene must include "[f]acts supporting the intervenor's standing and qualifications for intervention," the answers urged, the reasons for requesting to intervene, the party's involvement in any other proceeding involving the issue, identification of individuals with an interest in the decision, and "whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding." *Id.* r. 4.3.

In this case, the district court reversed the board's decision and remanded for an evidentiary hearing based on the city's complaint that it did not agree to be bound by the board's declaratory order and that its rights were substantially prejudiced by the board's issuance of the order without allowing the city to present evidence. The court criticized the board for citing no authority for its position "that an administrative proceeding involving a request for declaratory ruling does not involve submission of testimony or a contest case hearing." The court further reasoned that the factual findings underlying the declaratory order "must be fairly and soundly determined."

Mediacom and the board decry the district court's analysis as revealing a "fundamental misunderstanding" of the nature and function of declaratory ruling proceedings. Mediacom contends it was entitled to select the facts, be they actual or hypothetical, presented in its petition for a declaratory order and no evidentiary hearing was necessary to test those facts. Mediacom asserts that its ability to rely on the order in the district court will depend on how the facts presented in the petition square with the actual relevant facts. The board advances a similar argument, asserting declaratory ruling proceedings before an agency are not intended to resolve contested factual disputes. The board cites *Office of Consumer Advocate v. Iowa State Commerce Commission*, 395 N.W.2d 1, 6 (Iowa 1986) for the proposition that administrative declaratory order proceedings are distinct from contested case proceedings. The board also notes the statutorily imposed time constraints for declaratory orders reinforce the

impropriety of evidence gathering. *See* Iowa Code § 17A.9(8) (setting sixty days as deadline for issuing declaratory order).

The city defends the district court's decision, asserting that under section 17A.9(b)(2) the board should have declined to issue a declaratory order that would substantially prejudice the city when the city was a necessary party who did not consent in writing to the determination. The city also points out that the legislature amended section 17A.9 since the supreme court decided *Office of Consumer Advocate* in 1986.

We conclude the district court was mistaken in reversing the board's declaratory order and remanding for an evidentiary hearing. While the board had discretion to hold a contested case hearing in response to the city's petition to intervene, the board was not compelled to do so upon the city's request to present evidence. *See* Iowa Code § 17A.9(4). As a general rule, a petition for declaratory order is not a vehicle to adjudicate contested facts. *See* Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act (1998) Chapter 17A, Code of Iowa (House File 667 as Adopted) Report on Selected Provisions to Iowa State Bar Association and Iowa State Government* 38 (1998) ("Note that there are no contested issues of fact in declaratory order proceedings because their function is to declare the applicability of the law in question to unproven facts furnished by petitioners.").

We agree with the district court that the city was a necessary party to the administrative proceeding. But because the city was able to participate in the proceeding before the board, we do not agree with the district court's conclusion

that the declaratory order substantially prejudiced the city's rights. Regardless of whether the city agreed to be bound, the board afforded the city an opportunity to argue the law's application to Mediacom's presented facts.[4] The city will have a chance in the pending district court action to pursue its contention that the facts are not as asserted by Mediacom in its petition to the board.[5]

The city contends the board intended to actually decide the city's rights rather than only apply the law to Mediacom's specified circumstances. The order states: "The Board concludes that Mediacom's Certificate No. C-0002, issued by the Board on February 14, 2008, includes the City of Dubuque. The municipal franchise between Mediacom and the City of Dubuque has been terminated."

The order gives guidance in the pending district court action—the strength of which will be determined by comparing the proven facts to the assumed facts. But the order cannot terminate the franchise based on the circumstances proffered in Mediacom's petition. To interpret the order as determining the city's rights would overstate its purpose. As the board's decision explains, the order will guide future parties facing similar circumstances. Therefore, we affirm the

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[4] We reject the city's contention that section 17A.9 only allows declaratory rulings on purely hypothetical facts. Declaratory orders are available when the "specified circumstances" are hypothetical, *see City of Des Moines v. Public Employment Relations Bd*, 275 N.W.2d 753, 758 (Iowa 1979), but the language of the statute does not prohibit an agency from issuing a declaratory order based on genuine circumstances.

[5] In its brief, Mediacom asserts because the company presented the board with an existing set of facts and there has not yet been an evidentiary hearing regarding whether those facts are actual or hypothetical, "Mediacom's ability to rely on the declaratory order in the district court will depend on how the facts presented in Mediacom's petition square with the actual relevant facts." The board revives its argument in district court that "[t]he City is free to challenge those facts in another proceeding where factual evidence can properly be submitted and tested by cross-examination."

board's declaratory order only to the extent that it offers legal determinations based on the selected facts.

While the board's declaratory order is not based on proven facts, we disagree with the city's position that it was an abuse of discretion for the board to rule on Mediacom's petition. The city anchors its argument in rule 4.9, which lists ten reasons available for the board to refuse to issue a declaratory order. 199 Iowa Admin. Code r. 4.9. Because that rule is permissive and not mandatory, we do not believe the board's choice to proceed with the declaratory order was "unreasonable, arbitrary, capricious, or an abuse of discretion." *See* Iowa Code § 17A.19(10)(n).

The district court reversed the board's declaratory order without reaching the merits of the city's challenge to the board's interpretation of provisions in chapter 477A. Mediacom and the board urge us to decide on appeal whether the declaratory order is legally sound. The city agrees Mediacom and the board preserved error on the questions whether the board followed Iowa Code sections 477A.2(4) and (6). "Where the district court has not reached certain issues because they were deemed unnecessary to the decision under the rationale it elected to invoke, we may in the interest of sound judicial administration decide the issues where they have been fully briefed and argued." *IBP, Inc. v. Burress*, 779 N.W.2d 210, 218 (Iowa 2010) (internal quotations omitted). Accordingly, we proceed to address the legal merits of the board's order.

B. Does a Competitor's Failure to Provide Notice to a Municipality Deprive an Incumbent Provider of its Right to Expand its Service Area?

The city contests the board's interpretation of the notice provision in section 477A.2(4). The city argues because Phalanx failed to provide it with thirty days' notice that the competitor would be offering services within its locale, as required in section 477A.2(4), the board did not properly grant Phalanx's certificate and incumbent Mediacom could not expand its service area.[6] The city contends the notice provision establishes a condition precedent to the incumbent provider's right, and because the city did not receive Phalanx's notice, Mediacom had no right to terminate its franchise agreement with the municipality. The city asserts: "There is and cannot be any competitive service in . . . Dubuque until the statute is complied with, and until there is compliance, there is no basis in fact to forfeit the contract [between the city and Mediacom]."

Mediacom responds that Phalanx's application triggered Mediacom's right to expand its state certificate of franchise authority to include the city—regardless of whether the competitor provided proper notice to the city. *See* Iowa Code § 477A.2(6) (asserting if a competitive provider "applies for a certificate of franchise authority to operate within a municipality, the incumbent cable provider may . . . apply for a certificate of franchise authority for that same municipality").

In the board's view, chapter 477A contemplates "an automatic process of granting the incumbent's application for a state-issued certificate, not a process

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[6] During oral argument, the city conceded the only fact it is contesting is whether Phalanx actually provided the city with notice.

in which a municipality could challenge the incumbent's choice to convert to a state franchise and terminate the municipal franchise."

We agree with the interpretation urged by Mediacom and the board. Section 477A.2(4) sets out a notice obligation for a competitive cable service provider. It does not place restrictions on the incumbent's discretion to expand its franchise. Moreover, a closer read of the 2009 version of 477A.2(4) shows the thirty day requirement pertained to *providing service* to the municipality, and not to applying for its state franchise. *Compare* Iowa Code §§ 477A.2(4), .3 (2009) *with* Iowa Code §§ 477A.2(4), .3 (2011) (requiring applicant to notify each municipality by the time it submits its application to the board).

C. Does a Competing Provider's Entrance into the Market Require the Incumbent to Reapply for a State Franchise or Merely Notify the Board that the Incumbent is Modifying its Service Area?

The city next contends the board should have determined that Mediacom followed the wrong regulatory process to terminate its franchise with the city. The city interprets section 477A.2(6) (2009)[7] as requiring an incumbent cable provider to repeat the application process with the board when faced with competition in a municipality not yet covered by its state certificate of franchise.

Mediacom contends because it followed the procedure contemplated in section 477A.3 and rule 44.3(5), the provider fulfilled the requirements to expand

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[7] "If a competitive cable service provider or a competitive video service provider applies for a certificate of franchise authority to operate within a municipality, the incumbent cable provider may, at its discretion, apply for a certificate of franchise authority for that same municipality. . . ." Iowa Code § 477A.2(6).

its certificate of franchise authority to include the city. Similarly, the board adopts the explanation from its declaratory order that it never intended to issue separate certificates of franchise authority each time a competitor entered the incumbent's municipality.

The board may not issue a certificate of franchise authority to a service provider unless the board finds the applicant meets all the basic statements and disclosures in section 477A.3(1). Iowa Code § 477A.3(3). In requiring an applicant to describe its service area and municipalities to be served, section 477A.3(1) provides: "This description shall be updated by the applicant prior to the expansion of cable service or video service to a previously undesignated service area and, upon such expansion, notice shall be given to the board of the service area to be served by the applicant."

Chapter 477A does not mandate a state franchisee to complete a new application to increase its service area. Neither do the board's rules. Rule 44.3(5), relating to modification of a provider's service area, requires the company to "update the description of its service area on file with the board and . . . notify the board of the effective date of the expansion" at least fourteen days before expanding its services. The board will then acknowledge its receipt of the notice by letter. 199 Iowa Admin. Code r. 44.3(5). Mediacom completed these steps, according to its petition's facts.

Section 477A.2(6) authorizes an incumbent provider to "at its discretion, apply for a certificate of franchise authority for the same municipality" when a competitive provider "applies for a certificate of franchise authority to operate

within [the] municipality." As well, rule 44.5, which addresses the conversion of a municipal franchise by an incumbent cable provider, allows the incumbent provider to apply for a state franchise to operate in that municipality, which the board will automatically grant.

Because section 477A.2(1) requires a provider hold a franchise "issued by either the board pursuant to section 477A.3 or by a municipality pursuant to section 364.2," an incumbent municipal cable provider could lawfully operate without a state franchise. We agree with the board's reading of section 477A.2(6) and rule 44.5 as pertaining only to those incumbent municipal franchisees who are not yet authorized through the state. Those provisions do not require a state franchisee to reapply because of a competitor's entrance into the marketplace.

Section 477A.3(1)(d) and rule 44.3 allow a notice-based requirement for all other expansions. Neither the statute nor the rule suggests an incumbent provider who already operates under a state franchise should face a more rigorous process than in traditional modifications of its service area. Section 477A.2(6) and rule 44.5 provide a mechanism for a provider not previously certified by the state to compete under the same terms as its competitor; they do not create additional hurdles for a state franchisee who has already received a certificate from the board.

To recap, we conclude the board properly ruled on Mediacom's petition for declaratory order under section 17A.9 and correctly interpreted the provisions of

chapter 477A. We reverse the district court's judicial review ruling and affirm the legal conclusions in the board's declaratory order.

REVERSED AND REMANDED.