

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
Commission on Cable Communications

BRUCE D. CAMPBELL
Special Assistant
Attorney General

Suite 301
3050 Metro Office Park
Bloomington, MN 55420
612--854-1703

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to

the Cable Communications Commission
(Agency or Board)

Regulation No. MCCC 1 thru 217 (new)

Subject: Procedures for Franchising

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

DEC 27 1974 3:25 pm

BY Eda Staudenmaier
AUTH. SIGNATURE EJ

Stamped and filed with the Secretary of State 12-27-74

Rev. 9-72

RULES

of the

MINNESOTA STATE COMMISSION on CABLE COMMUNICATIONS

including

PROCEDURES For Franchising

and

STANDARDS Of Practice and Operation

I N D E X

CHAPTER A - PRACTICE AND PROCEDURE GENERAL

MCCC-A-1	Policy	A-1
MCCC-A-2	Definitions	A-1
MCCC-A-3	Requests for Commission Action	A-3
MCCC-A-4	Oppositions and Replies	A-3
MCCC-A-5	Subscriber Complaints - Procedure	A-3
MCCC-A-6	Proceedings Before the Commission	A-5
MCCC-A-7	Intervention in Commission Proceedings	A-5
MCCC-A-8	Practice Before the Commission	A-6
MCCC-A-9	Notice to Authorized Representatives	A-6
MCCC-A-10	Censure or Suspension of Persons Appearing Before the Commission	A-6
MCCC-A-11	Form of Papers Filed with the Commission	A-7
MCCC-A-12	Service of Papers and Proof of Service	A-7
MCCC-A-13	Withdrawal of Papers	A-9
MCCC-A-14	Changes in Information Furnished to the Commission	A-9
MCCC-A-15	Form of Commission Orders	A-10
MCCC-A-16	Petitions for Reconsideration	A-10
MCCC-A-17	Ex Parte Communications	A-11
MCCC-A-18	Computation of Time	A-12
MCCC-A-19	Commission Officers	A-12
MCCC-A-20	Variances	A-13

CHAPTER B - COMMISSION MEETINGS

MCCC-B-1	Regular Meetings	B-1
MCCC-B-2	Special Meetings	B-1
MCCC-B-3	Quorum	B-2
MCCC-B-4	Voting	B-2
MCCC-B-5	Open Meetings	B-2
MCCC-B-6	Agenda	B-2
MCCC-B-7	Filing of Agenda Matters	B-3
MCCC-B-8	Staff Discussion Papers	B-3
MCCC-B-9	Notice of Agenda	B-4
MCCC-B-10	Minutes	B-4
MCCC-B-11	Committees	B-4
MCCC-B-12	Advisory Committees	B-4
MCCC-B-13	Parliamentary Procedure	B-4

CHAPTER C - RULE MAKING

MCCC-C-1	Commencement of Rule Making Procedures	C-1
MCCC-C-2	Notice of Rule Making Proceedings	C-1
MCCC-C-3	Petitions for Rule Making	C-1
MCCC-C-4	Action on Petitions	C-1
MCCC-C-5	Notice	C-1
MCCC-C-6	Content of Notice	C-2
MCCC-C-7	Comments and Replies	C-2

CHAPTER C - RULE MAKING (CONTINUED)

MCCC-C-8	Form of Comments and Replies; Number of Copies	C-2
MCCC-C-9	Submissions to Attorney General	C-3
MCCC-C-10	Commission Action; Effective Date	C-3

CHAPTER D - RULES FOR CONTESTED CASES

MCCC-D-1	Definitions	D-1
MCCC-D-2	Hearing Officers	D-1
MCCC-D-3	Initiating a Contested Case	D-3
MCCC-D-4	Commencement of Contested Case	D-3
MCCC-D-5	Answer	D-4
MCCC-D-6	Right to Counsel	D-4
MCCC-D-7	Informal Disposition	D-4
MCCC-D-8	Default	D-4
MCCC-D-9	Intervention	D-5
MCCC-D-10	Consolidation	D-5
MCCC-D-11	Depositions	D-6
MCCC-D-12	Disqualification	D-6
MCCC-D-13	Prehearing Conference	D-6
MCCC-D-14	Notice of Hearing	D-7
MCCC-D-15	The Hearing	D-8
MCCC-D-16	The Commission Decision	D-14
MCCC-D-17	Rehearing	D-15
MCCC-D-18	Appeal by Commission	D-17
MCCC-D-19	Fees	D-17
MCCC-D-20	Rules of Procedure for District Court - Applications to Contested Case	D-17

CHAPTER E - DELEGATIONS OF AUTHORITY

MCCC-E-1	General Provisions	E-1
MCCC-E-2	Authority of Person to Whom Functions are Delegated	E-1
MCCC-E-3	The Exercise of Delegated Authority	E-1
MCCC-E-4	Authority Delegated to Chairman	E-2
MCCC-E-5	Authority Delegated to Executive Director and Counsel	E-2

CHAPTER F - CERTIFICATES OF CONFIRMATION

MCCC-F-1	Introduction	F-1
MCCC-F-2	Special Certificates of Confirmation	F-1
MCCC-F-3	Interim Certificate of Confirmation	F-2
MCCC-F-4	Necessity for a Certificate of Confirmation	F-2
MCCC-F-5	Procedure for Making Application for a Regular Certificate of Confirmation	F-3
MCCC-F-6	Public Meeting	F-3
MCCC-F-7	Grant of Certificate	F-4
MCCC-F-8	Renewal Certificate of Confirmation	F-4
MCCC-F-9	Transferability of Certificate of Confirmation	F-4

CHAPTER G - FRANCHISING AND FRANCHISE RENEWAL PROCEDURES

MCCC-G-1	Initial Franchise	G-1
MCCC-G-2	Renewal	G-6

CHAPTER H - FRANCHISE STANDARDS

MCCC-H-1	Required Contents of Franchises	H-1
MCCC-H-2	Additional Terms and Conditions Permitted	H-17

CHAPTER I - TRANSFER OF OWNERSHIP, RENEWAL, OR AMENDMENT OF FRANCHISE

MCCC-I-1	Requirement of Public Hearing	I-1
MCCC-I-2	Notice to Commission	I-1
MCCC-I-3	Transfer of Ownership of a Franchise	I-1
MCCC-I-4	Renewal	I-1
MCCC-I-5	Appeals to the Commission	I-2
MCCC-I-6	Approval of Franchise Amendments	I-2
MCCC-I-7	Amendments of Franchise Ordinance	I-2

CHAPTER K - OWNERSHIP AND CONTROL

MCCC-K-1	Certain Ownership Prohibited	K-1
MCCC-K-2	Exceptions	K-3

CHAPTER M - OBSCENITY AND DEFAMATION

MCCC-M-1	Obscenity	M-1
MCCC-M-2	Defamation	M-1

CHAPTER N - REPORTS TO COMMISSION

MCCC-N-1	Operator Required to File Reports with Commission	N-1
MCCC-N-2	Mailing Address and Telephone Number to be Furnished by Cable Communication Companies	N-1

CHAPTER O - COMMISSION BILLINGS

MCCC-O-1	Payments to Commission	O-1
MCCC-O-2	Billings	O-1

MCCC-A-1 Policy

These Rules shall be liberally construed to effectuate the purposes and provisions of Minnesota Statutes, 1973 Supplement, Sections 238.01 - 238.16 and Laws 1974, Chapter 506.

MCCC-A-2 Definitions

As used in these Rules the following words and phrases shall have the meanings given them herein unless a different meaning clearly appears in the text.

(a) "Cable communications company" means any person owning, controlling, operating, managing or leasing a cable communications system within the state.

(b) "Cable communications system" means any system which operates for hire the service of receiving and amplifying programs broadcast by one or more television or radio stations and any other programs originated by a cable communications company or by another party, and distributing such programs by wire, cable, microwave or other means, whether such means are owned or leased to persons who subscribe to such service. Such definition does not include:

(1) Any system which serves fewer than 50 subscribers;

(2) Any master antenna television system;

(3) Any specialized closed-circuit system which does not use the public rights-of-way for the construction of its physical plant; and

(4) Any translator system which receives and rebroadcasts over-the-air signals.

(c) "Commission" means the commission on cable communications created by the provisions of Minnesota Statutes, 1973 Supplement, Section 238.04.

(d) "Franchise" means any authorization granted by a municipality in the form of

a franchise, privilege, permit, license or other municipal authorization to construct, operate, maintain, or manage a cable communications system in any municipality.

(e) "Franchising authority" means a municipality, as herein defined, that has the authority to issue a cable communications franchise, or a group of municipalities, as herein defined, acting in concert pursuant to a joint powers agreement, that determines to issue a single, joint cable communications franchise.

(f) "Head end" means the electronic control center of a cable communications system, which includes antennas, preamplifiers, frequency converters, demodulators, modulators and other related equipment which receives, amplifies, filters and converts incoming signals to cable system channels.

(g) "Master antenna television system" means any system which serves only the residents of one or more apartment dwellings under common ownership, control or management and any commercial establishment located on the premises of such apartment house and which transmits only signals broadcast over the air by stations which may be normally viewed or heard locally without objectionable interference, and which does not provide any additional service over its facilities other than closed-circuit security viewing services.

(h) "Municipality" means any organized town, city or county with respect to the unorganized territory within its boundaries.

(i) "Person" means any individual, trustee, partnership, association, corporation or other legal entity.

(j) "Program" means any broadcast-type program, signal, message, graphics, data or communication content service.

(k) "State" means the State of Minnesota.

(l) "State agency" means any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of the state.

MCCC-A-3 Requests for Commission Action

Any motion, petition, or other official pleading shall set forth clearly and concisely the facts relied upon, the relief sought, any statutory provisions and/or other legal authority pursuant to which the pleading is filed and under which relief is sought, and the interest of the person submitting the pleading. A copy thereof shall be served on every party or person named in the motion, petition, or other official pleading as an adverse party or person.

MCCC-A-4 Oppositions and Replies

(a) Except as otherwise provided in these Rules or by Commission order, opposition to any motion, petition, or other pleading shall be filed as an adverse party within 20 days after the original pleading is filed. A copy of the opposition shall be served on the person who filed the original pleading. The person who filed the original pleading may reply to the opposing party within ten days after the time for filing opposition has expired and a copy thereof shall be filed with the Commission. The reply shall be limited to matters raised in the opposition, and the response to all such matters shall be set forth in a single pleading; separate replies to individual points of opposition shall not be filed. A copy of the reply shall be served on any person who has served and filed an opposition to the original pleading. Additional pleadings may be filed only if specifically authorized by the Commission.

(b) At its discretion, the Commission may rule upon motions for continuances and extensions of time, and requests for temporary relief, without waiting for the filing of opposition or replies.

MCCC-A-5 Subscriber Complaints - Procedure

(a) The following is the sequence the Commission requires as a condition for the Commission taking action on a subscriber complaint. The complainant must have directed the complaint to the cable communications company concerned. The cable communications company shall then have had the period of time to recitfy the matter complained of as provided for in the franchise as required by Chapter H of these Rules, provided that a response to the complaint shall have been made by the cable communications company

within 24 hours of receipt of the complaint by the company. If the complainant was not satisfied with the action taken by the company to rectify the complaint within the time period specified, the complainant must then have filed a complaint with the governing body of the municipality concerned.

The company must provide the governing body or its delegate with a statement of the action that has been taken to resolve the complaint and/or to preclude any recurrence of the complaint. The governing body or its delegate shall cooperate with the company in rectifying the complaint.

If, after a reasonable time, which shall depend on the nature of the complaint and the provisions of the franchise, the complainant, the governing body of the municipality or its delegate and the company, were unable to resolve the complaint, the governing body of the municipality or the subscriber may file a written complaint with the Commission. The written complaint shall be in the form of a petition containing a statement of the facts involved in the complaint together with a summary of the actions taken by all parties to resolve the complaint at the local level. The Commission, in its discretion, may by a majority vote of a quorum present at any regular or special meeting determine whether to take jurisdiction over a complaint. If the Commission determines to exercise jurisdiction over a complaint, it shall also determine whether the complaint will be heard by one or more members of the Commission or by one or more members of the Commission staff. The primary responsibility for resolving the subscriber complaint remains with the parties directly involved. If the Commission decides to take jurisdiction over a subscriber complaint, the Commission may, however, take such action with respect to a subscriber complaint or complaints as is prescribed by law.

(b) Where numerous unresolved complaints are referred to the Commission, or where it appears that reasonable attempts to resolve the complaints have not been made, the Commission may make further inquiry, which may be formal or informal, and which may include a Commission hearing or oral argument, or both. The Commission may take such action with respect to a subscriber complaint or complaints as is prescribed by law.

MCCC-A-6 Proceedings Before the Commission

The Commission may, on its own motion or on petition of any interested party, hold such proceedings as it may deem necessary in connection with any matter which it has power to investigate under the law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations. Procedures to be followed by the Commission shall, unless specifically prescribed in these Rules or the Minnesota Administrative Procedures Act, be such as in the opinion of the Commission will best serve the purposes of such proceedings.

MCCC-A-7 Intervention in Commission Proceedings

Intervention in Commission proceedings may be made as a matter of right or upon permission of the Commission, as hereinafter specified.

(a) The following persons may intervene as of right in Commission proceedings by filing a notice of intervention identifying the proceeding and stating, briefly, the position of the intervenor with respect to the matter in question:

(1) The Federal Communications Commission; or

(2) Any municipality of the State of Minnesota whose interest is directly affected by the matter in question.

(3) The Metropolitan Council or the regional development commission having territorial jurisdiction with regard to the subject matter of the proceeding and whose interest is directly affected by the matter in question.

(b) Upon petition, the Commission may authorize intervention in any proceeding by any person who demonstrates a substantial, direct interest in the subject matter of the proceeding. Intervention may be permitted upon such reasonable terms and conditions as the Commission may prescribe.

(c) Any person who intervenes or who is permitted to intervene in any proceeding in accordance with paragraphs (a) and (b) of this section shall be deemed a party to said proceeding.

MCCC-A-8 Practice Before the Commission

(a) Any party to a Commission proceeding may be heard in person or through any authorized representative.

(b) Any person transacting business with the Commission in a representative capacity may be required to show his credentials to act in such capacity in a form satisfactory to the Commission which may include a power of attorney.

MCCC-A-9 Notice to Authorized Representatives

With respect to any matter pending before the Commission in which an authorized representative has appeared for, submitted a document on behalf of, or been otherwise designated to represent any person, any Commission notice, order or other written communication pertaining to that matter will be communicated to the authorized representative, or to one of such authorized representatives if more than one is designated. If pursuant to law, a cable communications company has designated an agent for receipt of process within the State of Minnesota, that person shall receive the appropriate written communication from the Commission. If direct communication with a person so represented is appropriate, a copy of such communication will be mailed to the authorized representative.

MCCC-A-10 Censure or Suspension of Persons Appearing Before the Commission

(a) The Commission may censure or suspend from practice before the Commission any person who has practiced, is practicing or is holding himself out as entitled to practice before it, if it finds that such person:

(1) Is lacking in character or professional integrity;

and/or

(2) Has displayed toward the Commission or any person authorized to act by it, conduct which, if displayed toward any court of the State, would be cause for censure, suspension or disbarment.

(b) Before any person shall be censured or suspended by the Commission, charges shall be preferred by the Commission against said person and he shall be afforded an opportunity to be heard thereon.

MCCC-A-11 Form of Papers Filed with the Commission

(a) Except as hereinafter provided, all papers filed with the Commission shall, unless otherwise specifically provided, be on paper 8½ by 11 inches, with a left-hand margin not less than 1½ inches wide. This requirement shall not apply to original documents, or admissible copies thereof, offered as exhibits or to specially prepared exhibits. Papers may be typewritten and mechanically reproduced, or printed in 10-point or 12-point type. Carbon copies shall not be filed. All typewritten papers shall be double-spaced, except that long quotations shall be single-spaced and indented. This Rule shall not apply to correspondence or other written communication of an informal nature.

(b) Except as otherwise specifically provided by order, an original and a duplicate of all papers shall be filed.

(c) The original of all pleadings shall be signed by either the filing party or by at least one authorized representative in his individual name, whose address shall be stated. The signature shall be preceded by a statement that the signer has read the document, that to the best of his knowledge, information and belief the facts asserted therein are true and correct, and that the pleading is not interposed for purposes of delay.

MCCC-A-12 Service of Papers and Proof of Service

(a) Where any person is required by statute or by the provisions of these Rules to serve any paper, service shall be made in accordance with the provisions of this section.

(b) Service shall be made on or before the day on which the paper is filed.

(c) Papers may be served upon a party, his authorized representative or other duly constituted agent by delivery of a copy or by mailing a copy to the last known

address. When a party is represented by an authorized representative of record, service shall be made upon such authorized representative.

(d) Delivery of a paper pursuant to this section means handing a copy thereof to the party; to an officer or managing agent of a domestic or foreign corporation or to its agent for service established by statute; or to the authorized representative of a party or other duly constituted agent; or leaving it with the clerk or other person in charge of the office of the person being served; or, if there is no one in charge of such office, by leaving it in a conspicuous place therein; or, if such office is closed or the person to be served has no office, by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

Delivery of a paper to a public corporation pursuant to this section means handing a copy thereof to the following:

1. To the chairman of the county board or to the county auditor of a county.
2. To the chief executive officer or to the clerk of a city.
3. To the chairman of the town board or to the clerk of a town.
4. To any member of the board or any governing body of a school district.
5. To any member of the board or any governing body of a public board or a public body.
6. To any officer, agent, or representative designated by a joint powers agreement as the individual to be served in the instance of a board, group, body, or entity created by such agreement; or, in the lack of such designation, to the managing officer of such board, group, body, or entity; or, in the alternative, to all of the proper municipal officers of the member municipalities as such delivery is provided for above in this subdivision.

(e) Service by mail is complete upon mailing. Such mailing shall be by first class mail. Whenever a period of time prescribed by law or by these Rules is measured from the service of a paper and service is by mail, three days shall be added to the prescribed period, unless the mailing address for such service is outside the State of Minnesota, in which case eight days shall be added to the prescribed period.

(f) Proof of service shall be filed with the Commission. The proof of service shall show the time and manner of service, and may be by written acknowledgment of service, by certificate of the person effecting the service or by other proof satisfactory to the Commission. The Commission may allow the proof to be amended or supplied at any time, unless to do so would result in material prejudice to any person.

MCCC-A-13 Withdrawal of Papers

The Commission will retain at least one copy of every paper presented to it for filing. The granting of a request to dismiss or withdraw a pleading does not authorize the removal of such pleading from the Commisssion's records.

MCCC-A-14 Changes in Information Furnished to the Commission

Any person requesting Commission action is responsible for the continuing accuracy and completeness of information furnished in a pending request for such action or in Commission proceedings involving any pending request. Whenever the information furnished in a pending request is no longer substantially accurate and complete in all significant respects, the person seeking Commission action shall as promptly as possible, and in any event within 30 days of the date that such information has become inaccurate or incomplete, unless good cause is shown, amend his request so as to furnish such additional or corrected information as may be appropriate. Whenever an event of decisional significance with respect to a pending request for Commission action occurs, the party seeking such action shall as promptly as possible, and in any event within 30 days of the event of decisional significance, unless good cause is shown, submit a statement to the Commission furnishing such additional or corrected information as may be appropriate and

shall serve the same upon all parties of record. Where the matter is before any court for review, the amendments and statements referred to above shall also be served upon the Commission's counsel of record in the court proceeding. For the purposes of this section, a request for Commission action is "pending" before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the request is no longer subject to reconsideration by the Commission.

MCCC-A-15 Form of Commission Orders

Orders may be issued in any form (e.g., as captioned orders, letters, telegrams) and may, if appropriate, be issued orally. Orders issued orally shall be confirmed promptly in writing. All written orders will indicate the date on which they are released by the Commission. All written orders will be available for public inspection at the Commission's offices.

MCCC-A-16 Petitions for Reconsideration

(a) Any party aggrieved by a final Commission order may file a petition for reconsideration of said order. For purposes of this section, "final Commission order" shall include final orders made on behalf of the Commission pursuant to the authority delegated in these Rules.

(b) The petition for reconsideration shall cite the findings of fact and/or conclusions of law which the petitioner believes to be erroneous and shall state with particularity the respects in which the petitioner believes such findings and conclusions are in error and should be changed. The petition may request that additional findings of fact and conclusions of law be made.

(c) The petition for reconsideration shall be filed within 20 days from the date of release of the challenged order. The petition shall be served upon all parties to the proceeding.

(d) Oppositions to a petition for reconsideration may be filed by any party to the initial proceeding.

(e) If the Commission grants the petition for reconsideration in whole or in part, it may, in its order, rule on the merits of the petition. In the alternative, the Commission may, in its order granting the petition, order such further procedure as may be useful to it in reaching a decision on the merits of the petition. In the latter event, the Commission's ruling on the merits will be deferred pending completion of such procedure.

(f) No evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, which is not merely cumulative, corroborative, contradictory, or impeaching, or directed to collateral matters and which with the exercise of reasonable diligence could not have been discovered and produced at the time of taking of such evidence, or evidence which the Commission believes should have been taken in the original proceeding shall be taken on any rehearing ordered pursuant to the provisions of this section.

(g) The Commission may, on its own motion, set aside any order within 20 days after release of the order.

MCCC-A-17 Ex Parte Communications

In order to avoid all possibilities of prejudice, real or apparent, to the public interest and to persons involved in proceedings pending before the Commission, no person who is a party, witness or interceder in any on-the-record proceeding, nor any representative of any such person, shall submit ex parte off-the-record communications to any member of the Commission or to any employee of the Commission regarding any matter at issue in such on-the-record proceeding, except as authorized by law; and no Commissioner nor any employee shall request or entertain any such ex parte, off-the-record communications. For the purposes of this Rule, the term "on-the-record proceeding" means a proceeding required by statute, constitution or published Commission rule, regulation or order to be decided on the basis of the record of a Commission hearing; the term "interceder" shall include any person outside the Commission or other agency.

MCCC-A-18 Computation of Time

(a) In computing any period of time prescribed or allowed by these Rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. For any time period of 10 days or less, Saturdays, Sundays or legal holidays shall not be included in computing the period of time.

(b) All petitions, pleadings, or other documents filed with the Commission must be tendered for filing in complete form during the Commission's normal business hours.

MCCC-A-19 Commission Officers

(a) The officers of the Commission are the chairman and vice-chairman.

(1) The chairman of the Commission shall be designated by the Governor from among the membership of the Commission and he shall be the chief executive officer of the Commission.

(2) The vice-chairman of the Commission shall be elected by a majority of all Commission members at a regular meeting of the Commission for a term of one year. No member elected to the office of vice-chairman may serve in that capacity more than two full terms consecutively. It shall be the duty of the vice-chairman to discharge all duties of the chairman during the absence or disability of the chairman.

(b) Upon a vacancy in the office of chairman of the Commission, the vice-chairman shall sit as chairman until such time as the Governor designates a new chairman. Upon a vacancy in the office of vice-chairman, a special election shall be held at the next regular meeting of the Commission.

MCCC-A-20 Variances

The Commission may grant a variance from any of its rules, regulations or standards, except, where inconsistent with or otherwise prohibited by law, to promote the public interest, to avoid undue hardship and to promote the effective and reasonable application of its rules, regulations or standards relating to cable communications. Any person may petition the Commission for a variance from a rule, regulation or standard. The petition shall set forth the text of the rule, regulation or standard from which a variance is sought, the specific variance requested, and all facts, views, arguments and data deemed to support the granting of a variance. The petitioner shall cause to be published once each week for two successive weeks in a newspaper of general circulation in the municipality in which the system for which the variance is requested is located, a concise statement of the variance sought and the time, date and place of the Commission meeting at which the variance is to be considered. Any interested person may file with the Commission a petition in opposition to the granting of the variance. Any such petition shall state with particularity the reasons why the variance should not be granted. The Commission may hear testimony from all interested persons concerning the granting of a variance. If the granting of a variance is substantially contested, the Commission may deem the matter a contested case to which the Commission is not a party for disposition under Chapter D of these Rules. A variance shall be granted if, upon good cause shown, there is a finding that the granting of the variance is necessary or proper to avoid undue hardship on the petitioner and to promote the development and utilization of cable communications in the State of Minnesota. A variance which differs from that requested may be granted and it may be of a specific limited duration.

MCCC-B-1 Regular Meetings

Regular meetings shall be held on the second Friday in each odd numbered month and on the second Saturday in each even numbered month. The time and place of each regular meeting shall be designated by the chairman of the Commission, who shall require the executive director of the Commission to give written notice of the time and place of each meeting to all members of the Commission not less than five days prior to any regular meeting. The chairman of the Commission may direct that any regular meeting be postponed or advanced and require the executive director to give written notice of the time and place of the meeting to all Commission members not less than five days prior to the regular date if postponed. The executive director shall give notice of the time and place of a regular, advanced or postponed meeting to the public at such time in advance thereof and in such form as under all the attendant circumstances is reasonable, provided that the executive director shall at least notify, three days in advance of any regular, advanced or postponed meeting, those members of the public who have caused their names, addresses and telephone numbers to be placed on file with the executive director of the Commission for purposes of such notice.

MCCC-B-2 Special Meetings

The chairman of the Commission may call a special meeting of the Commission when, in his opinion, a meeting is necessary or desirable. The chairman shall call a special Commission meeting upon receipt of a written request, therefor, from any two members of the Commission. The executive director shall give as much notice as possible to all Commission members prior to any special meeting, which notice shall state the time, place and subject matter of the meeting. The executive director shall give such notice of the special meeting to the public as is reasonable under all the attendant circumstances, provided that the executive director shall at least notify those members of the public who have caused their names, addresses and telephone numbers to be placed on file with the executive director of the Commission for purpose of such notice.

MCCC-B-3 Quorum

A majority of the members of the Commission shall constitute a quorum, and a quorum must be present for the transaction of business.

MCCC-B-4 Voting

The affirmative vote of a majority of the quorum present shall be necessary to make any decision. All members present, including the chairman, shall vote or abstain on every matter presented for decision. No action or decision of the Commission shall be finally determined by an equally divided vote of the Commission members or by a vote of less than three Commission members, but shall either be placed on the agenda of the next regular meeting or considered at a special meeting instead.

MCCC-B-5 Open Meetings

All regular and special meetings of the Commission, other than administrative meetings not affecting the public interest at which no public business is permitted to be transacted, shall be open to the public, and all decisions of the Commission shall be made at such meetings, except the quasi-judicial deliberations in contested case proceedings before the Commission. All persons in attendance at a regular or special meeting shall be given opportunity to comment on any subject under discussion at the discretion of the presiding chairman.

MCCC-B-6 Agenda

A proposed agenda of business to be conducted shall be prepared for all regular meetings of the Commission. Except when the exigencies of time and circumstances warrant, an agenda shall be prepared for all special meetings as far in advance of the special meeting as possible. The agenda shall include a list of all matters to be considered at the meeting. The agenda, may be amended or modified by the Commission at any time.

Unless the exigencies of time and circumstances warrant otherwise, the agenda shall be available for public inspection at the offices of the Commission at least three days prior to a regular meeting and shall be made available at the meeting place. The agenda for a special meeting shall be made available for public inspection at the offices of the Commission as far in advance of the special meeting as is reasonable.

MCCC-B-7 Filing of Agenda Matters

Except when the Commission in its discretion determines otherwise, no matter shall be considered at a regular Commission meeting unless it has been placed on the agenda and all relevant public information has been made available for public inspection at the offices of the Commission, at least three days prior to such regular meeting. Public information regarding matters to be considered at a special meeting shall be made available for public inspection at the meeting place prior to the meeting and as far in advance of a special meeting as is reasonable at the office of the Commission.

MCCC-B-8 Staff Discussion Papers

Papers prepared by the Commission staff for purposes of discussion will be distributed as follows:

(a) Copies made ready in due time will be sent to members of the Commission by mail; copies that cannot be made ready for mailing in due time will be presented to members at the place of a meeting prior to discussion.

(b) A sufficient number of copies of such papers as determined by the executive director of the Commission, based on average meeting attendance and/or requests, shall be put at a convenient place or places for interested persons in attendance at meetings.

(c) All copies will be clearly designated for discussion purposes only in order to distinguish them from materials intended for statutory public hearings.

MCCC-B-9 Notice of the Agenda

The executive director shall mail a copy of the agenda to every member of the Commission and to those persons whom the executive director deems appropriate in the circumstances, at least five days prior to the meeting for which the agenda has been prepared, provided that the executive director shall mail an agenda to every person who has caused their name, address and telephone number to be placed on file with the executive director for purposes of receiving such agendas.

MCCC-B-10 Minutes

The Commission shall keep minutes of all meetings, including a record of all votes of individual members. A copy of the approved minutes shall be mailed to every person who has caused their name, address and telephone number to be placed on file with the executive director for purposes of receiving such approved minutes.

MCCC-B-11 Committees

The Commission may from time to time establish committees of Commission members as it may deem necessary and desirable to facilitate its work. All committee recommendations shall be duly submitted to the Commission for appropriate action. All committees shall be appointed by the chairman subject to the approval of the Commission.

MCCC-B-12 Advisory Committees

The Commission may from time to time establish committees advisory to the Commission on any subject matter within the scope of the Commission's duties. All such committees shall be appointed by the chairman of the Commission subject to the approval of the members of the Commission. A member of the Commission designated by the chairman of the Commission shall preside over the meetings of each such advisory committee, provided, however, that the chairman of the Commission may delegate to the executive director of the Commission the responsibility to select a member of the Commission staff to preside over the meetings of any such advisory committee.

MCCC-B-13 Parliamentary Procedure

The Commission, in its procedure, shall follow generally recognized principles of parliamentary procedure. In the event of a parliamentary dispute, the applicable provisions of Roberts Rules of Order shall be the governing authority.

MCCC-C-1 Commencement of Rule Making Proceedings

Rule making proceedings shall be commenced by the Commission either on its own motion or on the basis of a petition for rule making.

MCCC-C-2 Notice of Rule Making Proceedings

Before any proposed rules are approved by the Commission for a statutory public hearing, there shall be reasonable notice and a reasonable opportunity for the public to be heard with respect to the subject matter of the proposed rules.

MCCC-C-3 Petitions for Rule Making

(a) Any interested person may petition for the adoption, amendment or repeal of a rule.

(b) The petition shall set forth the text or substance of the proposed rule or amendment, or rule proposed to be repealed, together with all facts, views, arguments and data deemed to support the action requested, and shall indicate how the interests of the petitioner will be affected.

MCCC-C-4 Action on Petitions

If the Commission determines that the petition discloses sufficient reasons in support of the action requested to justify a public hearing, and if notice and public proceedings thereon are required by Minnesota Statutes, Chapter 15, or deemed desirable by the Commission, an appropriate notice of a public hearing will be issued. In all other cases, the petitioner will be notified of the Commission's action and the grounds therefor.

MCCC-C-5 Notice

Except for rules which relate only to the internal management of the Commission and which do not directly affect the rights of or the procedure available to the public, prior notice of proposed rule making will be given in accordance with Minnesota Statutes, Section 15.0412, Subdivision 4, at least 30 days prior to the holding of a public hearing required by law. Notice of proposed rule making will be given by United States mail to representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose. Copies of the notice also may be released by the

Commission, and a copy will be available to interested persons at the Commission's offices.

MCCC-C-6 Content of Notice

A notice of the proposed adoption, amendment or repeal of a rule shall include the following:

(a) Reference to the authority under which the adoption, amendment or repeal of a rule is proposed.

(b) Either (1) the express terms of the proposed rule or, (2) a description of the substance of the proposed rule and the subjects and issues involved and a reference to where the express terms may be obtained.

(c) A title designed to identify the proceeding.

(d) A statement of the time for filing comments and replies thereto.

(e) A statement of the time, nature and place of any public rule making proceeding to be held.

MCCC-C-7 Comments and Replies

(a) After notice of proposed rule making is issued, the Commission will afford interested persons an opportunity to participate in the rule making proceedings through submission of written data, views or arguments. Any person may testify orally at the statutory public hearing.

(b) Twenty days will be provided for submission of comments in support of or in opposition to proposed rules, and the time provided shall be specified in the notice of proposed rule making.

(c) Ten days may be provided for filing comments in reply to the original comments, and the time so provided may be specified in the notice of proposed rule making or in a subsequent notice.

(d) No additional comments may be filed unless specifically requested or authorized by the Commission.

MCCC-C-8 Form of Comments and Replies; Number of Copies

Comments, replies and other documents filed in a rule making proceeding shall conform

to the requirements of Rule MCCC-A-11 of these Rules.

MCCC-C-9 Submissions to Attorney General

Every rule proposed by the Commission, before being promulgated, shall be based on a showing of need for the rule and shall be submitted as to form and legality, with reasons therefor, to the Attorney General, who, within 20 days, shall either approve or disapprove the rule. If he approves the rule, he shall promptly file it in the office of the Secretary of State. If he disapproves the rule, he shall state in writing to the Commission his reasons therefor, and the rule shall not be filed in the office of the Secretary of State, nor published. If he fails to approve or disapprove any rule within the 20-day period the Commission may file the rule in the office of the Secretary of State and publish the same.

MCCC-C-10 Commission Action; Effective Date

The Commission action as to any rule shall be effective and the rule shall have the force and effect of law upon its further filing in the office of the Commissioner of Administration unless a later date is specified in an order accompanying the rule.

CHAPTER D - RULES FOR CONTESTED CASES

MCCC-D-1 Definitions

(a) "Commission" means the Commission on Cable Communications created by the provisions of Minnesota Statutes, 1973 Supplement, Section 238.04, Subdivision 1.

(b) "Contested case" means a proceeding before the Commission in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after a Commission hearing.

(c) "Party" means any person whose legal rights, duties or privileges may be determined in a contested case. The term "party" shall include the Commission, except when the Commission participates in the contested case in a neutral or quasi-judicial capacity only.

(d) "Person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit, or agency, other than a court of law.

(e) "Hearing officer" means the person or persons appointed by the Commission pursuant to MCCC-D-2 hereof, to hear and determine the contested case.

(f) "Initiation" means the application, complaint or Commission order providing for or requesting commencement of a contested case.

(g) "Commencement" means the beginning of a contested case before the Commission.

MCCC-D-2 Hearing Officers

(a) The Commission shall appoint a hearing officer before commencing a contested case.

(b) Qualifications:

(1) Cases to which the Commission is a party. In cases to which the Commission is a party, the hearing officer shall not at the time of appointment be employed as a member of the staff of the Commission nor on retainer to the Commission. He shall be an attorney at law unless an attorney at law is not obtainable or unless some other individual is agreed upon by all

parties. After appointment the hearing officer shall be considered an employee of the Commission for the sole purpose of (1) compensation, if any, and (2) authorization to conduct the hearing and decide the issues. In all other respects he shall be independent of the Commission. All appointments hereunder shall be consistent with the purpose of this Rule, which is to secure as objective and impartial a decision-maker as is legally and financially feasible.

(2) Cases to which the Commission is not a party. In cases to which the Commission is not a party, the Commission may appoint any person, including an employee of the Commission or a member or members thereof, as the hearing officer. He shall be an attorney at law unless an attorney at law is not obtainable or unless some other individual is agreed upon by all the parties.

(c) Authority of hearing officer:

(1) Cases to which the Commission is a party. In cases to which the Commission is a party, the appointment of the hearing officer shall, to the extent permitted by law, authorize the hearing officer to hear and decide the case, subject only to the rehearing provisions of MCCC-D-17.

(2) Cases to which the Commission is not a party. In cases to which the Commission is not a party, the appointment of the hearing officer shall, to the extent permitted by law, grant the hearing officer such authority as the Commission deems necessary and appropriate to hear and decide the case and reserve unto the Commission such authority to decide the case as it deems necessary and appropriate.

(d) Consistent with law and the terms of his appointment the hearing officer shall hear and decide the contested case. His functions shall include, but not be limited to, the following: hear and rule on preliminary motions, rule on the admissibility of evidence, conduct the hearing,

make impartial findings of fact upon the evidence presented, make a final or preliminary determination, and make such preliminary, interlocutory or final orders as appropriate.

MCCC-D-3 Initiating a Contested Case

(a) Initiation by Application. Any person authorized by law to have his rights, privileges or duties determined after a Commission hearing may initiate a contested case by making application. An application shall contain:

(1) The name and address of the applicant;

(2) A statement of the nature of the determination requested and the reasons therefor;

(3) The names and addresses of all persons known to the applicant who will be directly affected by such determination; and

(4) The signature of the applicant or his attorney.

(b) Initiation by Complaint. Any person authorized by law to submit to the Commission a complaint that his rights are being abridged, that his privileges are being denied, or that duties owed him are being defaulted upon may initiate a contested case by filing a complaint. A complaint shall contain:

(1) The name and address of the complainant;

(2) The name or names of those against whom the complaint is made;

(3) The relief sought and the grounds therefor; and

(4) The signature of the complainant or his attorney.

(c) Initiation by Commission Order. Where authorized by law, the Commission may order a contested case commenced to determine the rights, duties and privileges of specific parties.

MCCC-D-4 Commencement of Contested Case

Within ten days following receipt of a complaint or application or the adoption of

an order by the Commission initiating a contested case, the Commission shall appoint a hearing officer and commence the contested case by serving upon all known parties a copy of the document of initiation and a notice stating:

(a) The commencement of the contested case;

(b) The time and place of the prehearing conference, if any;

(c) The purpose of the prehearing conference;

(d) The name of the hearing officer;

(e) The rights of the parties to counsel and to a formal hearing;

(f) That failure to attend may prejudice the party's right in this and subsequent proceedings; and

(g) These Rules or a citation thereto.

If the hearing officer decides that no prehearing conference will be held, notice of hearing pursuant to MCCC-D-14 shall be given.

MCCC-D-5 Answer

Within twenty days after service (excluding the day of service), an adverse party may interpose an answer to the initiating complaint, application or order. A copy of such answer shall be served on all parties to the contested case. The original, together with an attached affidavit of service, shall be filed with the Commission within five days after service is completed.

MCCC-D-6 Right to Counsel

Any party may be represented by legal counsel throughout the proceedings in a contested case before this Commission.

MCCC-D-7 Informal Disposition

Informal disposition may be made of any contested case or any issue therein by stipulation, agreed settlement or consent order at any point in the proceedings.

MCCC-D-8 Default

The hearing officer may dispose of a contested case adverse to a party which defaults. Disposition by default shall occur only after the party against whom default is proposed, having been duly served with notice and proof of service filed, fails to appear.

MCCC-D-9 Intervention

Upon timely application,any person shall be permitted to intervene in a contested case upon a showing that his legal rights, duties or privileges may be determined or affected in the contested case, unless in the discretion of the hearing officer,such person's interest is adequately represented by one or more parties participating in the case.

MCCC-D-10 Consolidation

(a) Authority. Whenever, before hearing on any contested case, the Commission, either on its own motion or upon petition by any party, determines that separate contested cases present substantially the same issues of fact or law, that a holding in one case would affect the rights of parties in another case and that consolidation would not substantially prejudice any party, the Commission may order such cases consolidated for a single hearing on the merits. Notwithstanding the requirements of this Rule, the parties may stipulate and agree to such consolidation.

(b) Notice. Within five days following an order for consolidation the Commission shall serve on all parties a Notice of Consolidation. Such notice shall contain:

(1) A description of the cases for consolidation;

(2) The reasons for consolidation;

(3) Cancellation of all prehearing conferences for the cases consolidated; and

(4) Notification of the consolidated prehearing conference in the same fashion prescribed for notice of prehearing conferences. (MCCC-D-4)

(c) Objection to Consolidation:

(1) Petition for Severance. Any party may object to consolidation by filing with the Commission prior to final determination a Petition for Severance from Consolidation, setting forth petitioner's name and address, the designation of his case prior to consolidation,

and the reasons for his petition. Briefs may be filed, evidence received and oral argument heard at such time as the hearing officer deems proper.

(2) Determination. When such petition is filed, the hearing officer shall set aside a time for receiving evidence and oral argument, and determining, as a part of the record in the case, whether consolidation prejudices petitioner. If the hearing officer finds that consolidation would prejudice petitioner, he may order such severance or other relief as he deems necessary.

MCCC-D-11 Depositions

The parties to a contested case may take and use depositions to the same extent as authorized by the rules of civil procedure for the state district courts; provided, however, that before a deposition of a person who is at a greater distance than 100 miles from the place of hearing or who is out of state may be taken, the party requesting the taking of such a deposition shall first make application, therefor, to the hearing officer or the Commission, as appropriate, and give notice to all parties to the contested case. The hearing officer, or the Commission, as appropriate, may order as a condition of taking such a deposition that the party requesting the deposition pay the reasonable expense of the persons whose presence is usual at the taking of such a deposition as determined by the hearing officer or the Commission.

MCCC-D-12 Disqualification

A hearing officer shall withdraw from participation in a contested case at any time prior to the final determination if he deems himself disqualified for any reason. Upon the filing in good faith of a timely and sufficient Petition of Prejudice, the hearing officer shall determine the matter as a part of the record and decision in the case.

MCCC-D-13 Prehearing Conference

(a) Purpose. The purposes of the prehearing conference are to simplify the

issues to be determined and to reach a settlement on those simplified issues without the necessity for further hearing.

(b) Procedure. A prehearing conference may be held at the discretion of the hearing officer preparatory to each contested case hearing. The prehearing conference shall be an informal proceeding conducted fairly and expeditiously by the hearing officer. Agreements on the simplification of issues shall be put in the form of stipulations and entered on the record. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

(c) Dismissal. The hearing officer may, at any stage of the proceedings, including the prehearing conference, after all parties have had an opportunity to present their views, dismiss any sham, capricious or frivolous case or any case not within the Commission's jurisdiction.

(d) Consolidated Prehearing Conference. When cases before the Commission are consolidated pursuant to MCCC-D-10, a consolidated prehearing conference may be held in lieu of separate conferences for each case and notice thereof given as provided in MCCC-D-4.

MCCC-D-14 Notice of Hearing

Not less than thirty days prior to the hearing date, the Commission shall serve a notice of hearing on all parties to the case. Such notice shall contain:

(a) The time and place of the hearing;

(b) The purpose and procedure for the hearing;

(c) The issues to be determined; and

(d) The name of the hearing officer who will preside.

Not less than five days after receipt of the notice specified in MCCC-D-4, the plaintiff shall cause to be published once in a legal newspaper of general circulation in the municipality affected by the dispute, or, if there is no such newspaper, in a newspaper of general circulation in the municipality nearest to the municipality affected by the dispute in which a newspaper of general circulation is published, a copy of the notice.

Prior to the hearing the plaintiff shall file with the Commission an affidavit of publication of the notice.

MCCC-D-15 The Hearing

(a) Right to Hearing. All parties shall have the right to a hearing before the Commission, at which hearing the parties may cross-examine witnesses, and present evidence, rebuttal testimony and argument with respect to the issues.

(b) Witnesses. Any party may be a witness or may present witnesses on his behalf at a hearing. The hearing officer, or the Commission, as appropriate, may summon impartial, expert witnesses to testify as to any matter deemed material. All testimony at a hearing shall be under oath or affirmation. Every party shall have the right of cross-examination of witnesses who testify.

(c) Rules of Evidence:

(1) General Rules. The hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent men in the conduct of their affairs. He shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, repetitious, or based upon inadmissible hearsay may be excluded. Hearsay evidence in the form of statements of individuals or affidavits should be, whenever possible, substantiated by the appearance and testimony of the individuals, but may be received subject to objection if it is cumulative, corroborative or directed to collateral matters. Where evidence is offered that is necessary for the determination of the issues, the hearing may be recessed to allow for the taking of a deposition if the parties so wish, or for the appearance of the witness.

(2) Evidence Must be Offered to be Considered. All evidence to be considered in the case, including all records and documents (except tax returns, tax reports and material determined to be confidential by the Commission) in the possession of the Commission, shall be offered and made a part of the record in the case. No other factual information or evidence (except tax returns, tax reports and material determined to be confidential by the Commission) shall be considered in the determination of the case.

(3) Documentary Evidence. Documentary evidence in the form of certified copies may be received or incorporated by reference in the discretion of the hearing officer or upon agreement of the parties.

(4) Notice of Facts. The hearing officer may take notice of judicially cognizable facts and, in addition, may notice technical facts within his specialized knowledge when requested by a party. Where final determination rests on official notice of material facts not appearing in the evidence in the record, a party is entitled, upon timely request, to an opportunity to rebut such facts.

(5) The Standard and Burden of Proof. The party initiating the contested case bears the burden of proving the facts placed in issue,but the proof may be exacted from any source of admissible evidence.

(d) The Record:

(1) Commission Prepares Record. The Commission shall prepare an official record in each contested case.

(2) What the Record Shall Contain. The record in a contested case shall contain:

(aa) All pleadings (including documents of initiation and commencement and the answers thereto), motions and intermediate rulings;

(bb) Evidence received or considered;

(cc) A statement of matters officially noticed;

(dd) Questions and offers of proof, objections and rulings thereon;

(ee) Proposed findings and exceptions;

(ff) Any decision, opinion or report by the hearing officer; and

(gg) All memoranda or data other than advice of legal counsel submitted to the hearing officer by the Commission staff in connection with the case.

(3) Transcript:

(aa) Reporter or Mechanical Device. A verbatim record of the hearing shall be taken by court reporter or recording equipment. A court reporter shall be used if demanded by any party or if the hearing examiner determines that the nature of the hearing requires such use. The Commission shall bear the expense of the court reporter except where a demand for the reporter is made by a party to the proceedings. In the instance of a demand, the expense shall be borne by the demanding party, unless the Commission agrees to bear the expense.

(bb) Transcript. The verbatim record will not be transcribed unless requested by a party. If a transcript is requested, the Commission may require the requesting party to pay the reasonable cost of preparing the transcript.

(e) Hearing Procedure:

(1) Hearing Officer Conduct. The hearing officer shall take no part in any preliminary investigation or inquiry into the facts or issues involved in the contested case except as provided in MCCC-D-13. He shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, including the Commission, its employees or agents, nor, in connection with any issue of law, with any party, including the Commission, its employees or agents, or its representative, except upon notice and opportunity for all parties to participate. Any request or inquiry may be referred by the hearing officer to the Commission for answer and communication with respect to disposal of the request or inquiry.

(2) Sequence of Events. Except as set forth in MCCC-D-15 (g), the hearing shall be conducted in the following manner:

(aa) After opening the hearing, the hearing officer shall indicate the following procedural rules:

(i) All parties may present evidence and argument with respect to the issues.

(ii) All witnesses must be sworn and identify the party they represent, if any. They are subject to cross-examination by all parties.

(iii) The rules of evidence as set forth in MCCC-D-15 (c).

(iv) All parties who wish to introduce written matter may have it marked as an exhibit and offer it into evidence.

(bb) A representative of the Commission shall introduce the following exhibits on behalf of the Commission:

(i) Notice of Initiation of Proceedings, supporting documents, if any, and affidavits of service;

(ii) If consolidation has occurred, Notice of Consolidation, supporting documents, if any, and affidavits of service;

(iii) Notice of Hearing, supporting documents, if any, and affidavits of service;

(iv) Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing.

(cc) The party who initiated the contested case may make an opening statement. All other parties may make such statements in a sequence determined by the hearing officer.

(dd) After any opening statements the party who initiated the contested case shall begin the presentation of evidence. He shall be followed by the other parties in a sequence determined by the hearing officer.

(ee) Cross-examination of witnesses shall be conducted in a sequence determined by the hearing officer.

(ff) When all parties and witnesses have been heard, opportunity shall be offered to present rebuttal evidence and final argument, in a sequence determined by the hearing officer. Such rebuttal and final argument may be in the form of written memoranda, oral argument or both.

(gg) After final argument, the hearing shall be closed or continued at the discretion of the hearing officer. If continued, it shall be either (a) continued to a certain time and day, announced at the time of the hearing and made a part of the record, or (b) continued to a date, to be determined later, which must be upon not less than five days written notice to the parties.

(f) Decorum:

(1) The hearing officer may prohibit the operation of a television, newsreel, motion picture, still or other camera, or of lights or other devices used in connection with the camera in the hearing room while the hearing is in progress, if such operation would, in his opinion, interfere with or disrupt the hearing.

(2) Other Conduct. No person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the hearing officer shall read this Rule to those persons causing such interference or disruption and recess the hearing, continue it or proceed with it.

(g) Cases to Which Commission is Not a Party. In cases which the Commission has initiated pursuant to MCCC-D-3 (c), but to which the Commission is not a party, the hearing procedure shall be conducted in a sequence determined by the hearing officer in accordance with law or Commission statute or rule. In such cases, the burden of proof shall be as the hearing officer determines in accordance with law or Commission statute or rule. In all such cases, the hearing procedure sequence and the burden of proof shall be determined by the hearing officer and stated in an order noticed to all parties.

MCCC-D-16 The Commission Decision

(a) Basis for Determination:

(1) The Record. No factual information or evidence, except tax returns, tax reports and other material held confidential by the Commission, which is not a part of the record shall be considered by the hearing officer or the Commission in the determination of a contested case.

(2) Experience, Technical Competence and Specialized Knowledge. The hearing officer may use his experience, technical competence and specialized knowledge in the evaluation of the evidence presented in the case.

(b) Proposal for Decision:

(1) Need for Proposal, Exceptions and Argument. Whenever in a contested case the Commission has retained the authority to render a final decision, intends to make such final decision and has not heard or read the evidence, the decision, if adverse to a party to the proceeding other than the Commission, shall not be made until a Proposal for Decision has been served, and an opportunity has been afforded each party adversely affected to file exceptions and present argument, whether written or oral or both, to the Commission.

(2) Service and Contents. The Proposal for Decision shall be served on all parties to the case. The Proposal shall contain:

(aa) A statement of the proposed decision.

(bb) The reasons for such decision. Each reason shall consist of a concise statement of the conclusions upon each contested issue of fact necessary to the decision.

(cc) A final date for the filing of exceptions by parties adversely affected.

(dd) A statement of the right of parties adversely affected to present argument.

(c) Decisions and Orders:

(1) Formal Decision or Order with Reasons Required. Every decision or order rendered by the hearing officer or the Commission in a contested case shall be in writing or stated in the record and shall be accompanied by a statement of the reasons therefor. The statement of reasons shall include a concise statement of the conclusions upon each contested issue of fact necessary to the decision. A decision or order on a petition for severance, petition for intervention, petition of prejudice, on noticed facts which are challenged, or on a petition for rehearing shall be rendered in accordance with this Rule.

(2) Service and Contents. Every decision or order shall be served on all parties to the case. It shall contain:

(aa) A statement of the decision or order in the case;

(bb) A statement of the reasons therefor;

(cc) An affidavit of service.

MCCC-D-17 Rehearing

(a) Commission Right to Hear. The Commission may, upon request or its own motion and for good cause shown, reopen, rehear and redetermine a contested case after a final decision adverse to a party to the contested case other than the Commission has been rendered. This right may be exercised until it is lost by appeal or the granting of a writ of certiorari or until a reasonable time has run, but in no event shall the time exceed the time allowed by statute for appeal or six months, whichever is shorter.

(b) Obtaining a Rehearing:

(1) Parties other than the Commission. At any time prior to the Commission's loss of the right to rehear a contested case, any party to that case may request a rehearing by filing a petition for rehearing. Such petition shall contain:

(aa) The name and address of the petitioner;

(bb) The Commission designation for the case;

(cc) The reasons for the petition.

(2) The Commission. The Commission may, on its own motion, for good cause stated in the record, reopen, rehear and redetermine a contested case if the decision in that case was adverse to a party to that case other than the Commission.

(3) Default Judgments. A party against whom a default has been adjudged pursuant to MCCC-D-8 may obtain a rehearing upon a timely showing of good cause for his failure to appear or plead.

(4) Determination. The Commission shall grant or deny a petition for rehearing as a part of the record in the case. Such petition shall be granted if there appears on the face of the petition and the record irregularities in the proceedings, errors of law occurring during the proceedings, newly discovered material evidence, a lack of substantial evidence to support the decision or good cause for failure to appear or plead. Evidence and argument may be presented at the discretion of the Commission in written or oral form or both by any party to the contested case with respect to the petition.

(c) Notice of Rehearing. Notice of rehearing must be provided in the same manner prescribed for notice of hearing as provided in MCCC-D-14.

(d) Rehearing Procedure. A rehearing in a contested case shall be conducted in the same manner prescribed for a hearing as provided in MCCC-D-15.

(e) Decision after Rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing as provided in MCCC-D-16.

MCCC-D-18 Appeal by Commission

The Commission may appeal pursuant to M. S. §§. 15.0424 any adverse decision. The Commission shall be deemed a "person" for such purposes.

MCCC-D-19 Fees

In every contested case, the plaintiff, petitioner or other moving party shall pay, when the first paper on his part is filed or the first appearance is entered, a fee of $15, provided that the Commission shall not be required to pay such fee. The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay, when the first paper on his or their part is filed, or the first appearance is entered, a fee of $10, provided that the Commission shall not be required to pay such fee. All such fees shall be credited to the general revenue fund in the state treasury.

MCCC-D-20 Rules of Procedure for District Court-Applications to Contested Cases

The rules of civil procedure for the state district courts shall serve as a guide to any procedural or substantive matter within the scope of this Chapter not specifically provided for by rule to the extent that the same are not inconsistent with the rules provided for by this Chapter and the powers and duties of the Commission as provided by law. The hearing officer, or the Commission, as appropriate may vary the rules of procedure for the state district courts as applied to contested cases as may be deemed necessary or appropriate to secure the ends of justice without undue formality.

MCCC-E-1 General Provisions

(a) Delegations are arranged in this Chapter under headings denoting the person or persons to whom authority has been delegated.

(b) The Commission, by vote of a majority of the members then holding office, may delegate its functions either by motion or by resolution to one or more of its members, or its officers, agents, or employees, such powers and duties as it may deem appropriate, except as prohibited by law, and may at any time amend, modify or rescind any such motion or resolution.

MCCC-E-2 Authority of Person to Whom Functions are Delegated

(a) Except as provided elsewhere in these Rules, the person or persons to whom functions are delegated shall, with respect to such functions, have all the jurisdiction, powers and authority conferred by law upon the Commission, and shall be subject to the same duties and obligations.

(b) Except as provided elsewhere in these Rules, any action taken pursuant to delegated authority shall have the same force and effect and shall be made, evidenced and enforced in the same manner as actions of the Commission.

MCCC-E-3 The Exercise of Delegated Authority

(a) Any official (or group of officials) to whom authority is delegated in this Chapter is authorized to issue orders pursuant to such authority and to enter into general correspondence concerning any matter for which he is responsible under this Chapter.

(b) Authority delegated to any person to issue orders or to enter into correspondence under subparagraph (a) of this Rule may be exercised only by that official.

(c) Except as otherwise provided in these Rules, actions taken as provided in subparagraph (a) of this Rule shall be noted in writing, called to the Commission's attention at its next regularly scheduled session, and thereafter recorded in the official minutes of the Commission.

MCCC-E-4 Authority Delegated to Chairman

The responsibility for the general administration of the internal affairs of the Commission is delegated to the chairman of the Commission. The chairman will keep the Commission advised concerning his actions taken under this delegation of authority. This authority extends to:

(a) Actions of routine character;

(b) Actions taken by the chairman as chief executive officer for the Commission, including actions designating appropriate subordinate persons to act as executive officers for the Commission.

MCCC-E-5 Authority Delegated to Executive Director and Counsel

The Commission's executive director, or the counsel to the Commission, is delegated authority, subject to Commission review upon application being made by any interested person:

(a) To receive emergency action notifications and to authorize emergency action necessitated by natural disasters;

(b) To act upon requests for extensions of time in which to comply with Commission orders, upon a showing of good cause;

(c) To act upon requests for extensions of time within which to file papers;

(d) To authorize withdrawal of pleadings in accordance with these Rules;

(e) To return applications or pleadings which are not acceptable under Commission Rules;

(f) To issue informal interpretations of these Rules, subject to review by the Commission. Actions taken under this authority are strictly informal and shall be binding on the Commission only in the event that the interpretation is expressly ratified by the Commission.

MCCC-F-1 Introduction

The Commission shall issue certificates of confirmation only in accordance with the rules prescribed in this Chapter.

MCCC-F-2 Special Certificates of Confirmation

(a) Pursuant to Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivision 3, any cable communications company which under an existing franchise was lawfully engaged in actual operation on May 24, 1973, may continue to exercise said franchise pursuant to the terms thereof, provided the company files with the Commission by such date as the Commission shall set, an application for a special certificate of confirmation in such form and containing such information and supporting documentation as the Commission may require. Failure to file the written information shall not be cause for requiring a regular certificate of confirmation pursuant to MCCC-F-4. The Commission shall grant a certificate of confirmation without further proceedings which shall be valid for a period of five years. Each such certificate shall be granted only at a public meeting of the Commission by an affirmative vote of at least three members of the quorum.

(b) Pursuant to Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivision 4, cable communications companies which have been granted a franchise prior to April 1, 1973, and which were not in operation prior to May 24, 1973, shall be given a ten year certificate of confirmation without further proceedings provided such company files with the Commission by such date as the Commission shall set, an application for a special certificate of confirmation in such form and containing such information and supporting documentation as the Commission may require, and further provided such companies have commenced substantial construction, indicated by erection of the "head end" and stringing of no less than five miles of trunk and distribution cable, by January 1, 1974. Failure to file the written information shall not be cause for requiring a regular certificate of confirmation pursuant to MCCC-F-4. Each such certificate shall be granted only at a public meeting of the Commission by an affirmative vote of at least three members of the quorum.

(c) Pursuant to Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivision 5, a municipality may issue a franchise by September 15, 1973, if done so pursuant to a

municipal enabling ordinance for cable communications enacted April 1, 1973, containing detailed specifications for the construction and operation of a cable communications system. Any cable communications company so franchised may exercise its franchise pursuant to the terms thereof, provided such company files with the Commission an application in such form and containing such information and supporting documentation as the Commission may require. Failure to file the written information shall not be cause for requiring a regular certificate of confirmation pursuant to MCCC-F-4. The Commission shall issue, without further proceedings, a certificate of confirmation to such a cable communications company valid for ten years. Each such certificate shall be granted only at a public meeting of the Commission by an affirmative vote of at least three members of the quorum.

MCCC-F-3 Interim Certificate of Confirmation

The Commission may issue an interim certificate of confirmation after its acceptance of an application in such form and containing such information and supporting documentation as the Commission may require, such certificate to be valid for not more than five years, to an operating company having a franchise approved by the Commission to erect a community antenna and establish cable television services for any municipality having a population not greater than 15,000 according to the 1970 federal census; provided that the system shall be constructed and ready for operation by July 1, 1975, in full compliance with all applicable regulations of the Federal Communications Commission and with any special terms or conditions set by the Minnesota Commission to apply in any individual situation, not subject to Minnesota Statutes 1971, Chapter 15, to include stipulations regarding minimum channel capacity; extent of two-way capability; means for interconnection; and availability of facilities for public access cablecasting and for local program origination. Each such certificate shall be granted only at a public meeting of the Commission by an affirmative vote of at least three members of the quorum.

MCCC-F-4 Necessity for a Certificate of Confirmation

Any cable communications company which is not authorized by law to receive a special or interim certificate of confirmation pursuant to MCCC-F-2 or MCCC-F-3 shall be required to secure a regular certificate of confirmation from the Commission before becoming operational. Such certificate may be granted after full Commission proceedings and shall be for a period of ten years.

MCCC-F-5 Procedure for Making Application for a Regular Certificate of Confirmation

(a) Each cable communications company applying for a certificate of confirmation pursuant to MCCC-F-4 shall file, no later than 30 days before the Commission is to consider the application, an application in such form and containing such information and supporting documentation as the Commission may require.

(b) Each cable communications company applying for a certificate of confirmation pursuant to MCCC-F-4 shall cause to be published, weekly for two successive weeks, at its own expense, in a legal newspaper of general circulation in each municipality for which a certificate of confirmation is sought the following:

(1) The name and address of the company, its officers and its managing offices, as well as the names and addresses of each stockholder owning 10% or more of the company's stock;

(2) That it is seeking a certificate of confirmation from the Commission and designating the municipality or municipalities;

(3) The date, place and time of the meeting at which the granting of the certificate of confirmation will be considered by the Commission;

(4) That interested members of the public may submit their views on the application either in writing or orally at the Commission meeting.

A certificate of publication shall be filed with the Commission no later than seven days before the meeting at which the application for certification is to be considered.

(c) The executive director of the Commission may cause such additional notices to be given to such persons as in his opinion is reasonable.

MCCC-F-6 Public Meeting

(a) No later than 60 days after a completed application for a certificate of confirmation is received, the Commission shall hold a public meeting thereon. Any such public meeting may be combined with a regular or special Commission meeting. If, at any

such meeting, application is substantially contested, the Commission may adjourn the public meeting and deem the matter a contested case for disposition in accordance with Chapter D of these Rules; provided that the decision of any hearing examiner, appointed thereunder, shall not be binding unless adopted by the Commission. For purposes of the contested case procedure, the Commission shall not be deemed a party to any proceeding in which only the granting of a regular certificate of confirmation is at issue.

(b) Interested persons may submit to the Commission written testimony concerning the issuance of a regular certificate of confirmation within 20 days after completion of the final public meeting thereon.

MCCC-F-7 Grant of Certificate

If the Commission determines to grant a special, interim, regular or renewal certificate of confirmation it shall issue the certificate of confirmation within 30 days after the public meeting at which the certificate of confirmation is granted. If the Commission determines not to grant a special, interim, regular or renewal certificate of confirmation, it shall, within 30 days after the last public meeting at which the granting of the certificate of confirmation is discussed, issue to the applicant a statement of reasons for its decision not to issue a certificate of confirmation. The Commission may require the applicant for the certificate to complete an application form, which it may by resolution prescribe.

MCCC-F-8 Renewal Certificate of Confirmation

A renewal certificate of confirmation shall be issued only after full Commission proceedings and shall be valid for a period of five years. A certificate of confirmation is a renewal certificate if it is issued to the same cable communications company, or its successor in interest, for the same cable communications system for which an interim, special or regular certificate of confirmation was previously issued by the Commission. The procedure for obtaining a renewal certificate of confirmation shall be the same as is herein provided for obtaining a regular certificate of confirmation.

MCCC-F-9 Transferability of Certificate of Confirmation

A certificate of confirmation shall be transferable or in any way assignable only

upon full compliance with the applicable provisions of Chapter I of these Rules pertaining to the transfer of a franchise. Transfer of the certificate of confirmation shall not extend the duration of the certificate of confirmation. The transferee, as a condition of the transfer of the certificate, shall within 30 days of the transfer complete any application form required of any person for the original grant of a certificate of confirmation.

CHAPTER G - FRANCHISING AND FRANCHISE RENEWAL PROCEDURES

MCCC-G-1 Initial Franchise

(a) The procedure described in Rule 1 of this Chapter shall be observed by all franchising authorities before and during the awarding of any cable communications franchise, except as provided in Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivisions 3, 4 and 5 or in Laws 1974, Chapter 506, Section 10, and Rule of this Chapter.

(b) The proposed boundaries for all cable service territories must be approved by the Commission in accordance with Rules of the Commission to be adopted pertaining to districting before a franchising authority shall adopt an invitation for applications for a cable communications franchise as described in subsection 1(c) of this Rule.

(c) Except as provided in Rule 1(a) of this Chapter, no cable communications franchise may be awarded, nor may any application for any such franchise be invited without the research and planning required by this Rule. The franchising authority shall appoint a group of persons residing within the boundaries of the franchising authority as an advisory body to make recommendations on cable communications to the franchising authority. Persons commercially involved in cable communications activities or other communications media shall not serve as members of the advisory body, but may offer information and advice to the advisory body. The advisory body shall inform itself about cable communications through at least a review of published information, state and federal statutes and rules and regulations, and the experience of other municipalities that have or have studied cable communications. The advisory body shall also assess the communications needs of the persons residing within the franchising authority, make a report to the franchising authority, and make publicly available the procedures and results of such study. The advisory body shall make recommendations to the franchising authority on the means to satisfy the communications needs of the

persons residing within the franchising authority. After consideration of the recommendations of the advisory body, the franchising authority shall determine the advisability of continuing the franchising process. If the franchising authority determines that the franchising process should continue, then the franchising authority shall officially adopt in a public hearing, affording reasonable notice and a reasonable opportunity to be heard, an invitation for applications for a cable communications franchise which invitation shall include, but not necessarily be limited to the following items:

(1) the desired system design and services for the franchising authority including statements with respect to at least the following items: channel capacity; requirement for access channels and related staff and facilities; construction requirements; and two-way capability.

(2) criteria and priorities against which the applicants for the cable franchise shall be evaluated.

(3) information regarding applications for the cable communications franchise including:

(aa) A statement that the applications must be made on a form specified by and available from the franchising authority;

(bb) The closing date for submission of applications;

(cc) A statement of the application fee, if any, and the method for its submission;

(dd) The name, address and telephone number of a municipal official who may be contacted for further information.

The franchising authority within 10 days after adoption of an invitation for applications for a cable communications franchise shall mail a copy of the invitation to the

Commission and make a copy available for public inspection at the city offices during normal business hours.

The franchising authority shall consult with the Commission and may consult with the appropriate regional development commission. The franchising authority may assign to the advisory body such other duties as it deems appropriate.

(d) Not less than 45 days prior to the holding of the public meeting on the franchise as required by 1(f) of this Rule, the franchising authority shall give public notice of the availability of the invitation for applications for a cable communications franchise. The notice shall be published at least once in a newspaper of general circulation within the boundaries of the franchising authority and at least once in at least two publications contained in a list approved by the Commission and on file with the executive director of the Commission. The published notice shall contain the following information: the name(s) of the municipalities within the franchising authority inviting the application; the date by which all applications must be submitted; the name, address and telephone number of the municipal official from whom the invitation for applications for a cable communications franchise may be obtained; the amount of any application fee; and a statement that the application for a cable communications franchise must be submitted taking into account the system design and services as outlined by the franchising authority in its invitation for a cable communications franchise and on a standard form to be supplied by the franchising authority.

In addition to the published notice, the franchising authority should mail copies of the invitation for applications for a cable communications franchise to any persons it has identified as being potential candidates for the franchise. A copy of the notice shall be provided to the Commission on the date of initial publication together with an affidavit of publication.

(e) A franchising authority shall require that all applications for a cable communications franchise be notarized and contain the applicant's proposed service and

system design for the franchising authority's cable communications system submitted on a standard form supplied by the franchising authority, which form shall include, but not necessarily be limited to the following information:

(1) plans for channel capacity, including both the total number of channels capable of being energized in the system and the number of channels to be energized immediately;

(2) a statement of the television and radio broadcast signals for which permission to carry will be requested from the Federal Communications Commission;

(3) description of the proposed system design and planned operation, including at least the following items:

(aa) general area for location of antenna(e) and headend(s);

(bb) schedule for activating two-way capability;

(cc) type of automated services to be provided;

(dd) number of channels and services to be made available for access cablecasting, and a schedule of charges for facilities and staff assistance for access cablecasting.

(4) the terms and conditions under which particular service is to be provided to educational and governmental entities;

(5) a schedule of proposed rates in relation to the services to be provided, and a proposed policy regarding unusual or difficult connection of service;

(6) a time schedule for construction of the entire system with the time sequence for wiring the various parts of the franchising authority;

(7) a statement indicating the applicant's qualifications and/or experience in the cable communications field, if any;

(8) an identification of the municipalities in which the applicant either owns or operates any cable communications system, directly or indirectly, or has outstanding franchises for which no system has been built;

(9) plans for financing the proposed system, which shall indicate every significant anticipated source of capital and any significant limitations and/or conditions with respect to the availability of the indicated sources of capital;

(10) a statement of ownership detailing the corporate organization of the applicant, if any, including the names and addresses of officers and directors and the number of shares held by each officer or director; any intracompany relationship including a parent, subsidiary or affiliated company;

(11) a notation and explanation of any omissions or other variations with respect to the requirements of the proposal.

(f) A public hearing before the franchising authority affording reasonable notice and a reasonable opportunity to be heard with respect to all applications for the franchise shall be completed at least 27 days prior to the introduction of the franchise ordinance in the proceedings of the franchising authority.

(g) The franchise shall be granted by ordinance and within 10 days of the date on which the ordinance takes effect, the franchising authority shall forward a copy of the franchise ordinance to the Commission for approval in accordance with Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivision 1.

(h) Nothing in these Rules shall be construed to prohibit a franchising authority from recovering the reasonable and necessary costs of the entire process of awarding the cable communications franchise from the successful applicant.

(i) Nothing contained in any rule of the Commission shall prohibit a franchising

authority from franchising a nonprofit or municipally-operated system, provided that pursuant to Minnesota Statutes, 1973 Supplement, Section 238.01-238.16 and Laws 1974, Chapter 506, the municipality or the nonprofit entity shall be considered an applicant for purposes of these Rules.

MCCC-G-2 Renewal

(a) For purposes of these Rules a franchise is renewed whenever the franchising authority awards a subsequent franchise to the same cable communications company or its successor in interest after the award of the initial franchise.

(b)(1) Three months prior to the expiration of a franchise and to the expiration of a certificate of confirmation, the advisory body created in MCCC-H-1(bb) of these Rules shall submit a report to the franchising authority, to the cable communications system operator and to the Commission, which report shall include a written appraisal of the performance of the franchisee during the franchise term with regard to the provisions of the franchise. The report shall also include recommendations for revised or additional provisions of the franchise, considering at least the following items: channel capacity; channels for access cablecasting; facilities and staff assistance available for access cablecasting; two-way capability; and the need for further service to be extended within the franchised area based upon a reassessment of the communications needs of the persons residing within the franchising authority in relation to the services generally offered by the cable industry.

(b)(2) At least six months prior to the expiration of the franchise, franchising authorities which are being served by cable communications systems which are operating under a franchise which expires before May 1, 1979, shall create an advisory body to submit the report to the franchising authority, required by subdivision (b)(1) of this Rule.

(c) The franchising authority shall commence renegotiation of the franchise at least 30 days prior to the expiration of the franchise in accordance with MCCC-H-1(b)(3)

of these Rules, and may proceed with a renewal of the franchise unless the governing body determines not to reissue the franchise to the franchisee or desires to consider additional applicants for a franchise.

(d) The renewal shall be granted only after holding a public hearing thereon with reasonable notice and a reasonable opportunity to be heard. Notice of any such hearing shall be given not less than 30 days prior to the hearing by publishing notice thereof once each week for two successive weeks in a newspaper of general circulation within the boundaries of the franchising authority. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the franchising authority.

(e) If the franchising authority determines that additional applicants are to be sought, the franchising authority must follow the procedure prescribed in Rule 1 of this Chapter.

MCCC-H-1 Required Contents of Franchises

Where a cable communications franchise is awarded or renewed after April 1, 1973, except as provided in Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivisions 3, 4 and 5 or in Laws 1974, Chapter 506, Section 10, a regular or renewal certificate of confirmation will be issued only if the franchise ordinance contains recitations and provisions consistent with the following requirements:

(a) A statement that:

(1) the franchisee's technical ability, financial condition, legal qualification, and character were considered and approved by the municipality in a full public proceeding affording reasonable notice and a reasonable opportunity to be heard;

(2) the franchisee's plans for constructing and operating the cable communications system, including specific consideration of all sections of the area to be served, were considered and found adequate and feasible in a full public proceeding affording reasonable notice and a reasonable opportunity to be heard;

(3) the franchise complies with the Commission's franchise standards; and

(4) the franchise is non-exclusive.

(b) A provision:

(1) limiting the initial franchise term to not more than fifteen years;

(2) providing that any renewal of the franchise shall be for a term of not more than ten years; and

(3) providing for renegotiation periods mutually agreed to between the municipality and the company, such renegotiation periods to occur at least at the end of any franchise term, unless the governing body determines not to reissue the franchise to the franchisee or desires to consider additional applicants for a franchise.

(c) A provision stating that no signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year, which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revokable at any time by the subscriber without penalty of any kind whatsoever. Such authorization shall be required for each type or classification of Class IV cable communications activity planned for the purpose. For the purposes of this provision, a Class IV cable communications channel means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

(d) A provision specifying all subscriber charges and, if existent, the length of residential subscriber contracts which contracts may not exceed 12 months in duration unless after 12 months the contract may be terminated by the subscriber at any time at his option, with no penalty to the subscriber; and a provision stating that any changes in residential subscriber monthly service charges be approved by the franchising municipality in full public proceeding affording reasonable notice and a reasonable opportunity to be heard. Nothing in this provision shall be construed to limit the length of subscriber contracts with entities operated for profit.

(e) A provision specifying the procedure for the investigation and resolution by the franchisee of all complaints regarding quality of service, equipment malfunction, billing disputes, and any other matters.

(f) A provision requiring that at least a long distance toll-free telephone number for the reception of complaints be provided to the subscriber and that the franchisee maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. The provision shall also provide that, whenever it is necessary to shut off or interrupt services for the purpose of making repairs, adjustments or installation, the franchisee shall do so during periods of minimum use of the system by subscribers. Unless such interruption is unforeseen and immediately necessary, the franchisee shall give reasonable notice thereof to the subscribers affected. All costs incurred in making such repairs, adjustments or installations shall be borne by the franchisee unless otherwise provided for in the franchise ordinance or subscriber contract.

(g) A provision establishing the minimum system-wide channel capacity that the franchisee shall provide:

(1) For municipalities located within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules relating to cable television and as the same may be modified from time to time, the provision shall require the franchisee to construct the cable system with a minimum of 120 MHZ of bandwidth (the equivalent of 20 television broadcast channels) available for immediate or potential use;

(2) (a) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television and as the same may be modified from time to time and will be served by a cable

communications system that will not have been constructed at the time the franchise is to be granted, the provision shall require the franchisee to construct the cable system with a minimum of 72 MHZ of bandwidth (the equivalent of 12 television broadcast channels) available for immediate or potential use;

(b) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time and are served by a cable system already constructed pursuant to a preexisting franchise having less than 72 MHZ of bandwidth (the equivalent of less than 12 television broadcast channels), the municipality shall determine when an increase in MHZ of bandwidth is needed after consultation with the appropriate regional development commission and the Minnesota Commission on Cable Communications and appropriate public proceedings at the municipal level giving all interested persons an opportunity to be heard.

(h) A provision establishing the minimum number of public, educational, governmental and leased access channels that the franchisee shall provide to the municipality:

(1) For municipalities which are within a major television market as defined by the Federal Communications Commission in Section

76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time, the franchisee shall maintain at least one specially designated noncommercial public access channel available on a first come, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel for local government use; and at least one specially designated access channel available for lease on a first come, nondiscriminatory basis by commercial or noncommercial users. The VHF spectrum shall be used for at least one of the specially designated public access channels required in this subdivision. The provision shall require that facilities for playback of prerecorded programming, personnel and time for use of at least one of the specially designated public public access channels required by this subdivision shall be provided without charge, provided, however, that production costs may be assessed for live studio presentations exceeding five minutes. Such production costs and any fees for use of other public access channels shall be consistent with the goal of affording the public a low-cost means of television access.

(2) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time, the franchisee shall provide at least one specially designated access channel available for use by

the general public on a first come, nondiscriminatory basis. Time for use on this specially designated access channel shall be provided without charge to the general public. The specially designated access channel may be utilized by local educational authorities and local government on a first come, nondiscriminatory basis when the channel is not in use by the general public. The franchisee shall lease time on this specially designated access channel to commercial or non-commercial users on a first come, nondiscriminatory basis if the demand for such leased time arises and the channel is not being utilized by the general public, local educational authorities and local government users. The franchisee may also utilize this designated channel for automated services when the channel is not in use by either the general public, educational users, and local government, or commercial or non-commercial users who have leased time on this specially designated channel. The VHF spectrum shall be used for the specially designated access channel required in this subdivision.

The provision shall require that whenever the specially designated noncommercial public access channel, the specially designated educational access channel or the specially designated governmental access channel required in subsection h(1) of this Rule or the specially designated access channel required in subsection h(2) of this Rule are in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive 3 hour period for six weeks running, the system will then have six months in which to make the appropriate new specially designated access channel available. The provision shall also require that for the public access, educational access, the specially designated channel and leased access channels, the franchisee shall establish rules pertaining to the administration of those channels. The rules shall be consistent with the requirements of Section 76.251 of the Federal Communications Commission rules

and regulations relating to operating rules for access channels.

(i) A provision establishing the minimum equipment that the franchisee shall provide for public use:

(1) For municipalities which are within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules, and as the same may be modified from time to time, the franchisee shall operate and make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the public access channel required by subsection h(1) of this Rule. The franchisee shall also make readily available upon need being shown the minimum equipment necessary to make it possible to record programs at remote locations with battery operated portable equipment. Need within the meaning of this Rule shall be determined by subscriber petition. A successful petition must meet at least one of the following conditions:

(aa) Signatures of 500 subscribers of the system to a petition attesting to the need; or

(bb) Signatures of at least 10% of the subscribers of the system to a petition attesting to the need with a minimum of 100 signatures.

(2) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time, the franchisee shall operate and make readily available for public use, upon need being shown, at least the minimal equipment necessary to perform good quality playback of prerecorded programming, and to make it possible to record programs at remote locations with battery operated portable equipment. Need

within the meaning of this Rule shall be determined by subscriber petition. A successful petition must meet at least one of the following conditions:

(aa) Signatures of 500 subscribers of the system to a petition attesting to the need; or

(bb) Signatures of at least 10% of the subscribers of the system to a petition attesting to the need with a minimum of 100 subscribers.

(j) A provision pertaining to the franchisee's construction and maintenance of a cable communications system having the technical capacity for non-voice return communications which, for purposes of this Rule shall mean the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules:

(1) For municipalities which are within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time, the franchisee shall provide a cable communications system having the technical capacity for non-voice return communications;

(2) (a) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time; and will be served by a cable communications system that will not have been constructed at the time the franchise is to be granted, the provision shall require the franchisee to provide a cable communications system having the technical capacity for non-voice return communications;

(b) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time, and are served by a cable system already constructed pursuant to a pre-existing franchise without the technical capacity for non-voice return communications, the municipality shall determine when and if the technical capacity for non-voice return communications is needed after consultation with the appropriate regional development commission and the Minnesota Commission on Cable Communications and appropriate public proceedings at the municipal level giving reasonable notice and a reasonable opportunity to be heard.

(k) A provision requiring the franchisee to conform to all federal and state laws, rules and regulations regarding cable communications.

(l) A provision establishing the minimum operational standards by which the franchisee shall install and maintain the cable communications system. The provision shall provide at a minimum that:

(1) The system shall deliver to the subscriber's terminal a signal that is capable of producing a black and white or colored picture without visual material degradation in quality within the limitations imposed by the technical state of the art;

(2) The system shall transmit or distribute signals without causing objectionable cross-modulation in the cables or interfacing with other electrical or electronic networks or with the reception of other television or radio receivers in the area not connected to the network.

(m) A provision requiring the franchisee to indemnify and hold harmless the municipality at all times during the term of the franchise, and to maintain throughout

the term of the franchise, liability insurance in such amount as the municipality may require insuring both the municipality and the franchisee with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the franchise.

(n) A provision granting the municipality authority to audit the franchisee's accounting and financial records upon reasonable notice, and requiring that the franchisee file with the municipality annually reports of gross subscriber revenues and other information as the municipality deems appropriate.

(o) A provision prohibiting transfer of the franchise or ownership except at the approval of the franchising municipality, which approval shall not be unreasonably withheld.

(p) A provision requiring that upon termination or forfeiture of a franchise, the franchisee remove its cable, wires, and appliances from the streets, alleys and other public places within the municipality, and a procedure to be followed in the event the franchisee fails to remove its cable, wires, and appliances from the streets, alleys, and other public places within the municipality.

(q) A provision that upon expiration of the franchise term, or upon revocation of the franchise, or upon other termination of the franchise as provided for in these Rules or upon receipt of an application for approval of an assignment of the franchise, the municipality shall have the non-exclusive right to purchase the system.

(r) A provision granting the municipality the right to terminate and cancel the franchise and all rights and privileges of the franchise in the event that the franchisee substantially violates any provision of the franchise ordinance, or any rule, order, or determination of the municipality or attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the municipality. Conditions or circumstances for the municipality's termination of the franchise shall include, but not necessarily be limited to the following:

(1) If the franchisee should default in the performance of any of its obligations under the franchise, and shall fail to act on the default within 30 days after receiving written notice of the default;

(2) If a petition is filed by the franchisee under the Bankruptcy Act, or any other insolvency or creditors rights law, state or federal, or the franchisee is adjudged a bankrupt or insolvent under any insolvency or creditors rights law, state or federal.

The municipality shall provide the franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the franchisee a minimum of thirty days subsequent to receipt of the notice in which to correct the violation. The franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the franchise. In the event that the municipality determines to terminate the franchise, the franchisee shall have a period of thirty days, beginning the day next following the date of the conclusion of the public hearing at which the termination of the franchise is considered, within which to file an appeal with the Commission, pursuant to Minnesota Statutes, 1973 Supplement, Section 238.14. During such thirty day period and until the Commission determines the appeal, if an appeal is taken, the franchise shall remain in full force and effect, unless the term thereof sooner expires. If the Commission approves of the action of the municipality, the franchise shall terminate immediately; if the Commission disapproves of the action of the municipality, the franchise shall remain in full force and effect during the term thereof unless sooner terminated in accordance with law or these Rules. Any such appeal to the Commission, is a contested case to which the Commission is not a party.

(s) A provision that at the time the franchise becomes effective and at all times thereafter, until the franchisee has liquidated all of its obligation with the

municipality, the franchisee shall furnish a bond to the municipality in such amount as the municipality deems necessary in such form and with such sureties, as shall be acceptable to the municipality conditioned upon the faithful performance of the franchisee according to the terms of the franchise and upon the further condition that in the event the franchiseeshall fail to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the municipality as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the franchisee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the franchisee of claims, liens and taxes due the municipality which arise by reason of the construction, operation, or maintenance of the cable communications system. The rights reserved by the municipality with respect to the bond are in addition to all other rights the municipality may have under the franchise or any other law. The municipality may, from year to year, in its sole discretion, reduce the amount of the bond.

(t) A provision that there be full description of the system proposed for construction and a schedule showing:

(1) That for municipalities which will be served by a system proposed to have 100 plant miles of cable or more:

(a) that engineering and design shall be completed within one year after the granting of the franchise and that a significant amount of construction shall be completed within one year after the franchisee's receipt of all necessary governmental permits, licenses, certificates and authorizations;

(b) that energized trunk cable shall be extended substantially throughout the authorized area within five years after commencement of construction; and that persons along the route

of the energized cable will have individual "drops" within the same period of time, if the same is desired;

(c) that the requirement of this Rule be waived by the governing body of the municipality only upon occurrence of unforeseen events or acts of God.

(2) That for municipalities which will be served by a cable communications system having less than 100 miles of cable:

(a) that within 90 days of the granting of the franchise, the franchisee shall apply for all necessary governmental permits, licenses, certificates and authorizations;

(b) that energized trunk cable shall be extended substantially throughout the authorized area within one year after receipt of all necessary governmental permits, licenses, certificates and authorizations; and that persons along the route of the energized cable will have individual "drops" as desired during the same period of time;

(c) that the requirement of this Rule may be waived by the governing body of the municipality only upon occurrence of unforeseen events or acts of God.

(u) Unless otherwise already provided for by local law, a provision that the franchisee obtain the permission of the proper municipal authority before commencing any construction of a cable communications system. The franchisee shall give the municipality reasonable written notice of proposed construction so as to coordinate all work between the municipality and the franchisee.

(v) Unless otherwise already provided for by local law, a provision that the franchisee shall not open or disturb the surface of any street, sidewalk, driveway or

public place for any purpose without first having obtained a permit to do so from the proper municipal authority, for which permit the municipality may impose a reasonable fee to be paid by the franchisee. The lines, conduits, cables and other property placed in the streets and public places pursuant to such permit shall be located in the streets or portions of the streets and public places as shall be determined by the proper municipal authority. The franchisee shall, upon completion of any work requiring the opening of any street or public place, restore the same, including the paving and its foundations, to as good a condition as formerly, and in a manner and quality approved by the proper municipal authority, and shall exercise reasonable care to maintain the same thereafter in good condition. Such work shall be performed with due diligence and if the franchisee shall fail to perform the work promptly, to remove all dirt and rubbish and to put the street or public place back in good condition, the municipalities shall have the right to put the street or public place back into good condition at the expense of the franchisee and the franchisee shall, upon demand, pay to the municipality the cost of such work done or performed by the municipality, together with an additional sum as liquidated damages to be determined by the municipality.

(w) Unless otherwise already provided for by local law, a provision that all wires, conduits, cables and other property and facilities of the franchisee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the municipality. The franchisee shall keep and maintain all of its property in good condition, order and repair, so that the same shall not menace or endanger the life or property of any person. The municipality shall have the right to inspect and examine at any reasonable time and upon reasonable notice the property owned or used, in part or in whole, by the franchisee. The franchisee shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the municipality.

(x) Unless otherwise already provided for by applicable local law, a provision that all wires, cables, amplifiers and other property of the franchisee shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering considerations.

(y) Unless otherwise already provided for by local law, a provision that all construction, installation, maintenance and operation of any cable communications system or any facilities employed in connection therewith shall be in compliance with the provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, the Bell Telephone System's Code of Pole Line Construction, any standards issued by the Federal Communications Commission or other federal or state regulatory agencies in relation thereto, and local zoning regulations. Every cable communications system installed, constructed, maintained or operated in a municipality shall be so designed, constructed, installed, maintained and operated as not to endanger or interfere with the safety of persons or property in the municipality.

(z) Unless otherwise already provided for by local law, a provision that whenever the municipality shall undertake any public improvement which affects cable communications equipment, it shall with due regard to reasonable working conditions, direct the franchisee to remove or relocate its wires, conduits, cables and other property located in said street, right-of-way, or public place. The franchisee shall relocate or protect its facilities at its own expense. The municipality shall give the franchisee reasonable notice of the undertaking of public improvements which affect the franchisee's cable communication equipment.

(aa) A provision that nothing contained in the franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the franchisee's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

(bb) A provision creating an advisory body to be appointed by the governing body of the municipality to monitor the performance of the franchisee in executing the provisions of the franchise.

(1) The advisory body shall submit an annual report to the municipality, to the cable communications system operator and to the Commission, assessing the franchisee's performance according to the terms of the franchise and make recommendations to the municipality regarding the apparent or likely need for upgrading the system to meet the current state of the art;

(2) Three months prior to the expiration of a franchise and to the expiration of a certificate of confirmation, the advisory body shall submit a report to the municipality which report shall include a written appraisal of the performance of the franchisee over the entire length of the franchise with regard to the provisions of the franchise. The report shall also include recommendations for revised or additional provisions of the franchise, considering at least the following items: channel capacity, channels for access cablecasting; facilities and staff assistance available for access cablecasting; two-way capability; and the need for further service to be extended within the franchised area based upon a reassessment of the communications needs of the municipality in relation to the services generally offered by the cable industry. A copy of the report shall be sent, within 10 days of its submission to the franchising authority, to the cable communications system operator and to the Commission.

(cc) A provision indicating by title the office or officer of the municipality that is responsible for the continuing administration of the franchise.

(dd) A provision incorporating by reference as a minimum the technical standards promulgated by the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations relating to cable communications systems, as the same now provide and may hereafter be amended or modified from time to time. The results of any tests required by the Federal Communications Commission shall be filed within 10 days of the conduct of such tests with the franchising authority and the Minnesota Commission.

(ee) A provision that no cable communications company, notwithstanding any provision in a franchise, may abandon any cable communications service or any portion thereof without having given three months prior written notice to the franchising authority and the Commission. No cable communications company may abandon any cable communications service or any portion thereof without compensating the municipality for damages resulting to it from such abandonment.

(ff) A provision that the franchise shall cease to be of any force and effect if the franchisee fails to obtain either a regular or renewal certificate of confirmation from the Commission, provided, however, that the franchisee may operate his cable communications system while the Commission is considering the application for a certificate of confirmation.

MCCC-H-2 Additional Terms and Conditions Permitted

Any franchise may contain such additonal terms and conditions as the municipality and the franchisee deem appropriate, provided such additional terms and conditions are consistent with all federal and state laws, rules, regulations and orders. The Commission shall make itself available to municipalities who desire assistance in the development of a franchise ordinance and the awarding of a franchise.

CHAPTER I - TRANSFER OF OWNERSHIP, RENEWAL, OR AMENDMENT OF FRANCHISE

MCCC-I-1 Requirement of Public Hearing

Transfer of an entire legal ownership interest in a cable communications system, the transfer of a franchise, the renewal of a franchise, the termination of a franchise except for the expiration of the term thereof, or the amendment of a franchise requires the written approval of the municipality given only after holding a public hearing thereon. Notice of any such hearing shall be given not less than 30 days prior to the hearing by publishing notice thereof once each week for two successive weeks in a newspaper of general circulation in the municipality. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the municipality.

MCCC-I-2 Notice to Commission

Transfer of an entire legal ownership interest in a cable communications system or the transfer of a franchise requires notification to the Commission by the municipality. The notification shall be accompanied by the written certification of the transferee that he meets all of the requirements with respect to technical ability, good character and financial stability demanded of an original franchisee. The municipality shall cause to be sent to the Commission a copy of all public documents relating to the amendment, renewal, transfer of ownership or termination of a franchise.

MCCC-I-3 Transfer of Ownership of a Franchise

The parties to the transfer of ownership of only a franchise without the inclusion of a cable communications system in which at least substantial construction has been commenced, shall be required to establish that the transfer of a franchise only will be in the public interest.

MCCC-I-4 Renewal

When any franchise is renewed, the franchisee shall agree to abide by all rules and

regulations of the Commission. No franchise shall be renewed for a period longer than ten years. A franchise is renewed for purposes of these Rules whenever the municipality awards a subsequent franchise to a cable communications company after the award of the initial franchise to the same company or its successor in interest.

MCCC-I-5 Appeals to the Commission

(a) The franchisee may appeal a decision of the franchising authority terminating a franchise to the Commission pursuant to Minnesota Statutes, 1973 Supplement, Section 238.14 and the determination of the municipality shall be stayed pending a decision of the appeal as provided by MCCC-H-1 (r) of these Rules. Any such appeal is a contested case to which the Commission is not a party.

(b) A franchisee aggrieved by a material modification of its franchise may appeal to the Commission pursuant to Minnesota Statutes, 1973 Supplement, Section 238.14. Any such appeal is a contested case to which the Commission is not a party.

MCCC-I-6 Approval of Franchise Amendments

Any amendment of a provision of a franchise which is within the required content of a franchise prescribed by Chapter H of these Rules shall not be effective unless approved by the Commission. Such approval shall be given if consonant with the public interest and shall not be unreasonably withheld by the Commission.

MCCC-I-7 Amendments to Franchise Ordinance

The municipalities shall file any amendments to the franchise ordinance with the Commission within 10 days of adoption by the municipality.

MCCC-K-1 Certain Ownership Prohibiited

None of the following shall directly or indirectly own, operate, control or have a legal or equitable interest in a cable communications system:

(a) A television broadcasting station whose predicted Grade B contour, computed in accordance with section 73.684 of the Federal Communications Commission's rules and regulations, overlaps in whole or in part the service areas of the system (e.g. the area within which the system is serving subscribers); or

(b) A national television network; or

(c) A television translator station licensed to the municipality of such system; or

(d) A telephone company within its local exchange area, unless a proper and timely waiver is obtained from the Federal Communications Commission; or

(e) A publisher and/or owner of a newspaper company and the newspaper company within the primary market area, as defined by the Audit Bureau of Circulation, served by the newspaper; or

(f) A radio or television broadcast station, broadcasting from within the Twin Cities metropolitan area as designated in Minnesota Statutes 1971, Section 473B.01.

The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

The word "interest" as used herein includes, in the case of corporation, common officers, or directors and partial, as well as total, ownership interests represented by ownership of voting stock.

In applying the provisions of this Rule to the stockholders of a corporation which has more than 50 stockholders:

(aa) Only those stockholders need be considered who are officers or directors or who directly or indirectly own 1% or more of the outstanding voting stock.

(bb) Stock ownership by an investment company as defined in U.S.C. section 80a-3, commonly called a mutual fund, need be considered only if it directly or indirectly owns 3% or more of the outstanding voting stock or if officers or directors of the corporation are representatives of the investment company. Holdings by investment companies under common management shall be aggregated. If an investment company directly or indirectly owns voting stock in an intermediate company which in turn directly or indirectly owns 50 percent or more of the voting stock of the corporation, the investment company shall be considered to own the same percentage of outstanding shares of such corporation as it owns of the intermediate company: Provided, however, that the holding of the investment company need not be considered where the intermediate company owns less than 50 percent of the voting stock, but officers or directors of the corporation who are representatives of the intermediate company shall be deemed to be representatives of the investment company.

(cc) In cases where record and beneficial ownership of voting stock is not identical--for example, bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street name for the benefit of customers, trusts holding stock as record owners for the benefit of designated parties--the party having the right to determine how the stock will be voted will be considered to own it for the purposes of this section.

MCCC-K-2 Exceptions

The provisions of MCCC-K-1 shall not be applicable to any cable communications company or the ownership thereof during the term of a special certificate of confirmation obtained pursuant to Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivisions 3, 4 or 5 or during the term of an interim certificate of confirmation obtained pursuant to Laws 1974, Chapter 506, Section 10.

CHAPTER M - OBSCENITY AND DEFAMATION

MCCC-M-1 Obscenity

(a) Neither the cable communications system whose facilities are used to transmit a program produced by a person other than a cable communications system, nor the officers, directors, or employees of the cable communications system shall be liable for any penalty or damages arising from any obscene program presented thereon when the cable communications system or its employees does not originate or produce the program. Any entity which schedules the programming of the access channels of a cable communications system shall not be liable for the presentation of any obscene program thereon unless the entity itself originates or produces the program. The foregoing provision does not affect the liability of those responsible for the origination or production of any obscene program.

(b) A program is obscene when, to the average person applying contemporary community standards, the program taken as a whole appeals to the prurient interest; the program depicts or describes in a patently offensive way, sexual conduct, that is, patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated or patently offensive representations or descriptions of masturbation, excretory functions, or lewd exhibition of the genitals; and the program taken as a whole lacks serious literary, artistic, political or scientific value.

MCCC-M-2 Defamation

(a) Defamatory matter is anything which exposes a person or a group, corporation, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation and any other matter which renders an individual issuing defamatory matter subject to liability for damages within the laws of the State of Minnesota.

(b) Except as hereinafter provided, whoever has knowledge of the defamatory character of the matter and communicates the defamatory matter to a third person without the consent of the person defamed violates this Rule; provided that neither

the cable communications system whose facilities are used to transmit a program produced by a person other than a cable communications system, nor the officers, directors or employees of the cable communications system shall be liable for any penalty or damages arising from any defamatory material presented thereon when the cable communications system or its employees does not originate or produce the program. Any entity which schedules the programming of the access channels of a cable communications system shall not be liable for the presentation of any defamatory material presented thereon unless the entity itself originates or produces the program containing the defamatory material. The foregoing provision does not affect the liability of those responsible for the origination or production of any defamatory material presented in a program.

(c) The following shall not constitute a violation of subsection (b):

(1) The defamatory matter is true and is communicated with good motives and for justifiable ends; or

(2) The communication is absolutely privileged; or

(3) The communication consists of fair comment made in good faith with respect to persons participating in matters of public concern; or

(4) The communication consists of a fair and true report or a fair summary of any judicial, legislative or other public or official proceedings; or

(5) The communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with intent to further such interest or duty.

CHAPTER N - REPORTS TO COMMISSION

MCCC-N-1 Operator Required to File Reports with Commission

A copy of the form entitled "Annual Report of Cable Television Systems" (FCC Form 325) and a copy of the form entitled "Cable Television Annual Financial Report" (FCC Form 326) shall be filed annually with the Commission, by every cable communications company for each cable communications system operating in the State of Minnesota, substantially at the same time as the reports are filed with the Federal Communications Commission. The Minnesota State Commission may require such additional information to be filed at such time and in such form as the Commission shall by resolution determine.

MCCC-N-2 Mailing Address and Telephone Number to be Furnished by Cable Communication Companies

(a) Every cable communications company shall furnish the Commission with an address and telephone number to be used by the Commission in serving documents or directing correspondence to that company and shall promptly notify the Commission of any change of said address or telephone number. Unless any company advises the Commission to the contrary, the address and telephone number contained in the company's most recent application will be used by the Commission for this purpose.

(b) The company is responsible for making any arrangements which may be necessary to assure that Commission documents or correspondence delivered to its address will promptly reach a responsible person authorized by the company to act in its behalf.

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
DEC 27 1974
BY Ede Staudenmaier
AUTH. SIGNATURE 3:25 P.M.

CHAPTER O - COMMISSION BILLINGS

MCCC-O-1 Payments to Commission

Every cable communications company shall pay to the Minnesota State Commission on Cable Communications for the month of January separately and for the months of February and March of 1975 an amount equal to 1% of the system's gross annual subscriber receipts received for regular programming for each such period. Such payments shall be due and payable on the tenth calendar day of the succeeding month. Beginning April 1, 1975, and until otherwise provided by rule, every cable communications company shall pay to the Minnesota State Commission on Cable Communications for the entire quarter, 1% of the system's gross annual subscriber receipts received for regular programming for each such quarter. Such payments shall be due and payable on the tenth calendar day of the month following the close of each such quarter. For purposes of this Chapter, the number of subscribers for January, February, and March of 1975 shall be determined by taking the number of subscribers on the first day of each month. For purposes of this Chapter, the number of subscribers for a quarter beginning April 1, 1975 shall be determined by taking the number of subscribers on the first day of each month during the quarter. The amount due and payable shall be determined by multiplying the number of subscribers for each month of the period, as determined in accordance with this Rule, times the subscriber rate, time 1% plus the number of additional outlets, times the additional outlet service charge, times 1%.

MCCC-O-2 Billings

The Commission shall, not later than 10 calendar days before any payment is due and payable, send the cable communications company a bill in such form as the Commission may direct, stating that the periodic payment is due.

APPROVED AS TO FORM AND LEGALITY
DEC 27 1974 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY Michael B Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED - 3:15 pm
DEC 27 1974
Arlen I. Erdahl
Secretary of State

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

102

TO : **Bruce Campbell**
Special Assistant Attorney General
Cable Commission

DATE: **December30, 1974**

FROM : Michael B. Miller
Special Assistant Attorney General

SUBJECT: Rules and Regulations

Enclosed directly following this memorandum are the rules and regulations you have submitted for approval. These rules and regulations have been approved by the Attorney General, filed with the Secretary of State and with the Department of Administration.

Upon receipt and before transmittal to your agency, it is IMPERATIVE that you recheck these rules and regulations as to:

1. Are the stamps of the Attorney General, Secretary of State and Department of Administration affixed to the last page of the rules and/or regulations;

2. Are all rules and/or regulations submitted covered by these stamps;

3. Are all pages of the rules and/or regulations included in the approved set?

Directly following the approved rules and/or regulations is a complete set of required documents and transcript which MUST be retained with the approved rules and/or regulations by you or your agency.

Also enclosed are additional documents and transcripts not retained by the Secretary of State; these should also be retained with the rules and/or regulations by you or your agency.

If you have any questions in this regard, please contact me.

MBM/sr

Enclosures

DEPARTMENT OF ADMINISTRATION

MINNESOTA COMMISSION ON CABLE COMMUNICATIONS

PUBLIC HEARING
Sept. 27,1974

Addendum A

Exhibit A

RESOLUTION NO. 5

A resolution regarding the holding of a statutory public hearing.

BE IT RESOLVED that Mr. Richard G. Hunegs, Chairman of the Minnesota State Commission on Cable Communications be and he hereby is granted the authority and directed to call a public hearing for the purpose of promulgating rules of the Minnesota State Commission on Cable Communications as well as perform any and all acts incidental thereto, including but without being limited thereto, signing an order for hearing and notice of hearing as well as acting as presiding officer at all hearings.

BE IT FURTHER RESOLVED that the rules to be considered at the public hearing or hearings hereby authorized are described topically as follows: Chapter A - Practice and Procedure General; Chapter B - Commission Meetings; Chapter C - Rule Making; Chapter D - Rules for Contested Cases; Chapter E - Delegation of Authority; Chapter F - Certificates of Confirmation; Chapter G - Franchising and Franchise Renewal Procedures; Chapter H - Franchise Standards; Chapter I - Transfer of Ownership, Renewal, Termination or Amendment of Franchise; Chapter K - Ownership and Control; Chapter M - Obscenity and Defamation; Chapter N - Reports to Commission; and Chapter O - Commission Billings. A copy of said rules will be on file with the executive director of the Commission at its business offices at 3050 Metro Office Park, Bloomington, Minnesota thirty days prior to any public hearing ordered as a result of this Resolution.

BDC/d

8/9/74

Adopted August 9, 1974

Exhibit B

CERTIFICATE OF COMMISSION'S
AUTHORIZING RESOLUTION

I, Virginia G. Greenman, do hereby certify that I am vice-chairman of the Minnesota State Commission on Cable Communications, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a Resolution adopted at a meeting of the Minnesota State Commission on Cable Communications duly and properly called and held on the nineth day of August, 1974, that a quorum was present at said meeting; that a majority of those members present voted in favor of the Resolution; that said Resolution is set forth in the minutes of said meeting or is incorporated by reference into said minutes and attached thereto as an addendum and has not been rescinded or modified:

> BE IT RESOLVED that Mr. Richard G. Hunegs, Chairman of the Minnesota State Commission on Cable Communications be and he hereby is granted the authority and directed to call a public hearing for the purpose of promulgating rules of the Minnesota State Commission on Cable Communications as well as perform any and all acts incidental thereto, including but without being limited thereto, signing an order for hearing and notice of hearing as well as acting as presiding officer at all hearings.
>
> BE IT FURTHER RESOLVED that the rules to be considered at the public hearing or hearings hereby authorized are described topically as follows: Chapter A - Pratice and Procedure General; Chapter B - Commission Meetings; Chapter C - Rule Making; Chapter D - Rules for Contested Cases; Chapter E - Delegation of Authority; Chapter F - Certificates of Confirmation; Chapter G - Franchising and Franchise Renewal Procedures; Chapter H - Franchise Standards; Chapter I - Transfer of Ownership, Renewal, Termination or Amendment of Franchise; Chapter K - Ownership and Control; Chapter M - Obscenity and Defamation; Chapter N - Reports to Commission; and Chapter O - Commission Billings. A copy of said rules will be on file with the executive director of the Commission at its business offices at 3050 Metro Office Park, Bloomington, Minnesota thirty days prior to any public hearing ordered as a result of this Resolution.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 23 day of August 1974.

Virginia G. Greenman
Vice-Chairman

Janet L. Okenhiro
Attest by one other member

Exhibit C

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE Richard G. Hunegs, Chairman
Minnesota State Commission
on Cable Communications

In the matter of Proposed Rules
Relating to the Minnesota State
Commission on Cable Communications
and the regulation of cable com-
munications

ORDER FOR HEARING

To effectively implement Minnesota Statutes, 1973 Supplement, Sections 238.01-238.16 and Laws 1974, Chapter 506, as Chairman of the Minnesota State Commission on Cable Communications acting pursuant to authority delegated to me by the Commission, I deem it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in this Commission by Minnesota Statutes, 1973 Supplement, Section 238.05, and delegated to me for purposes of ordering a public hearing by Commission Resolution No. 5, adopted at a regular meeting of the Commission on August 9, 1974.

NOW, THEREFORE, IT IS ORDERED this 15th day of August, 1974, that a public hearing on the proposed rules captioned above be held in the State Office Building Auditorium, Saint Paul, Minnesota, on September 27, 1974, commencing at 9:00 A.M. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

Richard G. Hunegs

Richard G. Hunegs
Chairman, Minnesota State
Commission on Cable Communications

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE Richard G. Hunegs, Chairman
Minnesota State Commission
on Cable Communications

In the matter of Proposed Rules
Relating to the Minnesota State
Commission on Cable Communications
and the regulation of cable com-
munications

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to M. S. 1971, Section 15.0412, Subdivision 4, in the above-entitled matter in the auditorium of the State Office Building, Saint Paul, Minnesota, on September 27, 1974, commencing at 9:00 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing.

The Commission proposes to adopt rules relating to the following matters: Chapter A concerns general practice and procedure before the Commission; Chapter B concerns Commission meetings, the conduct of said meetings and the rules relating to the matters to be considered at said meetings; Chapter C concerns the procedure on rule making and is based on Minnesota Statutes 1971, Chapter 15; Chapter D concerns rules for contested cases and the hearing procedure to be followed in hearing contested cases; Chapter E concerns delegations of authority which is authorized by the enabling statute; Chapter F concerns certificates of confirmation and the rules applicable to special, regular and interim certificates of confirmation; Chapter G concerns

franchising and franchise renewal procedures and relates to the process a municipality must undertake before issuing an initial franchise or a renewal franchise; Chapter H concerns franchise standards and contains both the required content of the franchise as well as additional, optional provisions; Chapter I concerns transfer of ownership, renewal, termination or amendment of the franchise and set out required procedures; Chapter K concerns ownership and control and prohibits certain entities from owning a cable communications system; Chapter M concerns obscenity and defamation, defines obscene and defamatory program content, and fixes liability for the transmission of obscene and defamatory material; Chapter N concerns reports to the Commision, requires the cable communications system operator to file certain information with the Commission, and requires that each system furnish the Commission with a correct address; and Chapter O concerns Commission billings, defines gross receipts and requires a 1% payment of gross receipts to the Commission.

The proposed rules may be set out topically as follows:

A. Chapter A - Practice and Procedure General

1. Policy
2. Definitions
3. The Form of Requests for Commission Action
4. Oppositions and Replies
5. Subscriber Complaints - Procedure
6. Proceedings before the Commission
7. Intervention in Commission Proceedings
8. Practice before the Commission
9. Notice to Authorized Representative
10. Censure or Suspension of Persons Appearing before the Commission
11. Form of Papers Filed with the Commission
12. Service of Papers and Proof of Service

13. Withdrawal of Papers

14. Changes in Information Furnished to the Commission

15. Form of Commission Orders

16. Petitions for Reconsideration

17. Ex Parte Communications

18. Computation of Time

19. Commission Officers

20. Variances from Commission Rule or Regulations

B. Chapter B - Commission Meetings

1. Regular Meetings

2. Special Meetings

3. Quorum

4. Voting

5. Open Meetings

6. Agenda

7. Filing of Agenda Matters

8. Staff Discussion Papers

9. Notice of the Agenda

10. Minutes

11. Committees

12. Advisory Committees

13. Parliamentary Procedure

C. Chapter C - Rule Making

1. Commencement of Rule Making Proceedings

2. Notice of Rule Making Proceedings

3. Petitions for Rule Making

4. Action on Petitions

5. Notice

6. Content of Notice

7. Comments and Replies

8. Form of Comments and Replies; Number of Copies

9. Submissions to Attorney General

10. Commission Action; Effective Date

D. Chapter D - Rules for Contested Cases

1. Definitions

2. Hearing Officers

3. Initiating a Contested Case

4. Commencement of Contested Case

5. Answer

6. Right to Counsel

7. Informal Disposition

8. Default

9. Intervention

10. Consolidation

11. Depositions

12. Disqualification

13. Prehearing Conference

14. Notice of Hearing

15. The Hearing

16. The Commission Decision

17. Rehearing

18. Appeal by Commission

19. Fees

20. Rules of Procedure for District Court - Applications to Contested Cases

E. Chapter E - Delegations of Authority

1. General Provisions
2. Authority of Person to Whom Functions are Delegated
3. The Exercise of Delegated Authority
4. Authority Delegated to Chairman
5. Authority Delegated to Executive Director and Counsel

F. Chapter F - Certificates of Confirmation

1. Introduction
2. Special Certificates of Confirmation
3. Interim Certificate of Confirmation
4. Necessity for a Certificate of Confirmation
5. Procedure for Making Application for a Regular Certificate of Confirmation
6. Public Meeting
7. Grant of Certificate
8. Renewal Certificate of Confirmation
9. Transferability of Certificate of Confirmation

G. Chapter G - Franchising and Franchise Renewal Procedures

1. Initial Franchise
2. Renewal Franchise Procedure

H. Chapter H - Franchise Standards

1. Required Contents of Franchises
2. Additional Terms and Conditions Permitted

I. Chapter I - Transfer of Ownership, Renewal, Termination or Amendment of Franchise

1. Requirement of Public Hearing
2. Notice to Commission
3. Transfer of Ownership of a Franchise

4. Renewal

5. Appeals to the Commission

6. Approval of Franchise Amendments

7. Amendments to Franchise Ordinance

J. Chapter K - Ownership and Control

1. Certain Ownership Prohibited

K. Chapter M - Obscenity and Defamation

1. Obscenity

2. Defamation

L. Chapter N - Reports to Commission

1. Operator Required to File Reports with Commission

2. Mailing Address and Telephone Number to be Furnished by Cable Communication Companies

M. Chapter O - Commission Billings

1. Payments to Commission

2. Definition

3. Billings

Copies of the proposed rules will be available thirty days prior to the public hearing herein noticed and may be obtained by mail or at the offices of the Commission on Cable Communications, 3050 Metro Office Park, Suite 301, Bloomington, Minnesota 55420, for a nominal charge. Additional copies will be available at the door for a nominal charge on the date of the hearing.

Richard G. Hunegs

Richard G. Hunegs
Chairman, Minnesota State
Commission on Cable Communications

Exhibit F

STATE OF MINNESOTA

COUNTY OF HENNEPIN

In the matter of Proposed Rules relating to the Minnesota State Commission on Cable Communications and the regulation of Cable Communications

AFFIDAVIT

Richard Neumann, being duly sworn on oath deposes and says:

1) That he is an employee of the Department of Administration of the State of Minnesota serving the Minnesota Cable Commission.

2) That on the 19th day of August, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 19th day of August, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Richard Neumann

Richard Neumann
Accounting Officer
Minnesota Commission on
Cable Communications

Subscribed and sworn to before me
this 19th day of August 1974.

Darla Mae R. Hormann

DARLA MAE R. HORMANN
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Feb. 7, 1981

Exhibit G

STATE OF MINNESOTA

COUNTY OF HENNEPIN

CERTIFICATE

In the matter of Proposed Rules relating to the Minnesota State Commission on Cable Communications and the regulation of Cable Communications

---

I hereby certify that the attached 375 labels + one sheets constitute the complete list of persons, associations, and other interested groups who as of 9:00 o'clock A.M., this 19th day of August, 1974, have requested pursuant to M. S. 1971, Section 15.0412, Subdivision 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Arlen I. Erdahl

By Ceil Dion

Exhibit H

STATE OF MINNESOTA

COUNTY OF HENNEPIN

In the matter of Proposed Rules relating to the Minnesota State Commission on Cable Communications and the regulation of Cable Communications

AFFIDAVIT OF MAILING

Beatrice L. Frankus, being first duly sworn deposes and says:

That on the 21st day of August, 1974, at the City of Bloomington, County of Hennepin, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mails at said City of Bloomington, a true and correct copy thereof, properly enveloped, with postage prepaid, to all municipalities in the State of Minnesota, all persons and associations at the addresses listed on the attached Certificate regarding the Secretary of State, members of the Minnesota Legislature, and other interested individuals.

Further your affiant sayeth not.

Beatrice L. Frankus

Beatrice L. Frankus, Clerk-Typist
Minnesota State Cable Commission

Subscribed and sworn to before me
this 21st day of August, 1974.

Darla Mae R. Hormann

DARLA MAE R. HORMANN
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Feb. 7, 1981

Exhibit E

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE Richard G. Hunegs, Chairman
Minnesota State Commission
on Cable Communications

In the matter of Proposed Rules
Relating to the Minnesota State
Commission on Cable Communications
and the regulation of cable com-
munications

STATEMENT OF NEED

The above captioned rules are not amendments to existing rules of the Minnesota State Commission on Cable Communications. These are the initial rules to be adopted by the Commission.

The need to adopt these rules arises because of the legislative mandate placed on the Commission by Minnesota Statutes, 1973 Supplement, 238.01-238.16 and Laws 1974, Chapter 506, to adopt rules governing the Commission itself and the cable communications industry. The rules are further needed to promote the orderly growth of the cable communications industry in the State of Minnesota, to guide municipalities in the cable communications franchising process and to protect the public interest in the availability of cable communications services.

Richard G. Hunegs
Chairman, Minnesota State
Commission on Cable Communications

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE Richard G. Hunegs, Chairman
Minnesota State Commission
on Cable Communications

In the matter of Proposed Rules Relating to the Minnesota State Commission on Cable Communications and the regulation of cable communications

FINDINGS OF FACT

The above-entitled matter came on for hearing before Richard G. Hunegs, Chairman of the Minnesota State Commission on Cable Communications, acting as hearing officer pursuant to authority delegated by the Commission on the 27th day of September, 1974 at 9:00 A.M. in the State Office Building Auditorium, St. Paul, Minnesota, after proper notice required by M. S. 1971, Section 15.0412, was served on all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, I find the following facts and conclusions regarding the adoption of the above captioned rules:

Chapter A - Practice and Procedure, General

MCCC-A-1 Policy. The rule merely states that the rules should be liberally construed to effectuate the purposes and provisions of the governing statutes, Minnesota Statutes, 1973 Supplement, Sections 238.01 - 238.16 and Laws 1974, Chapter 506. I find that such a broad interpretation is necessary to effectuate the purposes for which the Commission was created.

MCCC-A-2 Definitions. The rule defines certain words and phrases for purposes

of the rules adopted. I find that such definitions are statutory definitions found in the governing statutes and that the Commission is without authority to vary the meanings given by statute. Testimony at the public hearing suggested that certain of the definitions should be altered. I find that such cannot be done consonant with the governing statute.

MCCC-A-3 Requests for Commission Action. This rule prescribes the methods by which a person may petition the Commission for specific action. Without such a procedure enunciated, there would be no authorized method of obtaining relief from the Commission. No testimony heard at the public hearing was in opposition to this rule.

MCCC-A-4 Oppositions and Replies. This rule provides for certain pleadings before the Commission. No testimony heard at the public hearing was in opposition to this rule. Such a rule is necessary to provide for the orderly presentation and disposition of pleadings before the Commission.

MCCC-A-5 Subscriber Complaints. This rule prescribes the action to be taken by the Commission with respect to subscriber complaints. Testimony was heard at the public hearing that the rule as presented therein contained no sanctions and provided an improper procedure for the reception of complaints. The Commission determined to alter the procedure for the Commission receiving and acting upon complaints. Also, the implicit statement that the Commission could take such action with respect to subscriber complaints as was provided for by law was made explicit. A resolution of subscriber complaints is a necessary function of the Commission; Rule MCCC-A-5 provides the requisite framework for that consideration of complaints.

MCCC-A-6 Proceedings Before the Commission. This rule provides for the Commission holding such proceedings, for such purposes, as it may deem proper. No testimony heard at the public hearing was in opposition to this rule.

MCCC-A-7 Intervention in Commission Proceedings. This rule provides for mandatory and permissive intervention in Commission proceedings. No testimony heard at the public hearing was in opposition to this rule. Such a rule is necessary for the orderly

participation of additional parties in Commission proceedings.

MCCC-A-8 Practice Before the Commission. This rule prescribes who may appear before the Commission either in person or in a representative capacity. Although some testimony was heard at the public hearing in opposition to this rule, it is a necessary action that the Commission provide for the method in which parties to a proceeding may be heard.

MCCC-A-9 Notice to Authorized Representatives. This rule provides for the giving of notice to authorized representatives of any party to Commission proceedings. The rule is purely technical and the need for the rule is self-evident. No testimony was heard at the public hearing in opposition to the rule.

MCCC-A-10 Censure or Suspension of Persons Appearing Before the Commission. This rule provides that the Commission may censure or suspend persons from practice before the Commission for stated reasons. Although some testimony at the public hearing was heard in opposition to this rule, it is necessary that the Commission have and exercise some control over the conduct of persons appearing before it.

MCCC-A-11 Form of Papers Filed with the Commission. This rule prescribes the form of papers that are filed with the Commission. No testimony was heard at the public hearing in opposition to the rule. For the sake of uniformity and administrative convenience, the Commission should prescribe the form of papers to be filed with it.

MCCC-A-12 Service of Papers and Proof of Service. This rule prescribes the method of serving official papers on parties to Commission proceedings. Testimony was heard at the public hearing that some provision should be made for the serving of papers on corporations. The Commission adopted the minor modification suggested at the public hearing. It is necessary that provision be made for the service of papers on parties to Commission proceedings and that proof of such service be made.

MCCC-A-13 Withdrawal of Papers. The rule provides that the Commission shall retain a copy of every paper filed with it. No testimony was heard at the public

hearing in opposition to the rule. The conclusion is necessary that the completeness of the Commission's records requires that a copy of every paper filed be retained.

MCCC-A-14 Changes in Information Furnished to the Commission. The rule provides that persons are responsible for providing the Commission with complete and fully accurate information. No testimony was heard at the public hearing in opposition to this rule. It is necessary that the Commission in taking any official action have access to completely accurate information.

MCCC-A-15 Form of Commission Orders. The rule merely provides the form in which Commission orders may be issued. No testimony was heard at the public hearing in opposition to the rule. It is necessary to provide the form in which orders may be issued by the Commission.

MCCC-A-16 Petitions for Reconsideration. The rule prescribes who may petition for a Commission reconsideration and specifies how the petition for reconsideration is to be made. No testimony was heard at the public hearing in opposition to the rule. Provision must be made for the procedural device of requesting a Commission rehearing.

MCCC-A-17 Ex Parte Communications. The rule prohibits ex parte communications by persons involved in on-the-record proceedings before the Commission. The integrity of on-the-record proceedings and the public interest involved therein must be protected. Hence, the prohibition on ex parte communications. No testimony was heard at the public hearing in opposition to the rule.

MCCC-A-18 Computation of Time. The rule provides for the method by which time is to be computed for purposes of these rules when a specific time period is given. No testimony was heard at the public hearing in opposition to the rule. Various sections of the rules provide for periods of time within which to perform prescribed actions; it is necessary that a method of computing the time be also prescribed.

MCCC-A-19 Commission Officers. The rule provides that the officers of the Commission shall be the chairman and the vice-chairman and limits the time the vice-chairman may serve. This rule is necessary for the orderly conduct of the affairs of the Commission.

MCCC-A-20 Variances. The rule provides a procedure for obtaining variances from Commission rules, regulations and standards. Although no testimony was heard at the public hearing substantially in opposition to the concept of the rule, the Commission determined to change the rule by giving the Commission more discretion in the complaints it would hear and more flexibility in disposing of those complaints. Without a variance procedure, a strict application of Commission rules and regulations in all instances could cause undue hardship for cable system operators and retard the development of cable communications in the State of Minnesota; this rule will relieve that possibility.

Chapter B - Commission Meetings

Chapter B provides the procedural rules for the conduct of Commission meetings. The procedure for the conduct of Commission meetings should be clearly detailed for the public. The only comment heard at the public hearing with respect to Chapter B was that MCCC-B-2 should provide notice of special meetings to the public if practicable. The Commission amended MCCC-B-2 to include notice of any such special meeting.

Chapter C - Rule Making

Chapter C fixes the procedure to be followed for the promulgation of future rules of the Commission. While much of Chapter C is dictated by the Administrative Procedure Act, some further substantive rules on the subject matter were felt necessary. Only one witness at the public hearing spoke against one rule of Chapter C, and that statement, was based on an unfounded interpretation of the proposed rule which has been clarified.

Chapter D - Rules for Contested Cases

Chapter D concerns rules for contested cases held in accordance with Minnesota

Statutes 1971, Chapter 15. The enabling act of the Commission requires the Comission to hear contested cases; rules for conducting such proceedings are therefor necessary. The rules adopted are based in large measure on the suggested rules of the Attorney General for contested cases. Some comment was made at the public hearing regarding the specific wording of some of Chapter D and to accommodate such comments, several nonsubstantive changes were made between the rules as proposed and the rules as adopted.

Chapter E - Delegations of Authority

Chapter E sets the parameters for the delegation of specified authority to officers, agents and employees of the Commission as permitted by its enabling legislation. While several witnesses at the public hearing testified against specific portions of Chapter E, the chapter was necessary to define the broad grant of delegatory power contained in the Commission's enabling legislation, Minnesota Statutes, 1973 Supplement, Section 238.04, Subdivision 6.

Chapter F - Certificates of Confirmation

Chapter F concerns the granting of special certificates of confirmation to systems that have grandfathered status under Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivisions 3, 4 and 5, and the granting of regular certificates of confirmation pursuant to Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivision 6. While some testimony was heard at the public hearing in opposition to the rules governing the granting of special certificates pursuant to Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivisions 3, 4 and 5, that testimony was in error, since the language of the proposed rules is taken from the governing statute, Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivision 6, which allows the Commission to grant regular certificates of confirmation to cable communications systems. No procedure for so doing is specified; rules governing the issuance of regular certificates of confirmation are necessary.

Chapter G - Franchising and Franchise Renewal Procedures

Chapter G specifies the procedures to be followed by a municipality in granting a cable communications franchise and in granting renewals of such franchise. At present, there are no uniform procedures that a municipality must follow in granting a franchise. In the past, it was common for the municipality to engage in no prior research or planning prior to issuing a franchise. In fact, it was not at all uncommon for the cable communications company to have its lawyer draft the franchise and then present it to the governing body of the municipality for enactment. Chapter G modifies past practice by ensuring that research and planning and deliberate action will be part of the cable communications franchising process. Testimony was heard at the public hearing relative to the duties of the citizens' advisory body required by MCCC-G-1(c). The Commission determined to modify the proposed rule, based on the testimony heard, to include specified duties for the advisory body in the rules as adopted. The Commission also voted that prescribing franchising procedures was mandated by Laws 1974, Chapter 506, Section 4.

Chapter H - Franchise Standards

Chapter H contains some thirty-two minimum provisions that must be included in all future cable communications franchises. In the past, there was no uniformity in cable communications franchises. Some franchises were quite extensive, affording protection to the municipality and system subscribers, while some franchises were no more than verbal permission to use the streets of the municipality to string cable for construction of a system. The public interest requires that some uniformity of protection and service levels be written into future cable communications franchises and that duty is placed on the Commission pursuant to Laws 1974, Chapter 506, Section 4.

Chapter I - Transfer of Ownership, Renewal, or Amendment of Franchise

Chapter I concerns the requirements of the Commission with respect to transfers of ownership, franchise renewals and franchise amendments. Rules covering this subject matter are necessary so that the Commission is informed about, and, may regulate,

in the public interest, the transfer of ownership of cable systems, the renewal of franchises and the amendment of franchises. Testimony was heard at the public hearing that the proposed provision in MCCC-I-3, which provided that no value could be assigned to a franchise for purposes of transfer of ownership, would be inequitable. The Commission altered MCCC-I-3 by dropping the provision that when only a franchise is transferred no value may be assigned to the franchise.

Chapter K - Ownership and Control

Chapter K provides that certain persons or corporations shall not hold any legal or equitable interest in a cable communications system under certain circumstances and provides an exception for existing cable communications companies. Based on the testimony heard at the public hearing, it is concluded that undue concentration of the ownership of programming media is not in the public interest and that certain newspaper and radio and broadcast television media should not be permitted to own, operate or control a cable communications system. The Commission is required by Minnesota Statutes, 1973 Supplement, Section 238.05, Subdivision 11, to establish standards pertaining to ownership and control of cable communications companies.

Chapter M - Obscenity and Defamation

Chapter M pertains to liability for obscene and defamatory programming broadcast over a cable communications system. Based on the testimony heard at the public hearing, it was determined that the rule should exempt cable communications systems and their employees from liability because, pursuant to Minnesota Statutes, 1973 Supplement, Section 238.11, Subdivision 2, they have no control over the content of the access or leased channel programming. Moreover, Minnesota Statutes, 1973 Supplement, Section 238.05, Subdivision 13 requires the Commission to establish rules relative to liability for defamation and obscenity.

Chapter N - Reports to Commission

Chapter N pertains to annual reports which are required to be filed with the Commission by system operators and the requirement that each cable communications company

file with the Commission its correct address and telephone number. Although some opposition to Chapter N was heard at the public hearing, it is concluded that annual reports must be made to the Commission if the Commission is to have the information necessary to perform its regulatory function. The extent to which the Commission can require the reporting of financial information will be resolved by the courts in a pending lawsuit, State of Minnesota vs. Minnesota All-Channel, Inc.

Chapter O - Commission Billings

Chapter O requires each cable communications company to pay to the Commission, for deposit in the general fund, 1% of its gross annual subscriber receipts received for regular programming. Such billings are mandated by Minnesota Statutes, 1973 Supplement, Section 238.07, and are necessary if the State of Minnesota is to be partially reimbursed for the benefit the Commission provides to cable communications companies. Such benefit must be the measure of any billing; the United States Supreme Court has so held in National Cable Television Association vs. Federal Communications Commission.

Conclusion

On the basis of all the facts heretofore detailed, I find that the rules and regulations heretofore detailed and approved by the Commission at its meeting of November 22, 1974 should be adopted because they provide for reasonable requirements for the administration and enforcement of regulations relating to the conduct of the affairs of the Commission and the cable communications business in the State of Minnesota, and I find that these rules are necessary to reinforce and supervise this effort.

December 6, 1974
Date

Richard G. Hunegs
Chairman, Minnesota State
Commission on Cable Communications

Addendum "B"

RESOLUTION NO. 7

A resolution relating to the adoption
of rules concerning cable communications

BE IT RESOLVED, that the rules relating to cable communications be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes, 1973 Supplement, Section 238.06, subdivision 1 and that Richard G. Hunegs, the chairman of the Minnesota State Commission on Cable Communications, be and hereby is authorized to sign an order adopting those rules.

ADOPTED ON NOVEMBER 22, 1974

CERTIFICATE OF COMMISSION'S
AUTHORIZING RESOLUTION

I, Virginia G. Greenman, do hereby certify that I am vice-chairman of the Minnesota State Commission on Cable Communications, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a Resolution adopted at a meeting of the Minnesota State Commission on Cable Communications duly and properly called and held on the twenty-second day of November, 1974, that a quorum was present at said meeting; that a majority of those members present voted in favor of the Resolution; that said Resolution is set forth in the minutes of said meeting or is incorporated by reference into said minutes and attached thereto as an addendum and has not been rescinded or modified:

> BE IT RESOLVED, that the rules relating to cable communications be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes, 1973 Supplement, Section 238.06, subdivision 1 and that Richard G. Hunegs, the chairman of the Minnesota State Commission on Cable Communications, be and hereby is authorized to sign an order adopting those rules.

IN WITNESS WHEREOF, I have hereunto subscribed my name this fourth day of December 1974.

Virginia G. Greenman
Vice-Chairman

Theodore F. Mega
Attest by one other member

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE Richard G. Hunegs, Chairman
Minnesota State Commission
on Cable Communications

In the matter of the Proposed
Adoption of Rules of the Minnesota
Commission on Cable Communications
Governing the Commission and stand-
ards of practice and operation of
cable communications companies and
municipalities

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Chairman of the Minnesota Commission on Cable Communications acting as hearing officer pursuant to delegated authority on the 27th day of September, 1974, at 9:00 A.M. in the State Office Building Auditorium, St. Paul, Minnesota, after proper notice required by M. S. 1971, Section 15.0412, was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Chapter A - Practice and Procedure, General, Chapter B - Commission Meetings, Chapter C - Rule Making, Chapter D - Rules for Contested Cases, Chapter E - Delegations of Authority, Chapter F - Certificates of Confirmation, Chapter G - Franchising and Franchise Renewal Procedures, Chapter H - Franchise Standards, Chapter I - Transfer of Ownership, Renewal, or Amendment of Franchise, Chapter K - Ownership and Control, Chapter M - Obscenity and

Defamation, Chapter N - Reports to Commission, and Chapter O - Commission Billings, are adopted this 6th day of December, 1974, pursuant to authority vested in the Commission by Minnesota Statutes, 1973 Supplement, Section 238.06, and delegated to me by Resolution No. 7 of the Commission adopted by the Commission at a regular meeting held November 22, 1974.

Richard G. Hunegs
Chairman, Minnesota State
Commission on Cable Communications

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Bruce D. Campbell, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Bruce D Campbell
Special Assistant Attorney General

Dated: December 6

12/23/74 Cable Commission Rules — Problems —

p.

✓10 Exceeds legislation — permits have too much power

✓ 11, 56, 123 Tax statute favors permit — w/ allow value on fr. or cert.

✓11 channels for pub. use — taking w/o comp.

✓12 Free air time

✓14 1B(1) of defns. vague

46 14da notice! why w/30? Changed to 30

✓47 D · 15 (c)(1) — vague std of ev. statutory

✓48 D - 15 (c)(2) + (c)(4) — mandatory offer of ev + notice of facts

✓50 F · 1+2 A+B · why vote on in conflict → statutorily presc. matter (grandfather clause)

✓54 F 2(b) 2(c) F(3) — discr. against operators in comm. action

F(2)(a)(4) operation eg 5/24/73 stat +

✓55 D/P violation F·4 — if w/ meet req'ts can be put in F·4 w/o hearing etc.

* = current suit going obj. w/ relevant to rule

✓55 F 2 + F 3 say after info filed, Cert/Conf granted but F-7 says "taken into consideration" + comm has discr. in gr. req. of cert.

✓60 6.2 "shall" means "may" but w/in 30 days if @ all.

changed to meet obj. ✓65 66 G - 1 - F. vague - should allow appl. before award

✓66, 86 G · 1 · b - no std for det. bounds of term. search. P (vague)

✓69, 90 G · 1 · c - consult w/ comm - vague - weak (music)

✓78 G · 1 (p. 3) "north" is ambiguous

✓96 H (1) + (2) - taking w/o d/p w/ taking - stat. req.

stat.

nothing

~~97~~ I (1)+(2) - Req'd contents of franchises - (taking? Proper?

~~100~~ J - 1(2) - forced neg w/ munic. interfere w/ free ct. 40K stat. req.

~~101~~ J-(1)(r)(5) - "unreasonable" dec. by munic. - vague

~~102~~ H(1)(z) - may discrim against cc if w/ req't of all R/O/W's

~~103~~ H(1)(bb) - adv. body - vague + can't make binding

~~121~~ changed by defn. H(1)(z)(a) - + (J)(2)(a) - vague - "non-voice return comm" →

~~125~~ K(1) - no need, as FCC governs cross-ownership

FCC not enforce much ~~133~~ common interest opposition to cross-media ownerships (legal?)

~~138~~ O-(1) Tax overage - use May + Nov, w/ Nov. + Dec. to get ave., as Winter is high season.

changed

~~139~~ Ch. N - obj. generally → need reports to regulate →

~~139~~ Incon. in % computation O(1) + O(2)

changed -

(74)

1. Munic. - enabling stat. (738) sets up this way —
   * - value rule changed

2. Taking w/o comp - FCC requires gov't access channel

3. Free air time - req. by FCC

4. Vagueness - defns from ch. 568 -
   only charge - gross annual receipts - makes stat specific
   accord w/ FCC

RULES

of the

MINNESOTA
STATE COMMISSION
on
CABLE COMMUNICATIONS

including

PROCEDURES
For Franchising

and

STANDARDS
Of Practice and Operation

PROPOSED

CHAPTER A - PRACTICE AND PROCEDURE GENERAL

MCCC-A-1 Policy

These Rules shall be liberally construed to effectuate the purposes and provisions of Minnesota Statutes, 1973 Supplement, Sections 238.01, 238.16 and Laws 1974, Chapter 506.

MCCC-A-2 Definitions

As used in these Rules the following words shall have the meanings given them herein unless a different meaning clearly appears in the text

(a) "Cable communications company" means any person owning, controlling, operating, managing or leasing a cable communications system within the state.

(b) "Cable communications system" means any system which operates for hire the service of receiving and amplifying programs broadcast by one or more television or radio stations and any other programs originated by a cable communications company or by another party, and distributing such programs by wire, cable, microwave or other means, whether such means are owned or leased to persons who subscribe to such service. Such definition does not include:

(1) Any system which serves fewer than 50 subscribers;

(2) Any master antenna television system;

(3) Any specialized closed-circuit system which does not use the public rights-of-way for the construction of its physical plant; and

(4) Any translator system which receives and rebroadcasts over-the-air signals.

(c) "Commission" means the commission on cable communications created by the provisions of Minnesota Statutes, 1973 Supplement, Section 238.04.

(d) "Franchise" means any authorization granted by a municipality in the form of a franchise, privilege, permit, license or other municipal authorization to construct,

PROPOSED

operate, maintain, or manage a cable communications system in any municipality.

(e) "Gross annual receipts" means all compensation received directly or indirectly by a cable communications company from its operations within the state, limited to sums received from subscribers in payment for programs received.

Gross annual receipts shall not include any taxes or services furnished by a cable communications company imposed directly on any subscriber or user by any municipality, state, or other governmental unit and collected by the company for such governmental unit.

(f) "Head end" means the electronic control center of a cable communications system, which includes antennas, preamplifiers, frequency converters, demodulators, modulators and other related equipment which receives, amplifies, filters and converts incoming signals to cable system channels.

(g) "Master antenna television system" means any system which serves only the residents of one or more apartment dwellings under common ownership, control or management and any commercial establishment located on the premises of such apartment house and which transmits only signals broadcast over the air by stations which may be normally viewed or heard locally without objectionable interference, and which does not provide any additional service over its facilities other than closed-circuit security viewing services.

(h) "Municipality" means any organized town, city or county with respect to the unorganized territory within its boundaries.

(i) "Person" means any individual, trustee, partnership, association, corporation or other legal entity.

(j) "Program" means any broadcast-type program, signal, message, graphics, data or communication content service.

(k) "State" means the State of Minnesota.

(l) "State agency" means any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of the state.

PROPOSED

MCCC-A-3 The Form of Requests for Commission Action

Any motion, petition, application or other request for Commission action shall set forth clearly and concisely the facts relied upon, the relief sought, any statutory provisions and/or other legal authority pursuant to which the request is filed and under which relief is sought, and the interest of the person submitting the request.

MCCC-A-4 Oppositions and Replies

(a) Except as otherwise provided in these Rules or by Commission order, opposition to any motion, petition, application or other request shall be filed within 20 days after the original pleading is filed. A copy of the opposition shall be served on the person who filed the original request for Commission action. The person who filed the original request for Commission action may reply to the opposing party within ten days after the time for filing opposition has expired and a copy thereof shall be filed with the Commission. The reply shall be limited to matters raised in the opposition, and the response to all such matters shall be set forth in a single pleading; separate replies to individual points of opposition shall not be filed. A copy of the reply shall be served on any person who has served and filed an opposition to the original request for Commission action. Additional pleadings may be filed only if specifically authorized by the Commission.

(b) At its discretion, the Commission may rule upon motions for continuances and extensions of time, requests for permission to file pleadings in excess of the length prescribed in these Rules and requests for temporary relief, without waiting for the filing of opposition or replies.

MCCC-A-5 Subscriber Complaints - Procedure

(a) The following is the sequence the Commission requires as a condition for the Commission taking action on a subscriber complaint. The complainant must have directed the complaint to the cable communications company concerned. The cable communications company shall then have had the period of time to rectify the matter complained of as provided for in the franchise as required by Chapter H of these Rules, provided that a response to the complaint shall have been made by the cable communications company

PROPOSED

within 24 hours of receipt of the complaint by the company. If the complainant was not satisfied with the action taken by the company to rectify the complaint within the time period specified, the complainant must then have filed a written complaint with the governing body of the municipality concerned.

The company must provide the governing body or its delegate with a statement of the action that has been taken to resolve the complaint and/or to preclude any recurrence of the complaint. The governing body or its delegate shall cooperate with the company in rectifying the complaint.

If, after a reasonable time, which shall depend on the nature of the complaint and the provisions of the franchise, the complainant, the governing body of the municipality or its delegate and the company, were unable to resolve the complaint, the governing body of the municipality shall have filed the subscriber complaint together with a summary of the actions taken by the parties to resolve the complaint with the Commission. Although the Commission will make every effort to conciliate the dispute, the primary responsibility for resolving the subscriber complaint remains with the parties directly involved.

(b) Where numerous unresolved complaints are referred to the Commission, or where it appears that reasonable attempts to resolve the complaints have not been made, the Commission may make further inquiry, which may be formal or informal, and which may include a Commission hearing or oral argument, or both.

MCCC-A-6 Proceedings Before the Commission

The Commission may, on its own motion or on petition of any interested party, hold such proceedings as it may deem necessary in connection with any matter which it has power to investigate under the law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations. Procedures to be followed by the Commission shall, unless specifically prescribed in these Rules or the Minnesota Administrative Procedures Act, be such as in the opinion of the Commission will best serve the purposes of such proceedings.

PROPOSED

MCCC-A-7 Intervention in Commission Proceedings

Intervention in Commission proceedings may be made as a matter of right or upon permission of the Commission, as hereinafter specified.

(a) The following persons may intervene as of right in Commission proceedings by filing a notice of intervention identifying the proceeding and stating, briefly, the position of the intervenor with respect to the matter in question:

(1) The Federal Communications Commission; or

(2) Any municipality of the State of Minnesota whose interest is directly affected by the matter in question.

(b) Upon petition, the Commission may authorize intervention in any proceeding by any person who demonstrates a substantial interest in the subject matter of the proceeding.

(c) Any person who intervenes or who is permitted to intervene in any proceeding in accordance with paragraphs (a) and (b) of this section shall be deemed a party to said proceeding. Intervention may be permitted upon such reasonable terms and conditions as the Commission may prescribe.

MCCC-A-8 Practice Before the Commission

(a) Any party to a Commission proceeding may be heard in person or through any authorized representative.

(b) Any person transacting business with the Commission in a representative capacity may be required to show his credentials to act in such capacity in a form satisfactory to the Commission which may include a power of attorney.

MCCC-A-9 Notice to Authorized Representatives

With respect to any matter pending before the Commission in which an authorized representative has appeared for, submitted a document on behalf of, or been otherwise designated to represent any person, any Commission notice, order or other written communication pertaining to that matter will be communicated to the authorized representative, or to one of such authorized representatives if more than one is designated.

PROPOSED

If pursuant to law, a cable communications company has designated an agent for receipt of process within the State of Minnesota, that person shall receive the appropriate written communication from the Commission. If direct communication with a person so represented is appropriate, a copy of such communication will be mailed to the authorized representative.

MCCC-A-10 Censure or Suspension of Persons Appearing Before the Commission

(a) The Commission may censure or suspend from practice before the Commission any person who has practiced, is practicing or is holding himself out as entitled to practice before it, if it finds that such person:

(1) Is lacking in character or professional integrity; and/or

(2) Has displayed toward the Commission or any person authorized to act by it, conduct which, if displayed toward any court of the State, would be cause for censure, suspension or disbarment.

(b) Before any person shall be censured or suspended by the Commission, charges shall be preferred by the Commission against said person and he shall be afforded an opportunity to be heard thereon.

MCCC-A-11 Form of Papers Filed with the Commission

(a) Except as hereinafter provided, all papers filed with the Commission shall, unless otherwise specifically provided, be on paper 8½ by 11 inches, with a left-hand margin not less than 1½ inches wide. This requirement shall not apply to original documents, or admissible copies thereof, offered as exhibits or to specially prepared exhibits. Papers may be typewritten and mechanically reproduced, or printed in 10-point or 12-point type. Carbon copies shall not be filed. All typewritten papers shall be double-spaced, except that long quotations shall be single-spaced and indented. All copies must be clearly legible. This Rule shall not apply to correspondence or other written communication of an informal nature.

(b) Except as otherwise specifically provided by order, an original and a duplicate of all papers shall be filed.

PROPOSED

(c) The original of all pleadings shall be signed by either the filing party or by at least one authorized representative in his individual name, whose address shall be stated. The signature shall be preceded by a statement that the signer has read the document, that to the best of his knowledge, information and belief the facts asserted therein are true and correct, and that the pleading is not interposed for purposes of delay.

MCCC-A-12 Service of Papers and Proof of Service

(a) Where any person is required by statute or by the provisions of these Rules to serve any paper, service shall be made in accordance with the provisions of this section.

(b) Service shall be made on or before the day on which the paper is filed.

(c) Papers may be served upon a party, his authorized representative or other duly constituted agent by delivery of a copy or by mailing a copy to the last known address. When a party is represented by an authorized representative of record, service shall be made upon such authorized representative.

(d) Delivery of a paper pursuant to this section means handing a copy thereof to the party, his authorized representative or other duly constituted agent; or leaving it with the clerk or other person in charge of the office of the person being served; or, if there is no one in charge of such office, by leaving it in a conspicuous place therein; or, if such office is closed or the person to be served has no office, by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(e) Service by mail is complete upon mailing. Such mailing shall be by first class mail. Whenever a period of time prescribed by law or by these Rules is measured from the service of a paper and service is by mail, three days shall be added to the prescribed period.

(f) Proof of service shall be filed with the Commission. The proof of service shall show the time and manner of service, and may be by written acknowledgment of service, by

PROPOSED

certificate of the person effecting the service or by other proof satisfactory to the Commission. The Commission may allow the proof to be amended or supplied at any time, unless to do so would result in material prejudice to any person.

MCCC-A-13 Withdrawal of Papers

The Commission will retain at least one copy of every paper presented to it for filing. The granting of a request to dismiss or withdraw a pleading does not authorize the removal of such pleading from the Commission's records.

MCCC-A-14 Changes in Information Furnished to the Commission

Any person requesting Commission action is responsible for the continuing accuracy and completeness of information furnished in a pending request for such action or in Commission proceedings involving any pending request. Whenever the information furnished in a pending request is no longer substantially accurate and complete in all significant respects, the person seeking Commission action shall as promptly as possible, and in any event within 30 days, unless good cause is shown, amend his request so as to furnish such additional or corrected information as may be appropriate. Whenever an event of decisional significance with respect to a pending request for Commission action occurs, the party seeking such action shall as promptly as possible, and in any event within 30 days, unless good cause is shown, submit a statement to the Commission furnishing such additional or corrected information as may be appropriate and shall serve the same upon all parties of record. Where the matter is before any court for review, the amendments and statements referred to above shall also be served upon the Commission's counsel of record in the court proceeding. For the purposes of this section, a request for Commission action is "pending" before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the request is no longer subject to reconsideration by the Commission or to review by any court.

MCCC-A-15 Form of Commission Orders

Orders may be issued in any form (e.g., as captioned orders, letters, telegrams) and may, if appropriate, be issued orally. Orders issued orally shall be confirmed

PROPOSED

promptly in writing. All written orders will indicate the date on which they are released by the Commission. All written orders will be available for public inspection at the Commission's offices.

MCCC-A-16 Petitions for Reconsideration

(a) Any party aggrieved by a final Commission order may file a petition for reconsideration of said order. For purposes of this section, "final Commission order" shall include final orders made on behalf of the Commission pursuant to the authority delegated in these Rules.

(b) The petition for reconsideration shall cite the findings of fact and/or conclusions of law which the petitioner believes to be erroneous and shall state with particularity the respects in which the petitioner believes such findings and conclusions are in error and should be changed. The petition may request that additional findings of fact and conclusions of law be made.

(c) The petition for reconsideration shall be filed within 20 days from the date of release of the challenged order. The petition shall be served upon all parties to the proceeding.

(d) Oppositions to a petition for reconsideration shall not be filed, unless the Commission otherwise orders.

(e) If the Commission grants the petition for reconsideration in whole or in part, it may, in its order, rule on the merits of the petition. In the alternative, the Commission may, in its order granting the petition, order such further procedure as may be useful to it in reaching a decision on the merits of the petition. In the latter event, the Commission's ruling on the merits will be deferred pending completion of such procedure.

(f) No evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, which is not merely cumulative, corroborative, contradictory, or impeaching, or directed to collateral matters and which with the exercise of reasonable diligence could not have been discovered and produced at the time of taking of such evidence, or evidence which the Commission believes should have been taken in the original proceeding shall be taken on any rehearing ordered pursuant to the provisions of this section.

PROPOSED

(g) The Commission may, on its own motion, set aside any order within 20 days after release of the order.

MCCC-A-17 Ex Parte Communications

In order to avoid all possibilities of prejudice, real or apparent, to the public interest and to persons involved in proceedings pending before the Commission, no person who is a party, witness or interceder in any on-the-record proceeding, nor any representative of any such person, shall submit ex parte off-the-record communications to any member of the Commission or to any employee of the Commission regarding any matter at issue in such on-the-record proceeding, except as authorized by law; and no Commissioner nor any employee shall request or entertain any such ex parte, off-the-record communications. For the purposes of this Rule, the term "on-the-record proceeding" means a proceeding required by statute, constitution or published Commission rule, regulation or order to be decided on the basis of the record of a Commission hearing; the term "interceder" shall include any person outside the Commission or other agency.

MCCC-A-18 Computation of Time

(a) In computing any period of time prescribed or allowed by these Rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. For any time period of 10 days or less, Saturdays, Sundays or legal holidays shall not be included in computing the period of time.

(b) All petitions, pleadings, or other documents filed with the Commission must be tendered for filing in complete form during the Commission's normal business hours.

MCCC-A-19 Commission Officers

(a) The officers of the Commission are the chairman and vice-chairman.

(1) The chairman of the Commission shall be designated by the Governor from among the membership of the Commission and he shall be the chief executive officer of the Commission.

PROPOSED

(2) The vice-chairman of the Commission shall be elected by a majority of all Commission members at a regular meeting of the Commission for a term of one year. No member elected to the office of vice-chairman may serve in that capacity more than two full terms consecutively. It shall be the duty of the vice-chairman to discharge all duties of the chairman during the absence or disability of the chairman.

(b) Upon a vacancy in the office of chairman of the Commission, the vice-chairman shall sit as chairman until such time as the Governor designates a new chairman. Upon a vacancy in the office of vice-chairman, a special election shall be held at the next regular meeting of the Commission.

MCCC-A-20 Variances

The Commission may grant a variance from any of its rules, regulations or standards, except as prohibited by law, to promote the public interest, to avoid undue hardship and to promote the effective and reasonable application of its rules, regulations or standards relating to cable communications. Any person may petition the Commission for a variance from a rule, regulation or standard. The petition shall set forth the text of the rule, regulation or standard from which a variance is sought, the specific variance requested, and all facts, views, arguments and data deemed to support the granting of a variance. The petitioner shall cause to be published once each week for two successive weeks in a newspaper of general circulation in the municipality in which the system for which the variance is requested is located, a concise statement of the variance sought and the time, date and place of the Commission meeting at which the variance is to be considered. Any interested person may file with the Commission a petition in opposition to the granting of the variance. Any such petition shall state with particularity the reasons why the variance should not be granted. The Commission may hear testimony from all interested persons concerning the granting of a variance. If the granting of a variance is substantially

PROPOSED

contested, the Commission may deem the matter a contested case to which the Commission is not a party for disposition under Chapter D of these Rules. A variance shall be granted if, upon good cause shown, there is a finding that the granting of the variance is necessary or proper to avoid undue hardship on the petitioner and to promote the development and utilization of cable communications in the State of Minnesota. A variance which differs from that requested may be granted and it may be of a specific limited duration.

PROPOSED

CHAPTER B - COMMISSION MEETINGS

MCCC-B-1 Regular Meetings

Regular meetings shall be held on the second Friday in each odd numbered month and on the second Saturday in each even numbered month. The time and place of each regular meeting shall be designated by the chairman of the Commission, who shall require the executive director of the Commission to give written notice of the time and place of each meeting to all members of the Commission not less than five days prior to any regular meeting. The chairman of the Commission may direct that any regular meeting be postponed or advanced and require the executive director to give written notice of the time and place of the meeting to all Commission members not less than five days prior to the regular date if postponed. The executive director shall give notice of the time and place of a regular, advanced or postponed meeting to the public at such time in advance thereof and in such form as under all the attendant circumstances is reasonable, provided that the executive director shall at least notify, three days in advance of any regular, advanced or postponed meeting, those members of the public who have caused their names, addresses and telephone numbers to be placed on file with the executive director of the Commission for purposes of such notice.

PROPOSED

MCCC-B-2 Special Meetings

The chairman of the Commission may call a special meeting of the Commission when, in his opinion, a meeting is necessary or desirable. The chairman shall call a special Commission meeting upon receipt of a written request, therefor, from any two members of the Commission. The executive director shall give as much notice as possible to all Commission members prior to any special meeting, which notice shall state the time, place and subject matter of the meeting. The executive director shall give such notice of the special meeting to the public as is reasonable under all the attendant circumstances.

MCCC-B-3 Quorum

A majority of the members of the Commission shall constitute a quorum, and a quorum must be present for the transaction of business.

MCCC-B-4 Voting

The affirmative vote of a majority of the quorum present shall be necessary to make any decision. All members present, including the chairman, shall vote or abstain on every matter presented for decision. No action or decision of the Commission shall be finally determined by an equally divided vote of the Commission members or by a vote of less than three Commission members, but shall either be placed on the agenda of the next regular meeting or considered at a special meeting instead.

MCCC-B-5 Open Meetings

All regular and special meetings of the Commission, other than administrative meetings not affecting the public interest at which no public business is transacted, shall be open to the public, and all decisions of the Commission shall be made at such meetings, except the quasi-judicial deliberations in contested case proceedings before the Commission. All persons in attendance at a regular or special meeting shall be given opportunity to comment on any subject under discussion at the discretion of the presiding chairman.

MCCC-B-6 Agenda

A proposed agenda of business to be conducted shall be prepared for all regular meetings of the Commission. Except when the exigencies of time and circumstances warrant, an agenda shall be prepared for all special meetings as far in advance of the special meeting as possible. The agenda shall include a list of all matters to be considered at the meeting. The agenda, may be amended or modified by the Commission at any time.

PROPOSED

Unless the exigencies of time and circumstances warrant otherwise, the agenda shall be available for public inspection at the offices of the Commission at least three days prior to a regular meeting and shall be made available at the meeting place. The agenda for a special meeting shall be made available for public inspection at the offices of the Commission as far in advance of the special meeting as is reasonable.

MCCC-B-7 Filing of Agenda Matters

Except when the Commission in its discretion determines otherwise, no matter shall be considered at a regular Commission meeting unless it has been placed on the agenda and all relevant public information has been made available for public inspection at the offices of the Commission, at least three days prior to such regular meeting. Public information regarding matters to be considered at a special meeting shall be made available for public inspection at the meeting place prior to the meeting and as far in advance of a special meeting as is reasonable at the office of the Commission.

MCCC-B-8 Staff Discussion Papers

Papers prepared by the Commission staff for purposes of discussion will be distributed as follows:

(a) Copies made ready in due time will be sent to members of the Commission by mail; copies that cannot be made ready for mailing in due time will be presented to members at the place of a meeting prior to discussion.

(b) A sufficient number of copies of such papers as determined by the executive director of the Commission, based on average meeting attendance and/or requests, shall be put at a convenient place or places for interested persons in attendance at meetings.

(c) All copies will be clearly designated for discussion purposes only in order to distinguish them from materials intended for statutory public hearings.

PROPOSED

MCCC-B-9 Notice of the Agenda

The executive director shall mail a copy of the agenda to every member of the Commission and to those persons whom the executive director deems appropriate in the circumstances, at least five days prior to the meeting for which the agenda has been prepared.

MCCC-B-10 Minutes

The Commission shall keep minutes of all meetings, including a record of all votes of individual members.

MCCC-B-11 Committees

The Commission may from time to time establish committees of Commission members as it may deem necessary and desirable to facilitate its work. All committee recommendations shall be duly submitted to the Commission for appropriate action. All committees shall be appointed by the chairman subject to the approval of the Commission.

MCCC-B-12 Advisory Committees

The Commission may from time to time establish committees advisory to the Commission on any subject matter within the scope of the Commission's duties. All such committees shall be appointed by the chairman of the Commission subject to the approval of the members of the Commission. A member of the Commission designated by the chairman of the Commission shall preside over the meetings of each such advisory committee, provided, however, that the chairman of the Commission may delegate to the executive director of the Commission the responsibility to select a member of the Commission staff to preside over the meetings of any such advisory committee.

MCCC-B-13 Parliamentary Procedure

The Commission, in its procedure, shall follow generally recognized principles of parliamentary procedure. In the event of a parliamentary dispute, the applicable provisions of Roberts Rules of Order shall be the governing authority.

PROPOSED

CHAPTER C - RULE MAKING

MCCC-C-1 Commencement of Rule Making Proceedings

Rule making proceedings are commenced by the Commission either on its own motion or on the basis of a petition for rule making.

MCCC-C-2 Notice of Rule Making Proceedings

Before any rules are approved by the Commission for a statutory public hearing, there shall be reasonable notice and a reasonable opportunity for the public to be heard with respect to the subject matter of the proposed rules.

MCCC-C-3 Petitions for Rule Making

(a) Any interested person may petition for the adoption, amendment or repeal of a rule.

(b) The petition shall set forth the text or substance of the proposed rule or amendment, or rule proposed to be repealed, together with all facts, views, arguments and data deemed to support the action requested, and shall indicate how the interests of the petitioner will be affected.

MCCC-C-4 Action on Petitions

If the Commission determines that the petition discloses sufficient reasons in support of the action requested to justify a public hearing, and if notice and public proceedings thereon are required by Minnesota Statutes, Chapter 15, or deemed desirable by the Commission, an appropriate notice of a public hearing will be issued. In those cases where notice and public proceedings thereon are not required, the Commission may issue a final order adopting, amending or repealing a rule or rules. In all other cases, the petitioner will be notified of the Commission's action and the grounds therefor.

MCCC-C-5 Notice

Except for rules which relate only to the internal management of the Commission and which do not directly affect the rights of or the procedure available to the public, prior notice of proposed rule making will be given in accordance with Minnesota Statutes, Section 15.0412, Subdivision 4, at least 30 days prior to the holding of a public hearing required by law. Notice of proposed rule making will be given by United States mail to representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose. Copies of the notice also may be released by the

PROPOSED

Commission, and a copy will be available to interested persons at the Commission's offices.

MCCC-C-6 Content of Notice

A notice of the proposed adoption, amendment or repeal of a rule shall include the following:

(a) Reference to the authority under which the adoption, amendment or repeal of a rule is proposed.

(b) Either (1) the express terms of the proposed rule or, (2) a description of the substance of the proposed rule and the subjects and issues involved and a reference to where the express terms may be obtained.

(c) A title designed to identify the proceeding.

(d) A statement of the time for filing comments and replies thereto.

(e) A statement of the time, nature and place of any public rule making proceeding to be held.

MCCC-C-7 Comments and Replies

(a) After notice of proposed rule making is issued, the Commission will afford interested persons an opportunity to participate in the rule making proceedings through submission of written data, views or arguments. Any person may testify orally at the statutory public hearing.

(b) Twenty days will be provided for submission of comments in support of or in opposition to proposed rules, and the time provided shall be specified in the notice of proposed rule making.

(c) Ten days may be provided for filing comments in reply to the original comments, and the time so provided may be specified in the notice of proposed rule making or in a subsequent notice.

(d) No additional comments may be filed unless specifically requested or authorized by the Commission.

MCCC-C-8 Form of Comments and Replies; Number of Copies

Comments, replies and other documents filed in a rule making proceeding shall conform

PROPOSED

to the requirements of Rule MCCC-A-11 of these Rules.

MCCC-C-9 Submissions to Attorney General

Every rule proposed by the Commission, before being adopted, shall be based on a showing of need for the rule and shall be submitted as to form and legality, with reasons therefor, to the Attorney General, who, within 20 days, shall either approve or disapprove the rule. If he approves the rule, he shall promptly file it in the office of the Secretary of State. If he disapproves the rule, he shall state in writing to the Commission his reasons therefor, and the rule shall not be filed in the office of the Secretary of State, nor published. If he fails to approve or disapprove any rule within the 20-day period the Commission may file the rule in the office of the Secretary of State and publish the same.

MCCC-C-10 Commission Action; Effective Date

The Commission action as to any rule shall be effective and the rule shall have the force and effect of law upon its further filing in the office of the Commissioner of Administration unless a later date is specified in an order accompanying the rule.

PROPOSED

CHAPTER D - RULES FOR CONTESTED CASES

MCCC-D-1 Definitions

(a) "Commission" means the Commission on Cable Communications created by the provisions of Minnesota Statutes, 1973 Supplement, Section 238.04, Subdivision 1.

(b) "Contested case" means a proceeding before the Commission in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after a Commission hearing.

(c) "Party" means any person whose legal rights, duties or privileges may be determined in a contested case. The term "party" shall include the Commission, except when the Commission participates in the contested case in a neutral or quasi-judicial capacity only.

(d) "Person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit, or agency, other than a court of law.

(e) "Hearing officer" means the person or persons appointed by the Commission pursuant to MCCC-D-2 hereof, to hear and determine the contested case.

(f) "Initiation" means the application, complaint or Commission order providing for or requesting commencement of a contested case.

(g) "Commencement" means the beginning of a contested case before the Commission.

MCCC-D-2 Hearing Officers

(a) The Commission shall appoint a hearing officer before commencing a contested case.

(b) Qualifications:

(1) Cases to which the Commission is a party. In cases to which the Commission is a party, the hearing officer shall not at the time of appointment be employed as a member of the staff of the Commission nor on retainer to the Commission. He shall be an attorney at law unless an attorney at law is not obtainable or unless some other individual is agreed upon by all

PROPOSED

parties. After appointment the hearing officer shall be considered an employee of the Commission for the sole purpose of (1) compensation, if any, and (2) authorization to conduct the hearing and decide the issues. In all other respects he shall be independent of the Commission. All appointments hereunder shall be consistent with the purpose of this Rule, which is to secure as objective and impartial a decision-maker as is legally and financially feasible.

(2) Cases to which the Commission is not a party. In cases to which the Commission is not a party, the Commission may appoint any person, including an employee of the Commission or a member or members thereof, as the hearing officer.

(c) Authority of hearing officer:

(1) Cases to which the Commission is a party. In cases to which the Commission is a party, the appointment of the hearing officer shall, to the extent permitted by law, authorize the hearing officer to hear and decide the case, subject only to the rehearing provisions of Rule 16 hereof.

(2) Cases to which the Commission is not a party. In cases to which the Commission is not a party, the appointment of the hearing officer shall, to the extent permitted by law, grant the hearing officer such authority as the Commission deems necessary and appropriate to hear and decide the case and reserve unto the Commission such authority to decide the case as it deems necessary and appropriate.

(d) Consistent with law and the terms of his appointment the hearing officer shall hear and decide the contested case. His functions shall include, but not be limited to, the following: hear and rule on preliminary motions, rule on the admissibility of evidence, conduct the hearing,

PROPOSED

make impartial findings of fact upon the evidence presented, make a final or preliminary determination, and make such preliminary, interlocutory or final orders as appropriate.

MCCC-D-3 Initiating a Contested Case

(a) Initiation by Application. Any person authorized by law to have his rights, privileges or duties determined after a Commission hearing may initiate a contested case by making application. An application shall contain:

(1) The name and address of the applicant;

(2) A statement of the nature of the determination requested and the reasons therefor;

(3) The names and addresses of all persons known to the applicant who will be directly affected by such determination; and

(4) The signature of the applicant or his attorney.

(b) Initiation by Complaint. Any person authorized by law to submit to the Commission a complaint that his rights are being abridged, that his privileges are being denied, or that duties owed him are being defaulted upon may initiate a contested case by filing a complaint. A complaint shall contain:

(1) The name and address of the complainant;

(2) The name or names of those against whom the complaint is made;

(3) The relief sought and the grounds therefor; and

(4) The signature of the complainant or his attorney.

(c) Initiation by Commission Order. Where authorized by law, the Commission may order a contested case commenced to determine the rights, duties and privileges of specific parties.

MCCC-D-4 Commencement of Contested Case

Within ten days following receipt of a complaint or application or the adoption of

PROPOSED

an order by the Commission initiating a contested case, the Commission shall appoint a hearing officer and commence the contested case by serving upon all known parties a copy of the document of initiation and a notice stating:

(a) The commencement of the contested case;

(b) The time and place of the prehearing conference, if any;

(c) The purpose of the prehearing conference;

(d) The name of the hearing officer;

(e) The rights of the parties to counsel and to a formal hearing;

(f) That failure to attend may prejudice the party's right in this and subsequent proceedings; and

(g) These Rules or a citation thereto.

If the hearing officer decides that no prehearing conference will be held, notice of hearing pursuant to MCCC-D-13 shall be given.

MCCC-D-5 Answer

Within twenty days after service (excluding the day of service), an adverse party may interpose an answer to the initiating complaint, application or order. A copy of such answer shall be served on all parties to the contested case. The original, together with an attached affidavit of service, shall be filed with the Commission within five days after service is completed.

MCCC-D-6 Right to Counsel

Any party may be represented by legal counsel throughout the proceedings in a contested case before this Commission.

MCCC-D-7 Informal Disposition

Informal disposition may be made of any contested case or any issue therein by stipulation, agreed settlement or consent order at any point in the proceedings.

MCCC-D-8 Default

The hearing officer may dispose of a contested case adverse to a party which defaults. Disposition by default shall occur only after the party against whom default is proposed, having notice, fails to appear.

PROPOSED

MCCC-D-9 Intervention

Upon timely application,any person shall be permitted to intervene in a contested case upon a showing that his legal rights, duties or privileges may be determined or affected in the contested case, unless in the discretion of the hearing officer,such person's interest is adequately represented by one or more parties participating in the case.

MCCC-D-10 Consolidation

(a) Authority. Whenever, before hearing on any contested case, the Commission, either on its own motion or upon petition by any party, determines that separate contested cases present substantially the same issues of fact or law, that a holding in one case would affect the rights of parties in another case and that consolidation would not substantially prejudice any party, the Commission may order such cases consolidated for a single hearing on the merits. Notwithstanding the requirements of this Rule, the parties may stipulate and agree to such consolidation.

(b) Notice. Within five days following an order for consolidation the Commission shall serve on all parties a Notice of Consolidation. Such notice shall contain:

(1) A description of the cases for consolidation;

(2) The reasons for consolidation;

(3) Cancellation of all prehearing conferences for the cases consolidated; and

(4) Notification of the consolidated prehearing conference in the same fashion prescribed for notice of prehearing conferences. (MCCC-D-4)

(c) Objection to Consolidation:

(1) Petition for Severance. Any party may object to consolidation by filing with the Commission prior to final determination a Petition for Severance from Consolidation, setting forth petitioner's name and address, the designation of his case prior to consolidation,

PROPOSED

and the reasons for his petition. Briefs may be filed, evidence received and oral argument heard at such time as the hearing officer deems proper.

(2) Determination. When such petition is filed, the hearing officer shall set aside a time for receiving evidence and oral argument, and determining, as a part of the record in the case, whether consolidation prejudices petitioner. If the hearing officer finds that consolidation would prejudice petitioner, he may order such severance or other relief as he deems necessary.

MCCC-D-11 Depositions

The parties to a contested case may take and use depositions to the same extent as authorized by the rules of civil procedure for the state district courts;

provided, however, that before a deposition of a person who is at a greater distance than 100 miles from the place of hearing or who is out of state may be taken, the party requesting the taking of such a deposition shall first make application, therefor, to the hearing officer or the Commission, as appropriate, and give notice to all parties to the contested case. The hearing officer, or the Commission, as appropriate, may order as a condition of taking such a deposition that the party requesting the deposition pay the reasonable expense of the persons whose presence is usual at the taking of such a deposition as determined by the hearing officer or the Commission.

MCCC-D-12 Disqualification

A hearing officer shall withdraw from participation in a contested case at any time prior to the final determination if he deems himself disqualified for any reason. Upon the filing in good faith of a timely and sufficient Petition of Prejudice, the hearing officer shall determine the matter as a part of the record and decision in the case.

MCCC-D-13 Prehearing Conference

(a) Purpose. The purposes of the prehearing conference are to simplify the

PROPOSED

issues to be determined and to reach a settlement on those simplified issues without the necessity for further hearing.

(b) Procedure. A prehearing conference may be held at the discretion of the hearing officer preparatory to each contested case hearing. The prehearing conference shall be an informal proceeding conducted fairly and expeditiously by the hearing officer. Agreements on the simplification of issues shall be put in the form of stipulations and entered on the record. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

(c) Dismissal. The hearing officer may, at any stage of the proceedings, including the prehearing conference, after all parties have had an opportunity to present their views, dismiss any sham, capricious or frivolous case or any case not within the Commission's jurisdiction.

(d) Consolidated Prehearing Conference. When cases before the Commission are consolidated pursuant to MCCC-D-10, a consolidated prehearing conference may be held in lieu of separate conferences for each case and notice thereof given as provided in MCCC-D-4.

MCCC-D-14 Notice of Hearing

Not less than thirty days prior to the hearing date, the Commission shall serve a notice of hearing on all parties to the case. Such notice shall contain:

(a) The time and place of the hearing;

(b) The purpose and procedure for the hearing;

(c) The issues to be determined; and

(d) The name of the hearing officer who will preside.

Not less than 14 days prior to the date set for the hearing, the plaintiff shall cause to be published once in a legal newspaper of general circulation in the municipality affected by the dispute, or, if there is no such newspaper, in a newspaper of general circulation in the municipality nearest to the municipality affected by the dispute in which a newspaper of general circulation is published, a copy of the notice.

PROPOSED

Prior to the hearing the plaintiff shall file with the Commission an affidavit of publication of the notice.

MCCC-D-15 The Hearing

(a) Right to Hearing. All parties shall have the right to a hearing before the Commission, at which hearing the parties may cross-examine witnesses, and present evidence, rebuttal testimony and argument with respect to the issues.

(b) Witnesses. Any party may be a witness or may present witnesses on his behalf at a hearing. The hearing officer, or the Commission, as appropriate, may summon impartial, expert witnesses to testify as to any matter deemed material. All testimony at a hearing shall be under oath or affirmation. Every party shall have the right of cross-examination of witnesses who testify.

(c) Rules of Evidence:

(1) General Rules. The hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent men in the conduct of their affairs. He shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, repetitious, or based upon inadmissible hearsay may be excluded. Hearsay evidence in the form of statements of individuals or affidavits should be, whenever possible, substantiated by the appearance and testimony of the individuals, but may be received subject to objection if it is cumulative, corroborative or directed to collateral matters. Where evidence is offered that is necessary for the determination of the issues, the hearing may be recessed to allow for the taking of a deposition if the parties so wish, or for the appearance of the witness.

PROPOSED

(2) Evidence Must be Offered to be Considered. All evidence to be considered in the case, including all records and documents (except tax returns, tax reports and material determined to be confidential by the Commission) in the possession of the Commission, shall be offered and made a part of the record in the case. No other factual information or evidence (except tax returns, tax reports and material determined to be confidential by the Commission) shall be considered in the determination of the case.

(3) Documentary Evidence. Documentary evidence in the form of certified copies may be received or incorporated by reference in the discretion of the hearing officer or upon agreement of the parties.

(4) Notice of Facts. The hearing officer may take notice of judicially cognizable facts and, in addition, may notice technical facts within his specialized knowledge. Where final determination rests on official notice of material facts not appearing in the evidence in the record, a party is entitled, upon timely request, to an opportunity to rebut such facts.

(5) The Standard and Burden of Proof. The party initiating the contested case bears the burden of proving the facts placed in issue,but the proof may be exacted from any source of admissible evidence.

PROPOSED

(d) The Record:

(1) Commission Prepares Record. The Commission shall prepare an official record in each contested case.

(2) What the Record Shall Contain. The record in a contested case shall contain:

(aa) All pleadings (including documents of initiation and commencement and the answers thereto), motions and intermediate rulings;

(bb) Evidence received or considered;

(cc) A statement of matters officially noticed;

(dd) Questions and offers of proof, objections and rulings thereon;

(ee) Proposed findings and exceptions;

(ff) Any decision, opinion or report by the hearing officer; and

(gg) All memoranda or data other than advice of legal counsel submitted to the hearing officer by the Commission staff in connection with the case.

(3) Transcript:

(aa) Reporter or Mechanical Device. A verbatim record of the hearing shall be taken by court reporter or recording equipment. A court reporter shall be used, if demanded by any party. Unless the Commission agrees to bear the expense of the court reporter, such expense shall be paid by the demanding party.

PROPOSED

(bb) Transcript. The verbatim record will not be transcribed unless requested by a party. If a transcript is requested, the Commission may require the requesting party to pay the reasonable cost of preparing the transcript.

(e) Hearing Procedure:

(1) Hearing Officer Conduct. The hearing officer shall take no part in any preliminary investigation or inquiry into the facts or issues involved in the contested case except as provided in MCCC-D-13. He shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, including the Commission, its employees or agents, nor, in connection with any issue of law, with any party, including the Commission, its employees or agents, or his representative, except upon notice and opportunity for all parties to participate.

(2) Sequence of Events. Except as set forth in MCCC-D-15 (g), the hearing shall be conducted in the following manner:

(aa) After opening the hearing, the hearing officer shall indicate the following procedural rules:

(i) All parties may present evidence and argument with respect to the issues.

(ii) All witnesses must be sworn and identify the party they represent, if any. They are subject to cross-examination by all parties.

PROPOSED

(iii) The rules of evidence as set forth in MCCC-D-15 (c).

(iv) All parties who wish to introduce written matter may have it marked as an exhibit and offer it into evidence.

(bb) A representative of the Commission shall introduce the following exhibits on behalf of the Commission:

(i) Notice of Initiation of Proceedings, supporting documents, if any, and affidavits of service;

(ii) If consolidation has occurred, Notice of Consolidation, supporting documents, if any, and affidavits of service;

(iii) Notice of Hearing, supporting documents, if any, and affidavits of service;

(iv) Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing.

(cc) The party who initiated the contested case may make an opening statement. All other parties may make such statements in a sequence determined by the hearing officer.

(dd) After any opening statements the party who initiated the contested case shall begin the presentation of evidence. He shall be followed by the other parties in a sequence determined by the hearing officer.

(ee) Cross-examination of witnesses shall be conducted in a sequence determined by the hearing officer.

(ff) When all parties and witnesses have been heard, opportunity shall be offered to present rebuttal evidence and final argument, in a sequence determined by the hearing officer. Such rebuttal and final argument may be in the form of written memoranda, oral argument or both.

PROPOSED

(gg) After final argument, the hearing shall be closed or continued at the discretion of the hearing officer. If continued, it shall be either (a) continued to a certain time and day, announced at the time of the hearing and made a part of the record, or (b) continued to a date, to be determined later, which must be upon not less than five days written notice to the parties.

(f) Decorum:

(1) The hearing officer may prohibit the operation of a television, newsreel, motion picture, still or other camera, or of lights or other devices used in connection with the camera in the hearing room while the hearing is in progress, if such operation would, in his opinion, interfere with or disrupt the hearing.

(2) Other Conduct. No person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the hearing officer shall read this Rule to those persons causing such interference or disruption and recess the hearing, continue it or proceed with it.

(g) Cases to Which Commission is Not a Party. In cases which the Commission has initiated pursuant to MCCC-D-3 (c), but to which the Commission is not a party, the hearing procedure shall be conducted in a sequence determined by the hearing officer in accordance with law or Commission statute or rule. In such cases, the burden of proof shall be as the hearing officer determines in accordance with law or Commission statute or rule. In all such cases, the hearing procedure sequence and the burden of proof shall be determined by the hearing officer and stated in a prehearing order notice to all parties.

PROPOSED

MCCC-D-16 The Commission Decision

(a) Basis for Determination:

(1) The Record. No factual information or evidence, except tax returns, tax reports and other material held confidential by the Commission, which is not a part of the record shall be considered by the hearing officer or the Commission in the determination of a contested case.

(2) Experience, Technical Competence and Specialized Knowledge. The hearing officer may use his experience, technical competence and specialized knowledge in the evaluation of the evidence presented in the case.

(b) Proposal for Decision:

(1) Need for Proposal, Exceptions and Argument. Whenever in a contested case the Commission has retained the authority to render a final decision, intends to make such final decision and has not heard or read the evidence, the decision, if adverse to a party to the proceeding other than the Commission, shall not be made until a Proposal for Decision has been served, and an opportunity has been afforded each party adversely affected to file exceptions and present argument, whether written or oral or both, to the Commission.

(2) Service and Contents. The Proposal for Decision shall be served on all parties to the case. The Proposal shall contain:

(aa) A statement of the proposed decision.

(bb) The reasons for such decision. Each reason shall consist of a concise statement of the conclusions upon each contested issue of fact necessary to the decision.

(cc) A final date for the filing of exceptions by parties adversely affected.

(dd) A statement of the right of parties adversely affected to present argument.

PROPOSED

THIS COPY DRAFTED FOR DISCUSSION PURPOSES ONLY
-Quotations Or Other Reference Not Authorized-

(c) Decisions and Orders:

(1) Formal Decision or Order with Reasons Required. Every decision or order rendered by the hearing officer or the Commission in a contested case shall be in writing or stated in the record and shall be accompanied by a statement of the reasons therefor. The statement of reasons shall include a concise statement of the conclusions upon each contested issue of fact necessary to the decision. A decision or order on a petition for severance, petition for intervention, petition of prejudice, on noticed facts which are challenged, or on a petition for rehearing shall be rendered in accordance with this Rule.

(2) Service and Contents. Every decision or order shall be served on all parties to the case. It shall contain:

(aa) A statement of the decision or order in the case;

(bb) A statement of the reasons therefor;

(cc) An affidavit of service.

(d) Default. When a party with adequate notice fails to plead or otherwise appear within the time allowed therefor by these Rules or by statute, judgment by default may be entered against him.

MCCC-D-17 Rehearing

(a) Commission Right to Hear. The Commission may, upon request or its own motion and for good cause shown, reopen, rehear and redetermine a contested case after a final decision adverse to a party to the contested case other than the Commission has been rendered. This right may be exercised until it is lost by appeal or the granting of a writ of certiorari or until a reasonable time has run, but in no event shall the time exceed the time allowed by statute for appeal or six months, whichever is shorter.

PROPOSED

(b) Obtaining a Rehearing:

(1) Parties other than the Commission. At any time prior to the Commission's loss of the right to rehear a contested case, any party to that case may request a rehearing by filing a petition for rehearing. Such petition shall contain:

(aa) The name and address of the petitioner;

(bb) The Commission designation for the case;

(cc) The reasons for the petition.

(2) The Commission. The Commission may, on its own motion, for good cause stated in the record, reopen, rehear and redetermine a contested case if the decision in that case was adverse to a party to that case other than the Commission.

(3) Default Judgments. A party against whom a default has been adjudged pursuant to MCCC-D-16 (d) may obtain a rehearing upon a timely showing of good cause for his failure to appear or plead.

(4) Determination. The Commission shall grant or deny a petition for rehearing as a part of the record in the case. Such petition shall be granted if there appears on the face of the petition and the record irregularities in the proceedings, errors of law occurring during the proceedings, newly discovered material evidence, a lack of substantial evidence to support the decision or good cause for failure to appear or plead. Evidence and argument may be presented at the discretion of the Commission in written or oral form or both by any party to the contested case with respect to the petition.

(c) Notice of Rehearing. Notice of rehearing must be provided in the same manner prescribed for notice of hearing as provided in MCCC-D-14.

(d) Rehearing Procedure. A rehearing in a contested case shall be conducted in the same manner prescribed for a hearing as provided in MCCC-D-15.

PROPOSED

(e) Decision after Rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing as provided in MCCC-D-16.

MCCC-D-18 Appeal by Commission

The Commission may appeal pursuant to M. S. §§. 15.0424 any adverse decision. The Commission shall be deemed a "person" for such purposes.

MCCC-D-19 Fees

In every contested case, the plaintiff, petitioner or other moving party shall pay, when the first paper on his part is filed or the first appearance is entered, a fee of $15, provided that the Commission shall not be required to pay such fee. The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay, when the first paper on his or their part is filed, or the first appearance is entered, a fee of $10, provided that the Commission shall not be required to pay such fee. All such fees shall be credited to the general revenue fund in the state treasury.

MCCC-D-20 Rules of Procedure for District Court-Applications to Contested Cases

The rules of civil procedure for the state district courts shall serve as a guide to any procedural or substantive matter within the scope of this Chapter not specifically provided for by rule to the extent that the same are not inconsistent with the rules provided for by this Chapter and the powers and duties of the Commission as provided by law. The hearing officer, or the Commission, as appropriate may vary the rules of procedure for the state district courts as applied to contested cases as may be deemed necessary or appropriate to secure the ends of justice without undue formality.

PROPOSED

CHAPTER E - DELEGATIONS OF AUTHORITY

MCCC-E-1 General Provisions

(a) Delegations are arranged in this Chapter under headings denoting the person or persons to whom authority has been delegated.

(b) The Commission, by vote of a majority of the members then holding office, may delegate its functions either by rule or by resolution to one or more of its members, or its officers, agents, or employees, such powers and duties as it may deem appropriate, and may at any time amend, modify or rescind any such rule or resolution.

MCCC-E-2 Authority of Person to Whom Functions are Delegated

(a) Except as provided elsewhere in these Rules, the person or persons to whom functions are delegated shall, with respect to such functions, have all the jurisdiction, powers and authority conferred by law upon the Commission, and shall be subject to the same duties and obligations.

(b) Except as provided elsewhere in these Rules, any action taken pursuant to delegated authority shall have the same force and effect and shall be made, evidenced and enforced in the same manner as actions of the Commission.

MCCC-E-3 The Exercise of Delegated Authority

(a) Any official (or group of officials) to whom authority is delegated in this Chapter is authorized to issue orders pursuant to such authority and to enter into general correspondence concerning any matter for which he is responsible under this chapter.

(b) Authority delegated to any person to issue orders or to enter into correspondence under subparagraph (a) of this section may be exercised only by that official.

(c) Except as otherwise provided in these Rules, actions taken as provided in subparagraph (a) of this section shall be noted in writing, called to the Commission's attention at its next regularly scheduled session, and thereafter recorded in the official minutes of the Commission.

PROPOSED

MCCC-E-4 Authority Delegated to Chairman

The responsibility for the general administration of the internal affairs of the Commission is delegated to the chairman of the Commission. The chairman will keep the Commission advised concerning his actions taken under this delegation of authority. This authority extends to:

(a) Actions of routine character;

(b) Actions taken by the chairman as chief executive officer for the Commission, including actions designating appropriate subordinate persons to act as executive officers for the Commission.

MCCC-E-5 Authority Delegated to Executive Director and Counsel

The Commission's executive director, or the counsel to the Commission, is delegated authority, subject to Commission review upon application being made by any interested person:

(a) To receive emergency action notifications and to authorize emergency action necessitated by natural disasters;

(b) To act upon requests for extensions of time in which to comply with Commission orders, upon a showing of good cause;

(c) To act upon requests for extensions of time within which to file papers;

(d) To authorize withdrawal of pleadings in accordance with these Rules;

(e) To return applications or pleadings which are not acceptable under Commission Rules;

(f) To issue informal interpretations of these Rules, subject to review by the Commission. Actions taken under this authority are strictly informal and shall be binding on the Commission only in the event that the interpretation is expressly ratified by the Commission.

PROPOSED

CHAPTER F - CERTIFICATES OF CONFIRMATION

MCCC-F-1 Introduction

The Commission shall issue certificates of confirmation only in accordance with the rules prescribed in this Chapter.

MCCC-F-2 Special Certificates of Confirmation

(a) Pursuant to Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivision 3, any cable communications company which under an existing franchise was lawfully engaged in actual operation on May 24, 1973, may continue to exercise said franchise pursuant to the terms thereof, provided the company files with the Commission by such date as the Commission shall set, an application for a special certificate of confirmation in such form and containing such information and supporting documentation as the Commission may require. The Commission shall grant a certificate of confirmation without further proceedings which shall be valid for a period of five years. Each such certificate shall be granted only at a public meeting of the Commission by an affirmative vote of at least three members of the quorum.

(b) Pursuant to Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivision 4, cable communications companies which have been granted a franchise prior to April 1, 1973, and which were not in operation prior to May 24, 1973, shall be given a ten year certificate of confirmation without further proceedings provided such company files with the Commission by such date as the Commission shall set, an application for a special certificate of confirmation in such form and containing such information and supporting documentation as the Commission may require, and further provided such companies have commenced substantial construction, indicated by erection of the "head end" and stringing of no less than five miles of trunk and distribution cable, by January 1, 1974. Each such certificate shall be granted only at a public meeting of the Commission by an affirmative vote of at least three members of the quorum.

(c) Pursuant to Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivision 5, a municipality may issue a franchise by September 15, 1973, if done so pursuant to a municipal enabling ordinance on cable communications enacted by April 1, 1973. containing

PROPOSED

detailed specifications for the construction and operation of a cable communications system. Any cable communications company so franchised may exercise its franchise pursuant to the terms thereof, provided such company files with the Commission an application in such form and containing such information and supporting documentation as the Commission may require. The Commission shall issue, without further proceedings, a certificate of confirmation to such a cable communications company valid for ten years. Each such certificate shall be granted only at a public meeting of the Commission by an affirmative vote of at least three members of the quorum.

MCCC-F-3 Interim Certificate of Confirmation

The Commission may issue an interim certificate of confirmation after its acceptance of an application in such form and containing such information and supporting documentation as the Commission may require, such certificate to be valid for not more than five years, to an operating company having a franchise approved by the Commission to erect a community antenna and establish cable television services for any municipality having a population not greater than 15,000 according to the 1970 federal census; provided that the system shall be constructed and ready for operation by July 1, 1975, in full compliance with all applicable regulations of the Federal Communications Commission and with any special terms or conditions set by the Minnesota Commission to apply in any individual situation, not subject to Minnesota Statutes 1971, Chapter 15, to include stipulations regarding minimum channel capacity; extent of two-way capability; means for interconnection; and availability of facilities for public access cablecasting and for local program origination. Each such certificate shall be granted only at a public meeting of the Commission by an affirmative vote of at least three members of the quorum.

MCCC-F-4 Necessity for a Certificate of Confirmation

Any cable communications company which does not meet the requirements for a special or interim certificate of confirmation pursuant to MCCC-F-2 or MCCC-F-3 shall be required to secure a regular certificate of confirmation from the Commission before becoming operational. Such certificate may be granted after full Commission proceedings and shall be for a period of ten years.

PROPOSED

MCCC-F-5 Procedure for Making Application for a Regular Certificate of Confirmation

(a) Each cable communications company applying for a certificate of confirmation pursuant to MCCC-F-4 shall file, no later than 30 days before the Commission is to consider the application, an application in such form and containing such information and supporting documentation as the Commission may require.

(b) Each cable communications company applying for a certificate of confirmation pursuant to MCCC-F-4 shall cause to be published, weekly for two successive weeks, at its own expense, in a legal newspaper of general circulation in each municipality for which a certificate of confirmation is sought the following:

(1) The name and address of the company, its officers and its managing offices, as well as the names and addresses of each stockholder owning 10% or more of the company's stock;

(2) That it is seeking a certificate of confirmation from the Commission and designating the municipality or municipalities;

(3) The date, place and time of the meeting at which the granting of the certificate of confirmation will be considered by the Commission;

(4) That interested members of the public may submit their views on the application either in writing or orally at the Commission meeting.

A certificate of publication shall be filed with the Commission no later than seven days before the meeting at which the application for certification is to be considered.

(c) The executive director of the Commission may cause such additional notices to be given to such persons as in his opinion is reasonable.

MCCC-F-6 Public Meeting

(a) No later than 60 days after a completed application for a certificate of confirmation is received, the Commission shall hold a public meeting thereon. Any such public meeting may be combined with a regular or special Commission meeting. If, at any

PROPOSED

such meeting, application is substantially contested, the Commission may adjourn the public meeting and deem the matter a contested case for disposition in accordance with Chapter D of these Rules; provided that the decision of any hearing examiner, appointed thereunder, shall not be binding unless adopted by the Commission. For purposes of the contested case procedure, the Commission shall not be deemed a party to any proceeding in which only the granting of a regular certificate of confirmation is at issue.

(b) Interested persons may submit to the Commission written testimony concerning the issuance of a regular certificate of confirmation within 20 days after completion of the final public meeting thereon.

MCCC-F-7 Grant of Certificate

If the Commission determines to grant a special, interim, regular or renewal certificate of confirmation it shall issue the certificate of confirmation within 30 days after the public meeting at which the certificate of confirmation is granted. If the Commission determines not to grant a special, interim, regular or renewal certificate of confirmation, it shall, within 30 days after the last public meeting at which the granting of the certificate of confirmation is discussed, issue to the applicant a statement of reasons for its decision not to issue a certificate of confirmation. The Commission may require the applicant for the certificate to complete an application form, which it may by resolution prescribe.

MCCC-F-8 Renewal Certificate of Confirmation

A renewal certificate of confirmation shall be issued only after full Commission proceedings and shall be valid for a period of five years. A certificate of confirmation is a renewal certificate if it is issued to the same cable communications company, or its successor in interest, for the same cable communications system for which an interim, special or regular certificate of confirmation was previously issued by the Commission. The procedure for obtaining a renewal certificate of confirmation shall be the same as is herein provided for obtaining a regular certificate of confirmation.

MCCC-F-9 Transferability of Certificate of Confirmation

A certificate of confirmation shall be transferable or in any way assignable only

PROPOSED

upon full compliance with the applicable provisions of Chapter I of these Rules pertaining to the transfer of a franchise; provided, however, that no payment shall be made for the certificate of confirmation itself. Transfer of the certificate of confirmation shall not extend the duration of the certificate of confirmation. The transferee,as a condition of the transfer of the certificate,shall within 30 days of the transfer complete any application form required of any person for the original grant of a certificate of confirmation.

PROPOSED

CHAPTER G - FRANCHISING AND FRANCHISE RENEWAL PROCEDURES

MCCC-G-1 Initial Franchise

(a) The procedure described in Rule 1 of this Chapter shall be observed by all municipalities before and during the awarding of any cable communications franchise, except as provided in Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivisions 3, 4 and 5 or in Laws 1974, Chapter 506, Section 10, and Rule 2 of this Chapter.

(b) The proposed boundaries for all cable service territories must be approved by the Commission before a municipality shall adopt an invitation for applications for a cable communications franchise as described in subsection 1(c) of this Rule. If two or more municipalities are bound by a joint powers agreement for purpose of cable communications franchising, and during the period in which the joint powers agreement is in force, the combined entity shall be deemed one municipality for purpose of this Rule.

(c) Except as provided in Rule 1(a) of this Chapter, no cable communications franchise may be awarded, nor may any application for any such franchise be invited without the research and planning required by this Rule. The governing body of the municipality shall inform themselves about cable communications through at least a review of published information, state and federal statutes and rules and regulations, and the experience of other municipalities with cable communications. The governing body of the municipality shall also assess the communications needs of the municipality. After a consideration of the present feasibility of cable communications in the particular municipality, the governing body shall determine the advisability of continuing with the franchising process. The governing body of the municipality shall officially adopt in a public meeting, affording reasonable notice and a reasonable opportunity to be heard, an invitation for applications for a cable communications franchise which invitation shall include, but not necessarily be limited to the following items:

(1) the desired system design and services for the municipality including statements with respect to at least the following items: channel

PROPOSED

capacity; requirement for access channels and related staff and facilities; construction requirements; and two-way capability.

(2) criteria and priorities against which the applicants for the cable franchise shall be evaluated.

(3) information regarding applications for the cable communications franchise including:

(aa) A statement that the applications must be made on a form specified by and available from the municipality;

(bb) The closing date for submission of applications;

(cc) A statement of the application fee, if any, and the method for its submission;

(dd) The name, address and telephone number of a municipal official who may be contacted for further information.

The municipality within 10 days after adoption of an invitation for applications for cable communications franchise shall mail a copy of the invitation to the Commission and make a copy available for public inspection at the city offices during normal business hours.

The governing body of the municipality shall consult with the Commission and may consult with the appropriate regional development commission. The governing body of the municipality shall appoint a group of persons residing within the municipality as an advisory body. The advisory body shall have and perform such duties with respect to the requirements of this Rule as the governing body of the municipality deems appropriate.

(d) Not less than 45 days prior to the holding of the public meeting on the franchise as required by 1(f) of this Rule, the municipality shall give public notice of the availability of the invitation for applications for a cable communications franchise. The notice shall be published at least once in a newspaper of general circulation

PROPOSED

in the municipality and at least once in at least two publications contained in a list approved by the Commission and on file with the executive director of the Commission. The published notice shall contain the following information: the name of the municipality inviting the application; the date by which all applications must be submitted; the name, address and telephone number of the municipal official from whom the invitation for applications for a cable communications franchise may be obtained; the amount of any application fee; and a statement that the application for a cable communications franchise must be submitted taking into account the system design and services as outlined by the municipality in its invitation for a cable communications franchise and on a standard form to be supplied by the municipality.

In addition to the published notice, the municipality should mail copies of the invitation for applications for a cable communications franchise to any persons it has identified as being desirable candidates for the franchise. A copy of the notice shall be provided to the Commission on the date of initial publication together with an affidavit of publication.

(e) A municipality shall require that all applications for a cable communications franchise be notarized and contain the applicant's proposed service and system design for the municipality's cable communications system submitted on a standard form supplied by the municipality, which form shall include, but not necessarily be limited to the following information:

(1) plans for channel capacity, including both the total number of channels capable of being energized in the system and the number of channels to be energized immediately;

(2) a statement of the television and radio broadcast signals for which permission to carry will be requested from the FCC;

(3) plans for the system layout, design and operation, including at least the following items:

(aa) general location of antenna(e) and headend(s);

PROPOSED

(bb) schedule for activating two-way capability;

(cc) type of automated services to be provided;

(dd) number of channels and services to be made available for access cablecasting, and a schedule of charges for facilities and staff assistance for access cablecasting.

(4) the terms and conditions under which particular service is to be provided to educational and governmental entities;

(5) a schedule of rates in relation to the services to be provided, and a proposed policy regarding unusual or difficult connection of service;

(6) a time schedule for construction of the entire system with the time sequence for wiring the various parts of the municipality;

(7) a statement indicating the applicant's qualifications and/or experience in the cable communications field, if any;

(8) an identification of the municipalities in which the applicant either owns or operates any cable communications system, directly or indirectly, or has outstanding franchises for which no system has been built;

(9) plans for financing the proposed system, which shall indicate every significant anticipated source of capital and any significant limitations and/or conditions with respect to the availability of the indicated sources of capital;

(10) a statement of ownership detailing the corporate organization of the applicant, if any, including the names and addresses of officers and directors and the number of shares held by each officer or director; any intracompany relationship including a parent, subsidiary or affiliated company;

PROPOSED

(11) a notation and explanation of any omissions or other variations with respect to the requirements of the proposal.

(f) A public meeting affording reasonable notice and a reasonable opportunity to be heard with respect to all applications for the franchise shall be completed at least 27 days prior to any franchise award,

(g) The franchise shall be granted by ordinance and within 10 days of the granting of the franchise, the municipality shall forward a copy of the franchise ordinance to the Commission for approval in accordance with Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivision 1.

(h) Nothing in these Rules shall be construed to prohibit a municipality from recovering the reasonable and necessary costs of the entire process of awarding the cable communications franchise from the successful applicant.

(i) Nothing contained in any rule of the Commission shall prohibit a municipality from franchising a noncommercial or municipally-operated system, provided that pursuant to Minnesota Statutes, 1973 Supplement, Section 238.01-238.16 and Laws 1974, Chapter 506, the municipality or noncommercial group shall be considered an applicant for purposes of these Rules.

MCCC-G-2 Renewal

(a) For purposes of these Rules a franchise is renewed whenever the municipality awards a subsequent franchise to the same cable communications company or its successor in interest after the award of the initial franchise.

(b) Three months prior to the expiration of a franchise the advisory body created in MCCC-H-1(bb) of these Rules shall submit a report to the municipality, which report shall include a written appraisal of the performance of the franchisee during the franchise term with regard to the provisions of the franchise. The report shall also include recommendations for revised or additional provisions of the franchise, considering at least the following items: channel capacity; channels for access cablecasting; facilities and staff assistance available for access cablecasting; two-way capability; and the need for further service to be extended within the franchised area based upon a reassessment of the

PROPOSED

communications needs of the municipality in relation to the services generally offered by the cable industry.

(c) The governing body of the municipality shall renegotiate the franchise at least 30 days prior to the expiration of the franchise in accordance with MCCC-H-1(b)(3) of these Rules.

(d) The renewal shall be granted only after holding a public hearing thereon with reasonable notice and a reasonable opportunity to be heard. Notice of any such hearing shall be given not less than 30 days prior to the hearing by publishing notice thereof once each week for two successive weeks in a newspaper of general circulation in the municipality. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the municipality.

(e) If the governing body of the municipality determines that additional applicants are to be sought, the municipality must follow the procedure prescribed in Rule 1 of this Chapter.

PROPOSED

MCCC-H-1 Required Contents of Franchises

Where a cable communications franchise is awarded or renewed after April 1, 1973, except as provided in Minnesota Statutes, 1973 Supplement, Section 238.09, Subdivisions 3, 4 and 5 or in Laws 1974, Chapter 506, Section 10, a regular or renewal certificate of confirmation will be issued only if the franchise ordinance contains recitations consistent with the provisions of Rule 1 of this Chapter as follows:

(a) A statement that:

(1) the franchisee's technical ability, financial condition, legal qualification, and character were considered and approved by the municipality in a full public proceeding affording reasonable notice and a reasonable opportunity to be heard;

(2) the franchisee's plans for constructing and operating the cable communications system, including specific consideration of all sections of the area to be served, were considered and found adequate and feasible in a full public proceeding affording reasonable notice and a reasonable opportunity to be heard;

(3) the franchise complies with the Commission's franchise standards; and

(4) the franchise is non-exclusive.

(b) A provision:

(1) limiting the initial franchise term to not more than ten years;

(2) providing that any renewal of the franchise shall be for a term of not more than five years; and

(3) providing for renegotiation periods mutually agreed to between the municipality and the company, such renegotiation periods to occur at least at the end of any franchise term.

(c) A provision stating that no signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring

PROPOSED

individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a seperate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. The authorization shall be revokable at any time by the subscriber without penalty of any kind whatsoever. For the purposes of this provision, a Class IV cable communications channel means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

(d) A provision specifying all subscriber charges and, if existent, the length of residential subscriber contracts which contracts may not exceed 12 months in duration unless after 12 months the contract may be terminated by the subscriber at his option, with no penalty to the subscriber; and a provision stating that any changes in residential subscriber monthly service charges be approved by the franchising municipality in full public proceeding affording reasonable notice and a reasonable opportunity to be heard. Nothing in this provision shall be construed to limit the length of subscriber contracts with entities operated for profit.

(e) A provision specifying the procedure for the investigation and resolution by the franchisee of all complaints regarding quality of service, equipment malfunction, billing disputes, and any other matters.

(f) A provision requiring that at least a long distance toll-free telephone number for the reception of complaints be provided to the subscriber and that the franchisee maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. The provision shall also provide that, whenever it is necessary to shut off or interrupt services for the purpose of making repairs, adjustments or installation, the franchisee shall do so during periods of minimum use of the system by subscribers. Unless such interruption is unforseen and immediately necessary, the franchisee shall give reasonable notice thereof to the subscribers affected. All costs incurred in making such repairs, adjustments or installations shall be borne by the franchisee unless

PROPOSED

otherwise provided for in the franchise ordinance or subscriber contract.

(g) A provision establishing the minimum system-wide channel capacity that the franchisee shall provide:

(1) For municipalities located within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules relating to cable television and as the same may be modified from time to time, the provision shall require the franchisee to construct the cable system with a minimum of 120 MHZ of bandwidth (the equivalent of 20 television broadcast channels) available for immediate or potential use;

(2) (a) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television and as the same may be modified from time to time and will be served by a cable communications system that will not have been constructed at the time the franchise is to be granted, the provision shall require the franchisee to construct the cable system with a minimum of 72 MHZ of bandwidth (the equivalent of 12 television broadcast channels) available for immediate or potential use;

(b) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time and are served by a cable system already constructed pursuant to a pre-existing franchise having less than 72 MHZ of bandwidth (the equivalent of less than 12 television broadcast channels), the municipality shall determine when an increase in MHZ of bandwidth is needed after consultation with the appropriate

PROPOSED

regional development commission and the Minnesota Commission on Cable Communications and appropriate public proceedings at the municipal level giving all interested persons an opportunity to be heard.

(h) A provision establishing the minimum number of public, educational, governmental and leased access channels that the franchisee shall provide to the municipality:

(1) For municipalities which are within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time, the franchisee shall maintain at least one specially designated noncommercial public access channel available on a first come, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel for local government use; and at least one specially designated access channel available for lease on a first come, nondiscriminatory basis by commercial or noncommercial users. The VHF spectrum shall be used for at least one of the specially designated public access channels required in this subdivision. The provision shall require that facilities for playback of prerecorded programming, personnel and time for use of at least one of the specially designated public access channels required by this subdivision shall be provided without charge, provided, however, that production costs may be assessed for live studio presentations exceeding five minutes. Such production costs and any fees for use of other public access channels shall be consistent with the goal of affording the public a low-cost means of television access.

(2) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the

PROPOSED

same may be modified from time to time, the franchisee shall provide at least one specially designated access channel available for use by the general public on a first come, nondiscriminatory basis. Time for use on this specially designated access channel shall be provided without charge to the general public. The specially designated access channel may be utilized by local educational authorities and local government on a first come, nondiscriminatory basis when the channel is not in use by the general public. The franchisee shall lease time on this specially designated access channel to commercial or non-commercial users on a first come, nondiscriminatory basis if the demand for such leased time arises and the channel is not being utilized by the general public, local educational authorities and local government users. The franchisee may also utilize this designated channel for automated services when the channel is not in use by either the general public, educational users, and local government, or commercial or non-commercial users who have leased time on this specially designated channel. The VHF spectrum shall be used for the specially designated access channel required in this subdivision.

The provision shall require that whenever the specially designated noncommercial public access channel, the specially designated educational access channel or the specially designated governmental access channel required in subsection h(1) of this Rule or the specially designated access channel required in subsection h(2) of this Rule are in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive 3 hour period for six weeks running, the system will then have six months in which to make the appropriate new specially designated access channel available. The provision shall also require that for the public access, educational access, the specially designated channel and leased access channels, the franchisee shall establish rules pertaining to the administration of those channels. The rules shall be consistent with the requirements of Section 76.251 of the Federal Communications Commission rules and

PROPOSED

and regulations relating to operating rules for access channels.

(i) A provision establishing the minimum equipment that the franchisee shall provide for public use:

(1) For municipalities which are within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules, and as the same may be modified from time to time, the franchisee shall operate and make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the public access channel required by subsection h(1) of this Rule. The franchisee shall also make readily available upon need being shown the minimum equipment necessary to make it possible to record programs at remote locations with battery operated portable equipment. Need within the meaning of this Rule shall be determined by subscriber petition. A successful petition must meet at least one of the following conditions:

(aa) Signatures of 500 subscribers of the system to a petition attesting to the need; or

(bb) Signatures of at least 10% of the subscribers of the system to a petition attesting to the need with a minimum of 100 signatures.

(2) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time, the franchisee shall operate and make readily available for public use, upon need being shown, at least the minimal equipment necessary to perform good quality playback of prerecorded programming, and to make it possible to record programs at remote locations with battery operated portable equipment. Need

PROPOSED

within the meaning of this Rule shall be determined by subscriber petition. A successful petition must meet at least one of the following conditions:

(aa) Signatures of 500 subscribers of the system to a petition attesting to the need; or

(bb) Signatures of at least 10% of the subscribers of the system to a petition attesting to the need with a minimum of 100 subscribers.

(j) A provision pertaining to the franchisee's construction and maintenance of a cable communications system having the technical capacity for non-voice return communications:

(1) For municipalities which are within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time, the franchisee shall provide a cable communications system having the technical capacity for non-voice return communications;

(2) (a) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time; and will be served by a cable communications system that will not have been constructed at the time the franchise is to be granted, the provision shall require the franchisee to provide a cable communications system having the technical capacity for non-voice return communications;

(b) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable

PROPOSED

television, and as the same may be modified from time to time, and are served by a cable system already constructed pursuant to a pre-existing franchise without the technical capacity for non-voice return communications, the municipality shall determine when and if the technical capacity for non-voice return communications is needed after consultation with the appropriate regional development commission and the Minnesota Commission on Cable Communications and appropriate public proceedings at the municipal level giving reasonable notice and a reasonable opportunity to be heard.

(k) A provision requiring the franchisee to conform to all federal and state laws and regulations and specifying that modifications of federal or state franchise standards will be incorporated into the franchise within one year of any such modifications or at the time of franchise renewal, whichever first occurs.

(l) A provision establishing the minimum operational standards by which the franchisee shall install and maintain the cable communications system. The provision shall provide at a minimum that:

(1) The system shall deliver to the subscriber's terminal a signal that is capable of producing a black and white or colored picture without visual material degradation in quality within the limitations imposed by the technical state of the art;

(2) The system shall transmit or distribute signals without causing objectionable cross-modulation in the cables or interfacing with other electrical or electronic networks or with the reception of other television or radio receivers in the area not connected to the network.

(m) A provision requiring the franchisee to indemnify and hold harmless the municipality at all times during the term of the franchise, and to maintain throughout the term of the franchise, liability insurance in such amount as the municipality may re-

PROPOSED

quire insuring both the municipality and the franchisee with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the franchise.

(n) A provision granting the municipality authority to audit the franchisee's accounting and financial records upon reasonable notice, and requiring that the franchisee file with the municipality annually reports of gross subscriber revenues and other information as the municipality deems appropriate.

(o) A provision prohibiting transfer of the franchise or ownership except at the approval of the franchising municipality, which approval shall not be unreasonably withheld.

(p) A provision requiring that upon termination or forfeiture of a franchise, the franchisee remove its cable, wires, and appliances from the streets, alleys, and other public places within the municipality, and a procedure to be followed in the event the franchisee fails to remove its cable, wires, and appliances from the streets, alleys, and other public places within the municipality.

(q) A provision that upon expiration of the franchise term, or upon revocation of the franchise, or upon other termination of the franchise as provided for in these Rules or upon receipt of an application for approval of an assignment of the franchise, the municipality shall have the non-exclusive right to purchase the system.

(r) A provision granting the municipality the right to terminate and cancel the franchise and all rights and privileges of the franchise in the event that the franchisee substantially violates any provision of the franchise ordinance, or any rule, order, or determination of the municipality or attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the municipality. Conditions or circumstances for the municipality's termination of the franchise shall include, but not necessarily be limited to the following:

(1) If the franchisee should default in the performance of any of its obligations under the franchise, and shall fail to act on the default within 30 days after receiving written notice of the default;

PROPOSED

(2) If a petition is filed by or against the franchisee under the Bankruptcy Act, or any other insolvency or creditors rights law, state or federal and the franchisee shall fail to have it dismissed within 90 days;

(3) If a receiver, trustee or liquidator of the franchisee is applied for or appointed for all or part of its assets;

(4) If the franchisee becomes insolvent or makes an assignment for the benefit of creditors;

(5) If any court of competent jurisdiction, the Federal Communications Commission, or the Minnesota Commission on Cable Communications by rule, decision, or other action determines that any provision of the franchise is invalid or unenforceable and in the opinion of the municipality the invalid provisions of the franchise are material and essential provisions both to the granting and the continuance of the franchise, without which the city would not have granted the franchise; provided that any decision of the municipality that the provisions of the franchise are unreasonable shall be subject to review by a court of competent jurisdiction.

The municipality shall provide the franchisee with a written notice of the violation and shall allow the franchisee a minimum of thirty days subsequent to receipt of the notice in which to correct the violation. The franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the franchise. In the event that the municipality determines to terminate the franchise, the franchisee shall have a period of thirty days, beginning the day next following the date of the conclusion of the public hearing at which the termination of the franchise is considered, within which to file an appeal with the Commission, pursuant to Minnesota Statutes, 1973 Supplement, Section 238.14. During such thirty day period and until the Commission determines the appeal, if an appeal is taken, the franchise shall remain in full force and effect, unless the term thereof sooner

PROPOSED

expires. If the Commission approves of the action of the municipality, the franchise shall terminate immediately; if the Commission disapproves of the action of the municipality, the franchise shall remain in full force and effect during the term thereof unless sooner terminated in accordance with law or these Rules. Any such appeal to the Commission, is a contested case to which the Commission is not a party.

(s) A provision that at the time the franchise becomes effective and at all times thereafter, until the franchisee has liquidated all of its obligations with the municipality, the franchisee shall furnish a bond to the municipality in such amount as the municipality deems necessary in such form and with such sureties, as shall be acceptable to the municipality conditioned upon the faithful performance of the franchise according to the terms of the franchise and upon the further condition that in the event the franchise shall fail to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the municipality as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the franchisee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the franchisee of claims, liens and taxes due the municipality which arise by reason of the construction, operation, or maintenance of the cable communications system. The rights reserved by the municipality with respect to the bond are in addition to all other rights the municipality may have under the franchise or any other law. The municipality may, from year to year, in its sole discretion, reduce the amount of the bond.

(t) A provision that there be full description of the system proposed for construction and a schedule showing:

(1) That for municipalities which will be served by a system proposed to have 100 plant miles of cable or more:

(a) that engineering and design shall be completed within one year after the granting of the franchise and that a significant amount of construction shall be completed within one

PROPOSED

year after the franchisee's receipt of all necessary governmental permits, licenses, certificates and authorizations;

(b) that energized trunk cable shall be extended substantially throughout the authorized area within five years after commencement of construction; and that persons along the route of the energized cable will have individual "drops" within the same period of time, if the same is desired;

(c) that the requirement of this Rule be waived by the governing body of the municipality only upon occurrence of unforeseen events or acts of God.

(2) That for municipalities which will be served by a cable communications system having less than 100 miles of cable:

(a) that within 90 days of the granting of the franchise, the franchisee shall apply for all necessary governmental permits, licenses, certificates and authorizations;

(b) that energized trunk cable shall be extended substantially throughout the authorized area within one year after receipt of all necessary governmental permits, licenses, certificates and authorizations; and that persons along the route of the energized cable will have individual "drops" as desired during the same period of time;

(c) that the requirement of this Rule may be waived by the governing body of the municipality only upon occurrence of unforeseen events or acts of God.

(u) Unless otherwise already provided for by local law, a provision that the franchisee obtain the permission of the proper municipal authority before commencing any construction of a cable communications system. The franchisee shall give the municipality reasonable written notice of proposed construction so as to coordinate all work between the municipality and the franchisee.

PROPOSED

(v) Unless otherwise already provided for by local law, a provision that the franchisee shall not open or disturb the surface of any street, sidewalk, driveway or public place for any purpose without first having obtained a permit to do so from the proper municipal authority, for which permit the municipality may impose a reasonable fee to be paid by the franchisee. The lines, conduits, cables and other property placed in the streets and public places pursuant to such permit shall be located in the streets or portions of the streets and public places as shall be determined by the proper municipal authority. The franchisee shall, upon completion of any work requiring the opening of any street or public place, restore the same, including the paving and its foundations, to as good a condition as formerly, and in a manner and quality approved by the proper municipal authority, and shall exercise reasonable care to maintain the same thereafter in good condition. Such work shall be performed with due diligence and if the franchisee shall fail to perform the work promptly, to remove all dirt and rubbish and to put the street or public place back in good condition, the municipalities shall have the right to put the street or public place back into good condition at the expense of the franchisee and the franchisee shall, upon demand, pay to the municipality the cost of such work done or performed by the municipality, together with an additional sum as liquidated damages to be determined by the municipality.

(w) Unless otherwise already provided for by local law, a provision that all wires, conduits, cables and other property and facilities of the franchisee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the municipality. The franchisee shall keep and maintain all of its property in good condition, order and repair, so that the same shall not menace or endanger the life or property of any person. The municipality shall have the right to inspect and examine at any reasonable time and upon reasonable notice the property owned or used, in part or in whole, by the franchisee. The franchisee shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the municipality.

PROPOSED

(x) Unless otherwise already provided for by applicable local law, a provision that all wires, cables, amplifiers and other property of the franchisee shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering considerations.

(y) Unless otherwise already provided for by local law, a provision that all construction, installation, maintenance and operation of any cable communications system or any facilities employed in connection therewith shall be in compliance with the provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, the Bell Telephone System's Code of Pole Line Construction, any standards issued by the Federal Communications Commission or other federal or state regulatory agencies in relation thereto, and local zoning regulations. Every cable communications system installed, constructed, maintained or operated in a municipality shall be so designed, constructed, installed, maintained and operated as not to endanger or interfere with the safety of persons or property in the municipality.

(z) Unless otherwise already provided for by local law, a provision that whenever the municipality shall undertake any public improvement which affects cable communications equipment, it shall with due regard to reasonable working conditions, direct the franchisee to remove or relocate its wires, conduits, cables and other property located in said street, right-of-way, or public place. The franchisee shall relocate or protect its facilities at its own expense. The municipality shall give the franchisee reasonable notice of the undertaking of public improvements which affect the franchisee's cable communication equipment.

(aa) A provision that nothing contained in these Rules shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the franchisee's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

PROPOSED

(bb) A provision creating an advisory body to be appointed by the governing body of the municipality to monitor the performance of the franchisee in executing the provisions of the franchise.

(1) The advisory body shall submit an annual report to the municipality assessing the franchisee's performance according to the terms of the franchise and make recommendations to the municipality regarding the apparent or likely need for upgrading the system to meet the current state of the art;

(2) Three months prior to the expiration of a franchise, the advisory body shall submit a report to the municipality which report shall include a written appraisal of the performance of the franchisee over the entire length of the franchise with regard to the provisions of the franchise. The report shall also include recommendations for revised or additional provisions of the franchise, considering at least the following items: channel capacity; channels for access cablecasting; facilities and staff assistance available for access cablecasting; two-way capability; and the need for further service to be extended within the franchised area based upon a reassessment of the communications needs of the municipality in relation to the services generally offered by the cable industry.

(cc) A provision indicating by title the office or officer of the municipality that is responsible for the continuing administration of the franchise.

(dd) A provision incorporating by reference as a minimum the technical standards promulgated by the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations relating to cable communications systems, as the same now provide and may hereafter be amended or modified from time to time.

(ee) A provision requiring that the cost of annual and any reasonable special testing necessary to determine whether the cable communications system is in compliance with

PROPOSED

the required technical standards shall be borne by the cable communications company.

(ff) A provision that no cable communications company, notwithstanding any provision in a franchise, may abandon any cable communications service or any portion thereof without having given three months prior written notice to the franchising authority and the Commission. No cable communications company may abandon any cable communications service or any portion thereof without compensating the municipality for damages resulting to it from such abandonment.

MCCC-H-2 Additional Terms and Conditions Permitted

Any franchise may contain such additional terms and conditions as the municipality and the franchisee deem appropriate, provided such additional terms and conditions are consistent with all federal and state laws, rules, regulations and orders. The Commission shall make itself available to municipalities who desire assistance in the development of a franchise ordinance and the awarding of a franchise.

PROPOSED

CHAPTER I - TRANSFER OF OWNERSHIP, RENEWAL, TERMINATION OR AMENDMENT OF FRANCHISE

MCCC-I-1 Requirement of Public Hearing

Transfer of an entire legal ownership interest in a cable communications system, the transfer of a franchise, the renewal of a franchise, the termination of a franchise except for the expiration of the term thereof, or the amendment of a franchise requires the written approval of the municipality given only after holding a public hearing thereon. Notice of any such hearing shall be given not less than 30 days prior to the hearing by publishing notice thereof once each week for two successive weeks in a newspaper of general circulation in the municipality. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the municipality.

MCCC-I-2 Notice to Commission

Transfer of an entire legal ownership interest in a cable communications system or the transfer of a franchise requires notification to the Commission by the municipality. The notification shall be accompanied by the written certification of the transferee that he meets all of the requirements with respect to technical ability, good character and financial stability demanded of an original franchisee. The municipality shall cause to be sent to the Commission a copy of all public documents relating to the amendment, renewal, transfer of ownership or termination of a franchise.

MCCC-I-3 Transfer of Ownership of a Franchise

The transfer of a franchise shall exclude any payment exclusively for the franchise itself. The parties to the transfer of ownership of only a franchise without the inclusion of a cable communications system in which at least substantial construction has been commenced, shall be required to establish that the transfer of a franchise only will be in the public interest.

MCCC-I-4 Renewal

When any franchise is renewed the franchisee shall agree to abide by all rules and

PROPOSED

regulations of the Commission. No franchise shall be renewed for a period longer than five years. A franchise is renewed for purposes of these Rules whenever the municipality awards a subsequent franchise to a cable communications company after the award of the initial franchise to the same company or its successor in interest.

MCCC-I-5 Appeals to the Commission

(a) The franchisee may appeal a decision of the franchising authority terminating a franchise to the Commission pursuant to Minnesota Statutes, 1973 Supplement, Section 238.14 and the determination of the municipality shall be stayed pending a decision of the appeal as provided by MCCC-H-1 (s) of these Rules. Any such appeal is a contested case to which the Commission is not a party.

(b) A franchisee aggrieved by a material modification of its franchise may appeal to the Commission pursuant to Minnesota Statutes, 1973 Supplement, Section 238.14. Any such appeal is a contested case to which the Commission is not a party.

MCCC-I-6 Approval of Franchise Amendments

Any amendment of a provision of a franchise which is within the required content of a franchise prescribed by Chapter H of these Rules shall not be effective unless approved by the Commission. Such approval shall be given if consonant with the public interest and shall not be unreasonably withheld by the Commission.

MCCC-I-7 Amendments to Franchise Ordinance

The municipalities shall file any amendments to the franchise ordinance with the Commission within 10 days of adoption by the municipality.

PROPOSED

MCCC-K-1 Certain Ownership Prohibited

None of the following shall directly or indirectly own, operate, control or have a legal or equitable interest in a cable communications system:

(a) A television broadcasting station whose predicted Grade B contour, computed in accordance with section 73.684 of the Federal Communications Commission's rules and regulations, overlaps in whole or in part the service areas of the system (e.g. the area within which the system is serving subscribers); or

(b) A national television network; or

(c) A television translator station licensed to the municipality of such system; or

(d) A telephone company within its local exchange area, unless a proper and timely waiver is obtained from the Federal Communications Commission; or

(e) A publisher and/or owner of a newspaper company within the primary market area served by the newspaper; or

(f) A radio broadcast station, broadcasting from within the Twin Cities metropolitan area as designated in Minnesota Statutes 1971, Section 473B.01.

The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

The word "interest" as used herein includes, in the case of corporation, common officers, or directors and partial, as well as total, ownership interests represented by ownership of voting stock.

In applying the provisions of this Rule to the stockholders of a corporation which has more than 50 stockholders:

(aa) Only those stockholders need be considered who are officers or directors or who directly or indirectly own 1% or more of the outstanding voting stock.

(bb) Stock ownership by an investment company as defined in U.S.C. section 80a-3, commonly called a mutual fund, need be con-

PROPOSED

sidered only if it directly or indirectly owns 3% or more of the outstanding voting stock or if officers or directors of the corporation are representatives of the investment company. Holdings by investment companies under common management shall be aggregated. If an investment company directly or indirectly owns voting stock in an intermediate company which in turn directly or indirectly owns 50 percent or more of the voting stock of the corporation, the investment company shall be considered to own the same percentage of outstanding shares of such corporation as it owns of the intermediate company: Provided, however, that the holding of the investment company need not be considered where the intermediate company owns less than 50 percent of the voting stock, but officers or directors of the corporation who are representatives of the intermediate company shall be deemed to be representatives of the investment company.

(cc) In cases where record and beneficial ownership of voting stock is not identical--for example, bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street name for the benefit of customers, trusts holding stock as record owners for the benefit of designated parties--the party having the right to determine how the stock will be voted will be considered to own it for the purposes of this section.

PROPOSED

CHAPTER M - OBSCENITY AND DEFAMATION

MCCC-M-1 Obscenity

(a) Neither the cable communications system whose facilities are used to transmit a program produced by a person other than a cable communications system, nor the officers, directors, or employees of the cable communications system shall be liable for any penalty or damages arising from any obscene program presented thereon when the cable communications system or its employees does not originate or produce the program. Any entity which schedules the programming of the access channels of a cable communications system shall not be liable for the presentation of any obscene program thereon unless the entity itself originates or produces the program. The foregoing provision does not affect the liability of those responsible for the origination or production of any obscene program.

(b) A program is obscene when, to the average person applying contemporary community standards, the program taken as a whole appeals to the prurient interest; the program depicts or describes in a patently offensive way, sexual conduct, that is, patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated or patently offensive representations or descriptions of masturbation, excretory functions, or lewd exhibition of the genitals; and the program taken as a whole lacks serious literary, artistic, political or scientific value.

MCCC-M-2 Defamation

(a) Defamatory matter is anything which exposes a person or a group, corporation, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation and any other matter which renders an individual issuing defamatory matter subject to liability for damages within the laws of the State of Minnesota.

(b) Except as hereinafter provided, whoever has knowledge of the defamatory character of the matter and communicates the defamatory matter to a third person without the consent of the person defamed is guilty of criminal defamation; provided that neither

PROPOSED

the cable communications system whose facilities are used to transmit a program produced by a person other than a cable communications system, nor the officers, directors or employees of the cable communications system shall be liable for any penalty or damages arising from any defamatory material presented thereon when the cable communications system or its employees does not originate or produce the program. Any entity which schedules the programming of the access channels of a cable communications system shall not be liable for the presentation of any defamatory material presented thereon unless the entity itself originates or produces the program containing the defamatory material. The foregoing provision does not affect the liability of those responsible for the origination or production of any defamatory material presented in a program.

(c) Violation of subsection (b) is justified if:

(1) The defamatory matter is true and is communicated with good motives and for justifiable ends; or

(2) The communication is absolutely privileged; or

(3) The communication consists of fair comment made in good faith with respect to persons participating in matters of public concern; or

(4) The communication consists of a fair and true report or a fair summary of any judicial, legislative or other public or official proceedings; or

(5) The communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with intent to further such interest or duty.

PROPOSED

CHAPTER N - REPORTS TO COMMISSION

MCCC-N-1 Operator Required to File Reports with Commission

A copy of the form entitled "Annual Report of Cable Television Systems" (FCC Form 325) and a copy of the form entitled "Cable Television Annual Financial Report" (FCC Form 326) shall be filed annually with the Commission, by every cable communications company for each cable communications system operating in the State of Minnesota, substantially at the same time as the reports are filed with the Federal Communications Commission. The Minnesota State Commission may require such additional information to be filed at such time and in such form as the Commission shall by resolution determine.

MCCC-N-2 Mailing Address and Telephone Number to be Furnished by Cable Communication Companies

(a) Every cable communications company shall furnish the Commission with an address and telephone number to be used by the Commission in serving documents or directing correspondence to that company and shall promptly notify the Commission of any change of said address or telephone number. Unless any company advises the Commission to the contrary, the address and telephone number contained in the company's most recent application will be used by the Commission for this purpose.

(b) The company is responsible for making any arrangements which may be necessary to assure that Commission documents or correspondence delivered to its address will promptly reach a responsible person authorized by the company to act in its behalf.

PROPOSED

CHAPTER O - COMMISSION BILLINGS

MCCC-O-1 Payments to Commission

During the calendar year 1974, every cable communications company shall pay to the Minnesota State Commission on Cable Communications for the entire month of November and for the entire month of December an amount equal to 1% of the system's gross receipts for each such month. Such payments shall be due and payable on the tenth calendar day of the succeeding month. Beginning January 1, 1975 and until otherwise provided by rule, every cable communications company shall pay to the Minnesota State Commission on Cable Communications for the entire quarter, 1% of the system's gross receipts for each such quarter. Such payments shall be due and payable on the tenth calendar day of the month following the close of each such quarter. For purposes of this Chapter, the number of subscribers for November and December of 1974 shall be determined by taking the number of subscribers on the first day of each month. For purposes of this Chapter, the number of subscribers for a quarter beginning January 1, 1975 shall be determined by taking the number of subscribers on the first day of each month during the quarter. The amount due and payable shall be determined by multiplying the number of subscribers for each month of the period, as determined in accordance with this Rule, times the subscriber rate, times 1%.

MCCC-O-2 Definition

For purposes of these Rules "gross receipts" means all compensation received directly or indirectly by a cable communications company from its operations within the state, limited to sums received from subscribers in payment for programs received. "Gross receipts" does not include any taxes on services furnished by a cable communications company imposed directly on any subscriber or user by any municipality, state or other governmental unit and collected by the company for such governmental unit. For purposes of this Chapter, "gross receipts" does not include charges for subscriber installations.

MCCC-O-3 Billings

The Commission shall, not later than 10 calendar days before any payment is due and payable, send the cable communications company a bill in such form as the Commission may direct, stating that the periodic payment is due.

PROPOSED