

Minnesota Attorney General: Administrative Rules Proceedings

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STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

July 30, 1975

TELEPHONE
(612) 296-6196

Mr. Harold Brown
Executive Secretary
Minnesota Cable Communication Assoc.
Suite 207
7850 Metro Parkway
Minneapolis, Minnesota 55420

Dear Mr. Brown:

Enclosed please find a copy of my memorandum rejecting the Cable Commission rules, as you requested.

Very truly yours,

Michael B. Miller
Special Assistant
Attorney General

MBM/nm

Enclosure

LAW OFFICES

DE PARCO, ANDERSON, PERL & HUNEGS

WILLIAM H. DE PARCO
JEROME T. ANDERSON (1924-1972)
NORMAN PERL
RICHARD G. HUNEGS

565 PILLSBURY BUILDING
608 SECOND AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55402
AREA CODE 612-339-4511

RALPH E. KOENIG
ROBERT E. ANDERSON
STEPHEN S. ECKMAN
F. DEAN LAWSON

July 29, 1975

JUL 30 1975
STATE OF MINNESOTA
CABLECOM COMMISSION

Mr. Robert J. McDonald
3050 Metro Office Park, Suite 301
Bloomington, Minnesota 55420

Dear Mr. McDonald:

I am not at all satisfied with the cursory note written by Michael B. Miller to Bruce Campbell, that purports to dismiss in a rather summary fashion the work done by the Commission on Chapter J and Chapter H.

I want you to invite Mr. Miller to write a letter to the Commission setting forth all the reasons for his memorandum, the authority that supports his action and all the evidence that he claims requires rejection of Chapters H and J.

I expect you to ask Mr. Miller to to respond in writing and to be present at the next meeting of the Commission to discuss these Chapters. aug 9

Yours very truly,

Richard G. Hunegs

RGH:gs

cc Virginia Greenman
Eugene E. Abbott
Theodore Mellby
Thomas Tipton
Janet Yonehiro
Jane Belau

Attorney General

Bruce Campbell
Special Assistant Attorney General
Cable Communication Commission

July 23, 1975

Michael B. Miller
Special Assistant Attorney General
G-19K Administration Building

Minnesota Cable Commission Rules, Chapters H and J

Returned herewith are the above-captioned rules, for the following reasons:

1. Chapter J is returned due to lack of any substantive evidence adduced in its support.

2. Chapter H is rejected due to:

a. The fact that while no substantive evidence was adduced in its support, much factual testimony was introduced in opposition to the provisions of this chapter.

b. There does not appear to be adequate statutory authority for adoption of this chapter. Specifically:

1) The enabling statute (Minn. Stat. §§ 238.05, .06) permits the Commission to direct the terms of franchises, but it appears to me that the re-purchase provisions of this chapter are beyond the scope and intent of the statute.

2) The Commission is without authority to direct a District Court judge to call for arbitration.

MBM/nm

Enclosures

DEPARTMENT OF ADMINISTRATION

MINNESOTA COMMISSION ON CABLE COMMUNICATIONS

PUBLIC HEARING

April 25, 1975

ADDENDUM "A"

Exhibit 1 7117B 4-25-75

RESOLUTION NO. 11

A resolution regarding the holding of a statutory public hearing.

BE IT RESOLVED that Mr. Robert J. McDonald, Executive Director 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 Q - Poles, Ducts, and Conduit Agreements; Chapter J - Discrimination Prohibited, and an amendment to Rule H-1(q) - Compensation for Value of Assets. 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/b

Adopted 3/13/75

Exhibit 2
4-25-75 MTB

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 thirteenth day of March, 1975, 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. Robert J. McDonald, Executive Director 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 Q - Poles, Ducts, and Conduit Agreements; Chapter J - Discrimination Prohibited, and an amendment to Rule H-1(q) - Compensation for Value of Assets. 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 14th day of March, 1975.

Virginia G. Greenman
Vice-Chairman

Attest by one other member

Exhibit 3
4-25-75 MTB

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE Robert J. McDonald
Executive Director
Minnesota State Commission
on Cable Communications

In the matter of Proposed
Rules relating to Cable
Communications

ORDER FOR HEARING

To effectively implement Minnesota Statutes 1974, Section 238.05, subdivision 9 and Section 238.13, 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 1974, Section 238.06, and delegated to me for purposes of ordering a public hearing by Commission Resolution No. 11, adopted at a regular meeting of the Commission on March 13, 1975.

NOW, THEREFORE, IT IS ORDERED this 17th day of March, 1975, that a public hearing on the proposed rules captioned above be held in the State Office Building Auditorium, Saint Paul, Minnesota, on April 25, 1975, 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.

Robert J. McDonald

Robert J. McDonald
Executive Director, Minnesota State
Commission on Cable Communications

Exhibit 4. MJB
4-25-75

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE Robert J. McDonald
Executive Director
Minnesota State Commission
on Cable Communications

In the matter of Proposed
Rules relating to the regulation of cable communications

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 April 25, 1975, 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 Q concerns pole, duct and conduit agreements; Chapter J concerns the prohibition of discrimination; and an amendment to Chapter H-1(q) concerning compensation for value of assets.

The proposed rules may be set out topically as follows:

A. Chapter Q - Pole, Duct and Conduit Agreements

1. Policy
2. Definitions
3. Application

4. Permits

5. Legal Authority

6. Indemnification

7. Additional Terms

B. Chapter J - Discrimination Prohibited

1. Discrimination in Franchising

2. Discrimination by Cable Communications Company

3. Employment

4. Equal Employment Opportunity Opportunity Program

5. Additional Information to be Furnished

6. Records Available to the Public

7. Compliance Mechanism

C. Amendment to H-1(q) - Compensation for Value of Assets

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.

Robert J. McDonald

Robert J. McDonald
Executive Director, Minnesota State
Commission on Cable Communications

Exhibit 5
4-25-75 MTB

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE Robert J. McDonald
Executive Director
Minnesota State Commission
on Cable Communications

In the matter of Proposed
Rules relating to Cable
Communications

STATEMENT OF NEED

The above captioned rules, with the exception of the amendment to Rule H-1(q), are not amendments to existing rules of the Minnesota State Commission on Cable Communications.

The need to adopt these rules arises because of the legislative mandate placed on the Commission by Minnesota Statutes 1974, Section 238.05, subdivision 9 and Section 238.13, to adopt rules governing certain aspects of the cable communications industry. The need to amend Rule H-1(q) arises because of problems with long-term financing. The rules are further needed to promote the orderly growth of the cable communications industry in the State of Minnesota, and to protect the public interest in the availability of cable communications services.

Robert J. McDonald

Robert J. McDonald
Executive Director, Minnesota State
Commission on Cable Communications

Exhibit 6 B23

4-25-75

STATE OF MINNESOTA

COUNTY OF HENNEPIN

In the matter of Proposed

Rules relating to Cable

Communications

AFFIDAVIT

Anita Benda, being duly sworn on oath deposes and says:

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

2) That on the 18th day of March, she 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 18th day of March, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Anita Benda

Anita Benda
Cable Communications Specialist
Minnesota Commission on
Cable Communications

Subscribed and sworn to before me
this 18th day of March, 1975.

Darla Mae R. Hormann

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

Exhibit 7 MTB

4-25-75

STATE OF MINNESOTA

COUNTY OF HENNEPIN

CERTIFICATE

In the matter of Proposed

Rules relating to Cable

Communications

I hereby certify that the attached 419 labels & one sheets constitute the complete list of persons, associations, and other interested groups who as of 8:00 o'clock A.M., this 18th day of March, 1975, have requested pursuant to M. S. 1974, 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

Joan Anderson Growe

By Ciel Dion

Exhibit 8 mtg
4-25-75

STATE OF MINNESOTA

COUNTY OF HENNEPIN

In the matter of Proposed

Rules relating to Cable

Communications

AFFIDAVIT OF MAILING

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

That on the 21st day of March, 1975, 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 Commission on
Cable Communications

Subscribed and sworn to before me
this 24th day of March, 1975.

Darla Mae R. Hormann

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

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 regulation of
cable communications

FINDINGS OF FACT

The above-entitled matter came on for hearing before Robert J. McDonald, executive director of the Minnesota State Commission on Cable Communications, acting as hearing officer pursuant to authority delegated by the Commission, on the 25th day of April, 1975, at 9:00 a.m. in Room 123 of the State Capitol Building, St. Paul, Minnesota, after proper notice required by M.S., 1974, 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 J - Discrimination Prohibited

The adoption of a chapter of rules prohibiting discrimination is mandated by Minnesota Statutes 1974, Section 238.05, subdivision 9, which provides:

> The commission shall insure that minorities and all other groups have the fullest access to cable communications at all levels, including the establishment of an affirmative action regulation and compliance mechanism consistent with Federal Executive Order 11246, of the President, as amended by Executive Order No. 11375 and Executive Order No. 11478.

Moreover, such a chapter should be consistent with the regulations of the Federal Communications Commission on the same subject matter.

MCCC-J-1 Discrimination in Franchising. This rule prohibits discrimination against a franchisee by a municipality. It is merely a restatement of existing state law. No testimony was heard at the public hearing in opposition to the rule. I find that the rule is a necessary part of the prohibition against discrimination mandated by Minnesota Statutes 1974, Section 238.05, subd. 9.

MCCC-J-2 Discrimination by Cable Communications Company. This rule prohibits a cable communications company from discriminating on certain grounds in the provisions of service and allowing use of the access channels. Again this rule restates state anti-discrimination law. No testimony was heard at the public hearing in opposition to the rule. I find that this rule is necessary if the minority groups are to be given free access to cable communications at all levels as required by Minnesota Statutes 1974, Section 238.05, subd. 9.

MCCC-J-3 Employment. This rule prohibits discrimination in employment by cable communications operators. Again, this rule restates the requirements of state law as it relates to anti-discrimination. No testimony was given at the public hearing in opposition to the rule. I find that the rule is a necessary part of the prohibition against discrimination mandated by Minnesota Statutes 1974, Section 238.05, subd. 9.

MCCC-J-4 Equal Employment Opportunity Program. This rule requires each cable system to establish, maintain and carry out a program designed to assure equal opportunity in system employment policy and practices. No testimony was heard at the public hearing in opposition to the rule. I find that this rule is necessary if minority groups are to be given free access to cable communications at all levels as required by Minnesota Statutes 1974, Section 238.05, subd. 9. Moreover, I find that the requirement of an equal employment opportunity program will not be unduly burdensome on cable communications companies since the same requirement is imposed on cable communications systems by the regulations of the Federal Communications Commission.

MCCC-J-5 Additional Information to be Furnished. This rule requires certain cable communications systems to furnish to the Commission and the Human Rights Department an equal employment program statement containing such information as therein described. No public testimony was heard in opposition to this rule. I find that the provision of an equal employment program statement is a necessary part of the affirmative action programs mandated by Minnesota Statutes 1974, Section 238.05, subd. 9. Further, the requirement should place no undue burden on cable system operators, since the Federal Communications Commission has an identical requirement.

MCCC-J-6 Records Available to the Public. This rule requires that records pertaining to equal employment opportunity programs be public records on file with the Commission, the Department of Human Rights and the cable operators. This rule in part merely restates the statute giving the public access to public records, Minnesota Statutes 1974, Section 15.17, subd. 4. I find that the maintenance of adequate records would be vital to the successful implementation of Minnesota Statutes 1974, Section 238.05, subd. 9. Further, the requirement would place no additional burden on cable operators, since the Federal Communications Commission has already promulgated identical rules requiring the keeping of such records.

MCCC-J-7 Enforcement Mechanism. This rule establishes the Department of Human Rights as the enforcement mechanism for the affirmative action plans. A document of agency agreement has already been signed with the Department of Human Rights whereby they undertake to perform this task as the Commission's agent. Statutory authority for this agreement is found in Minnesota Statutes 1974, Section 238.04, subd. 6. I find that the assistance of the Department of Human Rights is vital to the successful enforcement of the affirmative action programs contemplated by Chapter J and Minnesota Statutes 1974, Section 238.05, subd. 9. A certificate of confirmation, however, may only be revoked by the Commission.

Amendment to H-1(q) - Compensation for Value of Assets

This amendment deletes the provision contained in the required content of franchises that upon expiration of the franchise, or upon revocation of the franchise, or upon other termination of the franchise as provided for in the rules of the Commission or upon receipt of an application for approval of an assignment of the franchise, the municipality had the non-exclusive right to purchase the system, and substituted a rule that when the cable franchise is not renewed or is revoked or municipal purchase is permitted that the cable operator be compensated for his system based on the fair market value of the system. Statutory authority to adopt the rule is found in Minnesota Statutes 1974, Section 238.05. There was testimony at the hearing that supported the rule and testimony that opposed the rule. I find the testimony that cities will be forced to assume the responsibility for operating the systems to be groundless. I also reject as basically unfair the testimony that the basis for compensation should be cost minus depreciation rather than fair market value. I find on the basis of all the evidence presented that the cable communications industry in the State of Minnesota requires such a rule as that advanced herein so that the industry may obtain financing, especially during the final years of the franchise for system renovation and modernization according to the most advanced state of the art and that the availability of such financing will be in the public interest.

Chapter Q - Poles, Ducts and Conduits

The Commission continued consideration of Chapter Q, relating to poles, ducts and conduits regulation until its meeting of July 11, 1975.

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 June 14, 1975, should be adopted because they provide for reasonable requirements for the administration and enforcement of regulations relating to the prohibition of discrimination and the compensation for assets upon termination of a franchise, and I find that these rules are necessary to reinforce and supervise this effort.

July 1, 1975
Date

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

RESOLUTION NO. 12

BE IT RESOLVED, that the rules relating to the prohibition of discrimination and compensation for value of assets be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes, 1974, Section 238.06, subdivision 1 and that the Chairperson of the Minnesota Commission on Cable Communications, be and hereby is, authorized to sign an order adopting those rules.

Adopted
6/14/75

CERTIFICATE OF COMMISSION'S ADOPTION

OF RULES 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 14th day of June, 1975, 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 the prohibition of discrimination and compensation for value of assets be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes, 1974, Section 238.06, subdivision 1 and that the Chairperson of the Minnesota 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 20th day of June, 1975.

Virginia G. Greenman
Vice-Chairman

Theodore L. Mueg
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 Proposed Rules
Relating to the Regulation of
Cable Communications

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the executive director of the Minnesota Commission on Cable Communications acting as hearing officer pursuant to delegated authority on April 25, 1975, at 9:00 a.m. in Room 123 of the State Capitol Building, St. Paul, Minnesota, after proper notice required by M.S. 1974, 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 J - Discrimination Prohibited and an amendment to H-1(q) - Compensation for Value of Assets, are adopted this 1st day of July, 1975, pursuant to authority vested in the Commission by Minnesota Statutes, 1974, Section 238.06, and delegated to me by Resolution No. 12 of the Commission adopted by the Commission at a regular meeting held June 14, 1975.

Richard G. Hunegs

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: July 1, 1975

STATE OF MINNESOTA

COMMISSION ON CABLE COMMUNICATIONS

In the Matter of Proposed Rule Related to Cable Communications MCCC-H-1(q)	BRIEF IN OPPOSITION TO APPROVAL BY THE CITY OF SAINT PAUL

PIERRE N. REGNIER
City Attorney

THOMAS J. STEARNS
Assistant City Attorney

Attorneys for
City of Saint Paul
647 City Hall and Court House
Saint Paul, Minnesota 55102

PREFACE

By direction of the City Council of the City of Saint Paul, its counsel has expressed opposition to the adoption of Rule MCCC-H-1(q) by the Minnesota State Cable Communications Commission. Hearings have been held and the City has submitted various written expressions of its opposition, which have been incorporated into the record. The gist of the rule is to the effect that at the termination of a cable television franchise, any new franchisee would have to compensate the old franchise holder for the assets of the company, whether desired or not, in various designated ways. If no agreement can be reached upon the amount to be paid, the rule directs that the Senior District Judge of the Judicial District in which the system is located shall appoint an arbitrator whose decision of the amounts shall be <u>final</u> on the parties involved. The rule continues to require the same procedure in the case of municipal purchase of a cable communications system, without regard to any referendum or local approval. The City submits that the rule exceeds the statutory authority conferred upon the Commission, conflicts with the governing statute or

other relevant law, has no reasonable relationship to statutory purposes, and is unconstitutional, arbitrary and unreasonable.

ARGUMENT

I

THE RULE OF THE CABLE COMMISSION REQUIRING THE FRANCHISING AUTHORITY TO COMPEL A SUBSEQUENT FRANCHISEE TO PAY FOR THE PLANT OF A TERMINATED CATV OPERATOR EXCEEDS THE STATUTORY AUTHORITY CONFERRED ON THE COMMISSION.

A. The Franchising Authority Must Require Any Subsequent Franchisee To Purchase The Assets Of A Franchise Holder Whose Franchise Terminates And Is Not Renewed.

The adopted Rule MCCC-H-1(q) provides initially in paragraph (1)(a) that the City or franchising authority include the following condition in a franchise:

> "If the municipality shall fail to renew the franchise of the present franchisee, any subsequent franchisee selected to replace the original franchisee shall be required to compensate the original franchisee for its system based on its market value in accordance with accepted appraisal and accounting practices, except that for purposes of this subparagraph no value shall be assigned to the franchise."

A review of the statutes governing the Minnesota Cable Commission indicates that the Commission must consider its authority to be derived from Minn. Stat. § 238.05, which reads as follows:

> "Subd. 10. The Commission shall establish standards pertaining to transfer, renewal, termination or amendment of franchises."

Since the subject matter of the rule does not involve a transfer, renewal, or amendment of a franchise, the only possible part of the above statute that can be deemed applicable to it is that which pertains to "termination" of a franchise. However, the rule does not confine itself to the conditions of termination. Instead, it purports to place a burdensome condition on a later applicant for a franchise, even though that applicant was not a party to the original franchise agreement and had nothing to do with the preceding termination. The City of Saint Paul submits that the promulgation of the rule in this first particular is greatly beyond any statutory authority granted the Cable Commission in its law.

The Commission's interpretation of Minn. Stat. § 238.05, Subd. 10, with respect to "standards pertaining to termination" also has a practical conflict with its own law. For example, in Minn. Stat. § 238.05, Subd. 2, an express provision covers the non-exclusiveness of franchises:

> "Subd. 2. The Commission shall, to the extent permitted by, and not contrary to, applicable federal and state law, rules and regulations;
>
> (b) prescribe minimum standards for inclusion in franchises, including ... provisions for municipal purchase; and a requirement that no such franchise may be exclusive." (Underlining added)

No time limit is set out for the application of the termination conditions in the rule itself. If the applicant happens to obtain a franchise before the date of termination of the first franchise, that operator could be granted his with no strings attached. The original franchise is non-exclusive. If, by chance, the second franchisee is not granted his franchise until after the expiration of the first franchise, however, he has to buy assets he may have absolutely no need for. The same goes for an operator who wishes to apply for a franchise a month, year, or several years later. Once the rule becomes applicable, the non-exclusive character of a franchise no longer exists, and all franchisees are not treated the same. We might inquire what happens if two subsequent applicants are to be granted franchises.

The Minnesota law on Cable Communications does authorize the Commission to prescribe minimum standards to be included in new franchises. Still, once more, nothing in the law supports the adoption of discriminatory practices by the Commission. Nor does anything imply that the right of the municipality under Minn. Stat. § 238.08 should be so shackled. At the local level, it has been recognized that the operation of a cable television company is in the nature of a "public utility." TV Pix, Inc. vs. Taylor, 1968, 304 Fed. S. 459 (aff. 396 US 556). The

court noted (Fed. S. 463):

> "In this perspective, a community antenna system is essentially a local business and, in its impact on interstate commerce, is analogous to a local express or parcel delivery service or a local pilotage or lighter service organized to facilitate the final interstate delivery of goods to the named consignee."

Minnesota authority describes a franchise as a right granted to a company to maintain and operate utilities within a municipality. Village of Blaine vs. Independent School District No. 12, 1963, 265 Minn 9, 17, 121 NW 2d 183, 190:

> "Thus a franchise must be obtained not only to lay pipes to conduct gas across or over the boundaries of the village, or over its streets, alleys, and public grounds if necessary, but also to do all other things required to establish and to operate a utility. The grant of a right to maintain and operate public utilities within a municipality and to exact compensation therefor is a franchise."

The permission for a utility to operate over streets and public places is solely within the discretion of the City. Furthermore, the only method in such cities as Saint Paul by which such operation can be accomplished is by the issuance of a franchise ordinance. Those requirements appear in Section 16.01 of the Saint Paul City Charter:

> "Sec. 16.01. Franchises Required. Except as otherwise provided by law, no person, firm, or corporation shall

> place or maintain any permanent or semi-permanent fixtures in, over, upon, or under any street or public place for the purpose of operating a public utility without a franchise therefor from the city. A franchise shall be granted only by ordinance, which shall not be an emergency ordinance." (Underlining added)

Most municipalities appear to be in the situation of the City of Saint Paul. Utilities cannot maintain fixtures upon their streets or public places without a franchise. Therefore, once the franchise terminates by its terms, the municipality may require the franchise holder to remove the facilities from the streets and public places if the franchise is not renewed. Detroit United Railway vs. City of Detroit, 1913, 229 US 39, 45, 46:

> "We are of the opinion that where a street railroad is authorized to operate in the streets of a city for a definite and fixed time, and has enjoyed the full term granted, it may, upon failure to renew the grant, be required, within a reasonable time, to remove its tracks and other property from the streets."

In addition see: City of Kiowa, Barber County vs. Central Telephone & Utilities Corporation, 1973, _____ Kan _____, 515 Pac 2d 795, 798:

> "On expiration of the franchise the city has a right to require the company to remove the electric plant and distribution lines without payment of damages by the city."

The general law is summarized in 12 McQuillin on The Law of Municipal Corporations (Callaghan & Company, 1970 Rev. Ed.) Franchises, § 34.51, p. 137:

> "Rights of Parties. After the expiration of a franchise to use the streets, no further obligations between the city and the grantee can be implied from the franchise. The franchise may be granted to another company. The right of the company to use the streets, as well as the right of the city to demand the service, ceases. Continued use may be enjoined as a public nuisance. The former grantee may be compelled to discontinue the use of the streets, and to remove its property at its own expense, and it does not acquire any right by adverse possession. Removal of underground pipes was not compelled, however, and the owner was given the option whether to remove them, where they did not interfere with the usual use of the streets and alleys."

A rule, such as proposed and adopted by the Minnesota Cable Commission, in imposing conditions on the issuance of a subsequent franchise shows little adherence to the extent of the authority bestowed on the Commission by the law. No provision in the governing statute displays an intent to limit, restrict, or repeal the existing charters and decision law in this regard.

B. If The Subsequent Franchise Holder Cannot Agree With The Prior Franchise Holder On The Value Of The Assets Within 60 Days, The Senior District Court Judge Shall Appoint An Arbitrator To Decide The Amount.

In subparagraph (1)(a) of Rule MCCC-H-1(q), the Cable Commission has set up its own procedure for determining a compulsory arbitration of market value. The rule prescribes:

> "If the parties cannot agree on an amount within 60 days of the commencement of operations by the new franchisee, the Senior District Judge of the Judicial District in which the system is located shall appoint an arbitrator who shall arbitrate the matter and render a decision within 60 days of his appointment. His decision shall be final and binding on both parties. The cost of arbitration shall be borne equally by the parties to the transaction." (Underlining added)

The normal arbitration statute in Minnesota is found in Minn. Stat. § 572.08 et seq. By this, parties to an agreement may provide for arbitration of a dispute between them. The senior judge of district court is given the authority by statute to appoint arbitrators. What the Cable Commission is attempting to do by its rule is to expand the Arbitration Statute to include not only parties to an agreement, but to include a subsequent, non-participating party. Presently, there is no law in the State of Minnesota whereby the Cable Commission can force the Senior District Judge of the Judicial District to appoint an arbitrator for the purpose of rendering a decision in this respect. There is no law determining the measure of damages for the "purchase." There is no law

providing for the "finality" of the arbitrator's award. There is no law setting guidelines for the costs, and there is no law establishing the basis for the distribution of the costs.

Since authority for the Cable Commission must come from its statute, its attempts to establish an arbitration procedure solely by a rule and to amend the arbitration statute now existing, is far in excess of the statutory authority it has. Also, the expression of "market value in accordance with accepted appraisal and accounting practices" is almost impossible to determine. "Market value" is precisely what it says: value determined by market forces, the consequence of a market demand. An appraisal would normally look at exchanges that have taken place. In real property matters, comparable sales are examined. It is too much to expect comparable criteria to be available for cable systems that are not regularly bought and sold. In addition, "accounting practices" and their effect on the market price are somewhat beyond immediate comprehension. Sales have little to do with cost accounting.

C. If The Municipality Shall Revoke A Franchise For Cause, A Subsequent Franchisee Shall Be Required To Buy The System At Market Value.

In subparagraph (1)(b) of Rule MCCC-H-1(q) the Cable Commission has exceeded its authority to even a greater extent. The rule reads:

> "If the municipality shall revoke a franchise for continuous significant violations of the franchise, any subsequent franchisee selected to replace the original franchisee shall be required to compensate the original franchisee for its system based on its market value in accordance with accepted appraisal and accounting practices, except that no value shall be assigned to the franchise. If the parties cannot agree on an amount within 60 days of the commencement of operation by the new franchisee, the amount shall be determined as provided in subparagraph 1(q) (1) (a) of this Rule, except that no value shall be assigned to the franchise."

Being in the nature of a contract, a franchise that is breached by a franchise holder is certainly subject to cancellation. It hardly seems necessary that "continuous significant violations" be a prerequisite. The state law does permit an appeal from a municipality's determination to cancel a franchise and other action which aggrieves a franchise holder. See: Minn. Stat. § 238.14. Appeals to the Commission:

"Any franchised cable communications company, who is aggrieved by action of any franchise authority in modifying, suspending, cancelling, revoking, or declaring forfeited the franchise, may appeal to the commission within 30 days following notice of such action by a petition in writing, setting forth all the material facts in the case ....

If the commission approves the action of the municipality it shall issue notice to it to that effect, but if the commission disapproves of its action it shall issue a decision in writing advising the municipality of the reasons for its decision and ordering the municipality to conform with such decision."

What the present rule provides is not only for the Commission to approve of a revocation for cause, or even worse for continuous breaches, but also to penalize a later franchise applicant by compelling it to purchase the assets. This proposal goes beyond the statute which permits "approval or disapproval" and an order for the municipality to conform with a decision. It almost sanctions a breach by bestowing on errant franchise holders rights that they have neither earned nor been granted by any statute. Since Minn. Stat. § 238.14 has provided recourses for an "aggrieved franchise holder", anything in excess of those recourses would be contrary to the law rather than a fulfillment of its requirements.

The provisions about having a senior district judge appoint an arbitrator and having a final and binding award in accordance with a sort of "market value" are subject to the same criticisms announced by the City of Saint Paul earlier in this brief.

D. If A Municipality Shall Revoke A Franchise For Cause, It May Purchase The Property Of The System But Shall Be Required To Pay Market Value For It.

In subparagraph (2)(a) of Rule MCCC-H-1(q) a rather odd provision appears in the rule. It reads:

> "A municipality, upon revocation of the franchise for continuous significant violations of the franchise terms, may, if otherwise authorized by law or charter provision, purchase the property of a cable communications system upon notice to the franchisee as herein provided. The municipality shall be required to compensate the franchisee for its system based on its market value in accordance with accepted appraisal and accounting practices. If the parties cannot agree on an amount within 60 days of such revocation, the amount shall be determined as provided in subparagraph 1(q) (1) (a) of this Rule, except that no value shall be assigned to the franchise."

The way this rule is phrased it would appear that a municipality may purchase a system under one of two conditions. If the franchise terminates by its terms, the municipality may negotiate the price and pay whatever amount is agreed upon. If the parties do not agree as to amount, the municipality would not complete the purchase. On the other hand, as soon as the revocation of the franchise is for "continuous, significant violations of the franchise terms", the rule subjects the municipality to conditions on the purchase it can make. It can only undertake a purchase

of the system by payment of the market value "in accordance with accepted appraisal and accounting practices." The difficulty of ascertaining that type of value has been discussed, and, here, with significant breaches, a lack of agreement would carry the municipality further. Instead of having negotiations come to an end, the municipality would have to accede to a final and binding arbitration procedure. It appears that the portion of the statute the Commission is relying on is found in Minn. Stat. § 238.05, Subd. 2, which directs:

> "The Commission shall, to the extent permitted by, and not contrary to, applicable federal and state law, rules and regulations:
>
> (b) prescribe minimum standards for inclusion in franchises, including ... provisions for municipal purchase; and a requirement that no such franchise may be exclusive."

The construction the Commission desires to place on that provision is contradictory to another portion of the statute which reads in Minn. Stat. § 238.08, Subd. 3:

> "Nothing in Laws 1973, Chapter 568 shall be construed to limit any municipality from the right to construct, purchase, and operate a cable communications system."

That right is further defined by Saint Paul Charter provision in Section 15.01:

> "Sec. 15.01. Acquisition and Operation of Utilities. The city may own and operate any gas, water, heat, power, light, telephone, transportation, market, or

other public utility for supplying its own needs for utility service or for supplying utility service to private consumers or other governmental agencies. It may construct all facilities needed for that purpose and may acquire any existing utility properties so needed. The city shall not acquire or construct any public utility unless the proposition to acquire or to construct it has been approved by a majority of the electors voting upon the proposition at a general or special election."

The phrase "state law", which appears in the Cable Communications statute, has been considered to be more inclusive than state statute. As far as the federal constitution is concerned, it pertains to a municipal ordinance. Tampa Northern R. Co. vs City of Tampa, 1926, _____ Fla _____, 107 So. 364, 365. It may cover both statutory and common law. Fitzpatrick vs Simonson Bros. Mfg. Co., 1902, 86 Minn 140, 90 NW 378. A home rule charter is construed as a "local statute" (Mitchell vs City of Saint Paul, 1949, 228 Minn 64, 68, 36 NW 2d 132, 135), so it would also be enveloped within the term "state law."

Under the Saint Paul charter, there is no limitation on the price the City of Saint Paul can negotiate, except that whatever it pays must be approved by the electors. Having an arbitrator attempt to establish a "final and binding" amount, instead of the electors, is decidedly in conflict with the "state law" on the

question. In addition, selecting a "market value" as the price to be paid rather than a negotiated amount exceeds the statutory authorization even more.

Provisions similar to what has been proposed by the rule on municipal purchase are not unknown. However, in setting up a procedure to qualify charters and other law, the right definitely must be delineated in the governing statute. Note: Minn. Stat. § 216B.45, which covers the regulation of electric and gas utilities in the State of Minnesota. Since the legislature recognized the propriety of directing a procedure through statutory conditions in this instance, it is apparent that it does not imply the authority by not enacting such provisions in the Cable Communications statute.

E. If A Municipality Shall Revoke A Franchise For Cause, It May Purchase The Property Of The System By Resolution Of The Governing Body And Ratification By The Electors Not Less Than 60 Nor More Than 120 Days After The Resolution.

In subparagraph (2)(b) of Rule MCCC-H-1(q) the Cable Commission proceeds to limit the period in which a municipality may purchase a system of a cable operator whose franchise was revoked. The entire provision reads as follows:

> "Municipal procedure; notice; election:
> Any municipality which desires to acquire the property of a cable communications system, as authorized by subparagraph 2 (a) of Rule H-1 (q) may determine to do so by resolution of the governing body of the municipality taken after a public hearing of which at least 30 days published notice shall be given as determined by the governing body. The determination shall become effective when ratified by a majority of the qualified electors voting on the question at a general or special election to be held for that purpose, not less than 60 or more than 120 days after the resolution of the governing body of the municipality."

The charter provision of the City of Saint Paul pertinent to the acquisition of utilities is found on pages 14 and 15 of this brief. It prescribes no time limit during which the city must submit the proposition of acquiring the property to electors at a general or special election. An attempt by the Cable Commission to limit the time for approval by the voters exceeds the

directives of its law which is found on page 14 of the brief. Minn. Stat. § 238.05, Subd. 2 recites that the rules and regulations for purchasing the assets shall not be contrary to state law, and further, Minn. Stat. § 238.08, Subd. 3 spells out that the law itself is not to be construed to limit any municipality's purchase of a system.

Taking the provisions a step further, according to the rule, if the municipality were not to have the purchase ratified in 120 days, it is implied that the municipality cannot purchase the system at all. On the other hand, if the municipality were to purchase a system at the termination of the franchise, it could do so in either a general or special election without regard to time. The two situations are in conflict without any reason. Besides, a special election called merely for the purpose of purchasing the system may be a very expensive undertaking for a large municipality, and nowhere in the law does an intent appear to require only a special election in the event that the general election cannot occur within 120 days. Once more, the City of Saint Paul submits that the Cable Commission has exceeded its authority in this portion of the rule.

F. If A Franchise Expires Or Is Revoked, The Municipality Shall Require An Extension Of Operation For 120 Days And If No Subsequent Franchisee Has Been Selected To Replace The Original Franchisee, The Municipality Shall Issue A License For The Continuation Of The Service Beyond That Time.

In subparagraph (4) of Rule MCCC-H-1(q) the Cable Commission requires the municipality to have the franchisee operate the system without a franchise for 120 days after the date of its expiration or revocation. If there is no subsequent franchisee selected in that period, a license is to be issued by the municipality to the original franchise holder for further operation of the system. The provision reads as follows:

> "Upon the expiration or revocation of a franchise, the municipality shall require the original franchisee to continue to operate the system either until a new franchisee or the municipality begins to operate the system, or the passage of 120 days from the date of such expiration or revocation, whichever condition sooner occurs. All provisions of the franchise shall be in full force and effect during said extension of the franchise and the original franchisee shall be accountable to the franchisee selected to replace the original franchisee or to the municipality, whichever is applicable, for the financial operation of the system during said extension of the franchise. Upon expiration of the 120 day period herein prescribed, if no franchisee has been selected to replace the

original franchisee or the municipality has not purchased the system, the original franchisee shall have a license from the municipality to allow the original franchisee to continue to maintain his wires, cables, amplifiers and other equipment in the public streets and ways until a subsequent franchisee is selected to replace the original franchisee and a purchase price for the system is determined as provided for in MCCC-H-1(q)(1)(a) or 1(b) as applicable, or until the municipality purchases the system as provided for in MCCC-H-1(q)(2); provided, however, that the provisions of all pole, duct and conduit agreements shall be applicable to the period of the license and that the original franchisee shall not operate the system during the period of the license without a franchise from the municipality."

As has been mentioned earlier on pages 6 and 7 of this brief, the charter of the City of Saint Paul, and probably of many other communities, does not permit the operation and maintenance of a utility service upon the streets and public places of the city <u>without a franchise</u>. Obtaining a franchise depends, in turn, upon an ordinance passed by the governing body to that effect. There is no margin for relaxation of these conditions, whether by a rule of the Commission or wish of the City Council. What the Cable Commission is attempting to do in prescribing the issuance of a license is thus contrary to a specific charter provision, which has the effect of a local statute. The state law does not suggest that such legislative power is vested in

the Commission. Furthermore, there is no basis for the Commission decreeing that a license or even a franchise shall be issued by a municipality. That is purely a legislative prerogative. In this particular, once more, the City submits that the Cable Commission has exceeded its powers and attempted to dictate something that is not intended by the state law.

II

THE PROVISIONS OF THE RULE PERTAINING TO SUBSEQUENT FRANCHISES, MARKET VALUE, ARBITRATION PROCEDURE AND MUNICIPAL PURCHASE CONFLICT WITH THE GOVERNING STATUTE OR OTHER RELEVANT LAW.

The arguments presented regarding the individual parts of the rule referring to subsequent franchisees, and to purchase and acquisition by a municipality of the assets of the expired or revoked franchise owner can be repeated almost verbatim with respect to the conflict the rule has with the governing statute or other relevant law. For the sake of brevity, the City of Saint Paul will not repeat them in this subdivision. However, it should be realized that court decisions have emphasized the legislature may not delegate its legislative functions to an administrative body. See: State vs. Great Northern Ry. Co., 1907, 100 Minn 445, 447, 111 NW 289 (Quoting Justice Mitchell):

> "All laws are carried into execution by officers appointed for the purpose, some with more, others with less, but all clothed with power sufficient for the efficient execution of the law. These powers often necessarily involve in a large degree the exercise of discretion and judgment, even to the extent of investigating and determining the facts, and acting upon and in accordance with the facts as thus found .... The difference between the power to say what the law shall be, and the power to adopt rules and regulations, or to

> investigate and determine the facts, in order to carry into effect a law already passed, is apparent. The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and the conferring of authority or discretion to be exercised under and in pursuance of the law."

This proposition is amplified in Bielke vs. American Crystal Sugar Co., 1939, 206 Minn 308, 312, 288 NW 584, 586:

> "To the extent that such rules (administrative) attempt to change substantive and mandatory portions of a statute, they are a nullity. It is axiomatic that an administrative body can neither make nor change substantive law. It may adopt administrative rules, but in doing so cannot change existing, or make new, law." (Parenthetical matter added)

In accord: McGuire vs. Viking Tool & Die Co., 1960, 258 Minn 336, 348, 104 NW 2d 519, 528.

Again, the rule is attempting to limit the issuance of franchises by municipalities by imposing conditions that make it extremely difficult for a subsequent applicant to undertake the investment needed. Nothing in the governing statute allows the limitation in this manner, and, in effect, the requirement that no such franchise may be exclusive would connote a disavowance of that type of discrimination. In view of the stature of the charter provisions of the City of Saint Paul, and probably of many other

charter provisions, the attempt to limit purchase of a system by the rule is a direct violation of the statute which allows no limit on purchase and also a violation of charter provisions which do not impose similar conditions on a municipality.

III

THE PROVISIONS OF THE RULE PERTAINING TO SUBSEQUENT FRANCHISES, MARKET VALUE, ARBITRATION PROCEDURE AND MUNICIPAL PURCHASE HAVE NO REASONABLE RELATIONSHIP TO STATUTORY PURPOSES.

The statute establishing a Cable Commission in the State of Minnesota is intended to provide an orderly operation of cable communications for subscribers to the system. It is not intended to place cable companies into a monopolistic posture at the expense of such subscribers. Nor does it purport to favor an operator that has a limited franchise right over another who may provide a much better service. A rule that places an existing franchise holder in a commanding position over those who do not need the facilities of the earlier operator can only deter development of the communications system in the community. The ambiguity of application of the rule that comes from having one operator able to obtain a concurrent franchise because of the non-exclusive nature of the first franchise, and another penalized because of his being subsequent, certainly was not intended by the statute. Also, the peculiar method of favoring a franchise holder whose franchise was terminated for cause over one whose franchise was terminated by its terms in a municipal purchase cannot be deemed as an intended consequence of the law.

What the Cable Commission apparently has done is to proceed to contradict its governing statute in many ways in its effort to espouse a single purpose that is not found in any statutory provision. Accordingly, the City of Saint Paul submits that the rule does not fulfill the delegation of authority which the statute intended the Commission to have.

IV

THE PROVISIONS OF THE RULE PERTAINING TO SUBSEQUENT FRANCHISES, MARKET VALUE, ARBITRATION PROCEDURE AND MUNICIPAL PURCHASE ARE UNCONSTITUTIONAL, ARBITRARY AND UNREASONABLE.

Many of the same arguments that were submitted earlier in this brief support a position that the rule is unconstitutional, arbitrary and unreasonable. In view of the double standards involved, the City of Saint Paul contends that the rule violates the XIV Amendment of the United States Constitution to the extent of depriving persons within its jurisdiction of the equal protection of the law. Construction of the state law by the Cable Commission makes the presumed authority it has far and away violative of any constitutional guarantees in both the state and federal constitutions.

V

CONCLUSION

In the course of this brief, the City of Saint Paul has more or less emphasized the fact that the state law does not delegate expressly or by implication the type of authority which the Commission has attempted to exercise through adoption of the rule pertaining to the purchase of assets by either a municipality or subsequent franchisee, and the issuance of franchises or licenses through the Cable Commission itself. As the court has emphasized in the past, the function of the Commission is to develop rules for the fulfillment of the purposes of the law. In a sense, what the Commission has discretion in determining is how the law shall be applied rather than what the law should have been. This proposition was announced in Lee vs. Delmont, 1949, 228 Minn 101, 113, 36 NW 2d 530, 538:

> "Pure legislative power, which can never be delegated, is the authority to make a complete law - complete as to the time it shall take effect and as to whom it shall apply - and to determine the expediency of its enactment. Although discretion to determine when and upon whom a law shall take effect may not be delegated, the legislature may confer upon a board or commission

a discretionary power to ascertain, under and pursuant to the law, some fact or circumstance upon which the law by its own terms makes, or intends to make, its own action depend." (Underlining added)

Therefore, the City of Saint Paul requests the Attorney General to disapprove of the rule as it has been forwarded to him.

Dated:

Respectfully Submitted,

PIERRE N. REGNIER
City Attorney

Thomas J. Stearns

THOMAS J. STEARNS
Assistant City Attorney
647 City Hall and Court House
Saint Paul, Minnesota 55102

CITY OF SAINT PAUL

OFFICE OF THE CITY ATTORNEY

PIERRE N. REGNIER

July 8, 1975

Warren Spannaus, Attorney General
State of Minnesota
State Capitol Building
Saint Paul, Minnesota 55155

Attention: Michael Miller

Re: Cable Television Rule MCCC-H-1(q)
Payment For Assets At Termination Of Franchise

Dear Sir:

I enclose herewith the City of Saint Paul's objection to the above rule which has been approved by the Cable Commission of the State of Minnesota.

Very truly yours,

Thomas J. Stearns

THOMAS J. STEARNS
Assistant City Attorney

TJS/g

Enc.

City Hall, Saint Paul, Minnesota 55102

612 298-5121

COMPENSATION FOR VALUE OF ASSETS

MCCC-H-1(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.~~

A provision that:

(1) (a) If the municipality shall fail to renew the franchise of the present franchisee, any subsequent franchisee selected to replace the original franchisee shall be required to compensate the original franchisee for its system based on its market value in accordance with accepted appraisal and accounting practices, except that for purposes of this subparagraph no value shall be assigned to the franchise. If the parties cannot agree on an amount within 60 days of the commencement of operations by the new franchisee, the Senior District Judge of the Judicial District in which the system is located shall appoint an arbitrator who shall arbitrate the matter and render a decision within 60 days of his appointment. His decision shall be final and binding on both parties. The cost of arbitration shall be borne equally by the parties to the transaction.

(b) If the municipality shall revoke a franchise for continuous significant violations of the franchise, any subsequent franchisee selected to replace the original franchisee shall be required to compensate the original franchisee for its system based on its market value in accordance with accepted appraisal and accounting practices, except that no value shall be assigned to the franchise. If the parties cannot agree on an amount within 60 days of the commencement of operation by the new franchisee, the amount shall be determined as provided in subparagraph 1(q) (1) (a) of this Rule, except that no value shall be assigned to the franchise.

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(2) (a) Municipal purchase of a cable communications system:

A municipality, upon revocation of the franchise for continuous significant violations of the franchise terms, may, if otherwise authorized by law or charter provision, purchase the property of a cable communications system upon notice to the franchisee as herein provided. The municipality shall be required to compensate the franchisee for its system based on its market value in accordance with industry appraisal and accounting practices. If the parties cannot agree on an amount within 60 days of such revocation, the amount shall be determined as provided in subparagraph 1(q) (1) (a) of this Rule, except that no value shall be assigned to the franchise.

(b) Municipal procedure; notice; election:

Any municipality which desires to acquire the property of a cable communications system, as authorized by subparagraph 2 (a) of Rule H-1 (q) may determine to do so by resolution of the governing body of the municipality taken after a public hearing of which at least 30 days published notice shall be given as determined by the governing body. The determination shall become effective when ratified by a majority of the qualified electors voting on the question at a general or special election to be held for that purpose, not less than 60 or more than 120 days after the resolution of the governing body of the municipality.

(c) Acquisition by eminent domain:

Nothing herein shall be construed to preclude a municipality from acquiring the property of a cable communications system by eminent domain proceedings.

(3) Upon receipt of an application for approval of an assignment of the franchise, the municipality, if otherwise authorized by law or charter provision, shall have the non-exclusive right to bid for the purchase of the

PROPOSED

ongoing system. The franchisee shall not be required to accept the bid of the municipality.

(4) Upon the expiration or revocation of a franchise, the municipality shall require the original franchisee to continue to operate the system either until a new franchisee or the municipality begins to operate the system, or the passage of 120 days from the date of such expiration or revocation, whichever condition sooner occurs. All provisions of the franchise shall be in full force and effect during said extension of the franchise and the original franchisee shall be accountable to the franchisee selected to replace the original franchisee or to the municipality, whichever is applicable, for the financial operation of the system during said extension of the franchise. Upon expiration of the 120 day period herein prescribed, if no franchisee has been selected to replace the original franchisee or the municipality has not purchased the system, the original franchisee shall have a license from the municipality to allow the original franchisee to continue to maintain his wires, cables, amplifiers and other equipment in the public streets and ways until a subsequent franchisee is selected to replace the original franchisee and a purchase price for the system is determined as provided for in MCCC-H-1(q)(1)(a) or 1(b) as applicable, or until the municipality purchases the system as provided for in MCCC-H-1(q)(2); provided, however, that the provisions of all pole, duct and conduit agreements shall be applicable to the period of the license and that the original franchisee shall not operate the system during the period of the license without a franchise from the municipality.

(5) A municipality shall, if it determines not to renew a franchise or to revoke a franchise, serve written notice on the franchisee of its intention to do so at least 60 days prior to such termination or revocation.

PROPOSED

CHAPTER J - DISCRIMINATION PROHIBITED

MCCC-J-1 Discrimination in Franchising

No municipality shall discriminate against a prospective franchisee, in any manner, on the basis of race, color, religion, national origin or sex.

MCCC-J-2 Discrimination by Cable Communications Company

(a) No cable communications company shall unreasonably discriminate against any person in initially providing, or continuing to provide cable communications services, nor shall any cable communications company discriminate against any person in initially providing, or continuing to provide, cable communications services on the basis of race, color, religion, national origin or sex;

(b) No cable communications company that provides a channel or channels and/or facilities for public access and leased access programming shall unreasonably discriminate against any person in the use of such a channel or channels and/or facilities, nor shall any cable communications company that provides a channel or channels and/or facilities for public access and leased access programming discriminate against any person in the use of such a channel or channels and/or facilities on the basis of race, color, religion, national origin, sex or political beliefs.

MCCC-J-3 Employment

Equal opportunity in employment shall be afforded by all operators of cable communications systems to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, national origin or sex.

MCCC-J-4 Equal Employment Opportunity Program

(a) Each cable communications system shall establish, maintain and carry out a positive continuing program of specific practices designed to assure equal opportunity in every aspect of system employment policy and practice;

(b) Under the terms of its program a system shall:

(1) Define the responsibility of each level of management to insure a positive application and vigorous enforcement of the policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

PROPOSED

(2) Inform its employees and recognized employees organizations of the positive equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate the system's equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin or sex from the system's personnel policies and practices and working conditions;

(5) Conduct continuing review of job structure and employment practices and adopt positive recruitment, training, job design and other measures needed to assure genuine equality of opportunity to participate fully in all organizational units, occupations and levels of responsibility in the system.

(c) Where two or more cable communications systems under common ownership or control are so interrelated in their management, operations and utilization of employees as to constitute a single employment unit, the program shall be jointly established, maintained and carried out by them. Under other circumstances, the term "single employment unit" refers to an individual cable communications system or to a headquarters office.

MCCC-J-5 Additional Information to be Furnished

(a) Equal employment programs to be filed by operators of systems:

(1) The operator of each cable communications system shall file with the Commission and with the Department of Human Rights a statement of its equal employment opportunity program

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not later than September 1, 1975, indicating specific practices to be followed in order to assure equal employment opportunity for females, Negroes, Orientals, American Indians and Spanish-surnamed Americans in such aspects of employment practices as recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff and termination. Any changes or amendments to existing programs shall be filed with the Commission and the Department of Human Rights on or before September 1st of each year thereafter;

(2) If the operator of a proposed system believes that the system will continuously during January, February and March of the year following commencement of operations satisfy the conditions of Section 76.311(c)(1)(i)(b) of the Rules of the Federal Communications Commission, he may submit a statement justifying that conclusion in lieu of a statement of the proposed system's equal employment opportunity program;

(3) If the system has fewer than five full-time employees and does not with other cable communications systems constitute a single employment unit with an aggregate total of five or more full-time employees, an equal employment opportunity program statement need not be filed for the employment unit which consists of or includes the system;

(4) Where,pursuant to Rule MCCC-J-4(c), a program is jointly established by two or more systems with an aggregate total of 10 or more full-time employees, a multiple system operator shall file a combined statement. A multiple system operator shall file a separate equal employment opportunity program statement for each headquarters office if that office has five or more full-time

PROPOSED

employees, and its work is primarily related to the operation of more than one cable communications system under common ownership or control;

(5) If pursuant to subsection (a)(3) of this rule or subsection (a)(2) of this rule a cable operator has been exempted from the requirement that it file and equal employment opportunity program statement, but has failed to satisfy the conditions of that exemption at any time during the first three months of a calendar year, it shall file the statement on or before September 1st of that year.

(b) Contents of the equal employment program statement. The program should reasonably address itself to such specific areas as hereinafter set forth, to the extent that they are appropriate in terms of employment unit size and location;

(1) To assure nondiscrimination in employment:

(aa) Posting notices in the cable operator's offices and places of employment informing employees, and applicants for employment of their equal employment opportunity rights and their right to notify the federal equal employment opportunity commission, the federal communications commission, or the Minnesota Department of Human Rights if they believe they have been discriminated against. Where a significant percentage of employees, employment applicants or residents of the municipality of a cable communications system are Spanish-surnamed Americans, such notices shall be posted in Spanish and English. Similar use should be made of other languages in such posted equal employment opportunity notices, where appropriate;

PROPOSED

(bb) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of sex, race, color, religion or national origin is prohibited and that they may notify the federal equal employment opportunity commission, the federal communications commission, or the Minnesota Department of Human Rights if they believe they have been discriminated against;

(cc) Placing employment advertisements in media that have significant circulation among minority-group people in the recruiting area;

(dd) Recruiting through schools and colleges with significant minority-group enrollment;

(ee) Maintaining systematic contacts with minority and human relations organizations, leaders and spokesman to encourage referral of qualified minority or female applicants;

(ff) Encouraging present employees to refer minority or female applicants;

(gg) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members and females are being sought for consideration whenever the cable operator hires.

(2) To assure non-discrimination in selection and hiring:

(aa) Instructing personally those on the staff of the system who make hiring decisions that all applicants for all jobs are to be considered without discrimination;

(bb) Where union agreements exist cooperating with the union or unions in the development of programs to assure that qualified

PROPOSED

minority group persons or females of equal opportunity for employment, and including an effective non-discrimination clause in new or renegotiated union agreements;

(cc) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

(3) To assure non-discriminatory placement and promotion:

(aa) Instructing personally those of the system's staff that make decisions on placement and promotion that minority group employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination;

(bb) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interests and skills of all lower paid employees with respect to any of the higher paid positions, followed by assistance, counseling and effective measures to enable employees with interest and potential to qualify themselves for such positions;

(cc) Reviewing seniority practices to insure that such practices are non-discriminatory and do not have a discriminatory effect;

(dd) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

(4) To assure non-discrimination in other areas of employment practices:

(aa) Examining rates of pay and fringe benefits for present employees with equivalent duties and adjusting any inequities found;

(bb) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority group or female employees.

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(c) Report of complaints filed against operators of systems. All operators of cable communications systems shall submit an annual report to the Commission and to the Department of Human Rights no later than September 1st of each year indicating whether any complaints regarding violations by the operator of equal employment provisions of federal, state or local law have been filed before any body having competent jurisdiction. The report shall state with respect to each such complaint: the parties involved, the date filed, the courts or agencies before which the matter has been heard; the appropriate file number, if any; and the respective disposition or current status of the complaint;

(d) Report of annual employment. Each operator of a cable communications system with five or more full-time employees, as defined by the Federal Communications Commission, shall file with the Commission and with the Department of Human Rights on or before September 1 of each year a copy of FCC Form 395, an annual employment report in such form as will satisfy the requirements of, Section 76.311 of the Federal Communications Commission Rules and Regulations;

(e) Where an equal employment opportunity program is jointly established by two or more cable communications systems with an aggregate total of five or more full-time employees, a combined (single employment unit) annual employment report shall be filed;

(f) A multiple system operator shall file a separate annual employment report for each headquarters office if that office has five or more full-time employees, and its work is primarily related to the operation of more than one cable communications system under common ownership or control;

(g) Where pursuant to subdivision (e) and (f) of this Rule, if more than annual employment report is filed with respect to cable communications systems under common ownership or control, or headquarters offices performing work related to such systems, a multiple cable system operator shall also file a consolidated report covering all systems and headquarters office employees included in those reports;

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(h) The date contained in each annual employment report required by subdivision (d) of this Rule and subdivision (e) and (f) of this Rule shall reflect the figures from any one payroll period in January, February or March of the year during which the report is filed. The same payroll period shall be used in each year's annual employment report;

(i) Annual employment reports required by the Rule shall be filed on or before September 1 of each year;

(j) Anything to the contrary in this Chapter notwithstanding, the cable communications system operator shall not be required to file with the Minnesota State Commission or Department of Human Rights any report or data with respect to any cable communications system not located at least partially within the State of Minnesota.

MCCC-J-6 Records Available to the Public

(a) Commission records. A copy of every annual employment report, equal employment program and reports on complaints regarding violations of equal employment provisions of federal, state or local law, and copies of all exhibits, letters and other documents filed as part thereof, all amendments thereto are open for public inspection at the offices of the Commission and the offices of the Department of Human Rights;

(b) Records to be maintained locally for public inspection by operators:

(1) Each operator of a cable communications system required to file annual employment reports, equal employment opportunity programs and annual reports on complaints regarding violations of equal employment provisions of federal, state or local law shall maintain, for public inspection, a file containing a copy of each such report and copies of all exhibits, letters and other documents filed as part thereto. An employer who is required to file a consolidated annual employment report shall maintain an adequately indexed consolidated equal employment opportunity file,

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containing copies of all the material included in the equal employment opportunity files of the headquarters offices and other employment units reported upon in his consolidated annual employment report;

(2) The documents specified in subsection (b) of this section shall be maintained for a period of five years;

(3) The equal employment opportunity file for a system, or a single employment unit including that system, shall be maintained at the principal workplace of the employment unit, or at any accessible location, such as a public registry for documents or an attorney's office, in the principal community served by the employment unit. The headquarters office equal employment opportunity file shall be maintained respectively, at the headquarters office and the principal office of the employer, or at any accessible place, such as a public registry for documents or an attorney's office, in the community in which the office is located. The employer shall provide reasonable accommodations at these locations for undisturbed inspection of his equal employment opportunity records by members of the public during regular business hours.

MCCC-J-7 Compliance Mechanism

The Minnesota Department of Human Rights shall be the compliance mechanism to oversee compliance with the provisions of this Chapter and to investigate complaints made pursuant thereto; provided, however, that only the Minnesota State Commission may revoke or suspend a certificate of confirmation for a cable communications company after an appropriate hearing.

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CHAPTER J - DISCRIMINATION PROHIBITED

MCCC-J-1 Discrimination in Franchising

No municipality shall discriminate against a prospective franchisee, in any manner, on the basis of race, color, religion, national origin or sex.

MCCC-J-2 Discrimination by Cable Communications Company

(a) No cable communications company shall unreasonably discriminate against any person in initially providing, or continuing to provide cable communications services, nor shall any cable communications company discriminate against any person in initially providing, or continuing to provide, cable communications services on the basis of race, color, religion, national origin or sex;

(b) No cable communications company that provides a channel or channels and/or facilities for public access and leased access programming shall unreasonably discriminate against any person in the use of such a channel or channels and/or facilities, nor shall any cable communications company that provides a channel or channels and/or facilities for public access and leased access programming discriminate against any person in the use of such a channel or channels and/or facilities on the basis of race, color, religion, national origin, sex or political beliefs.

MCCC-J-3 Employment

Equal opportunity in employment shall be afforded by all operators of cable communications systems to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, national origin or sex.

MCCC-J-4 Equal Employment Opportunity Program

(a) Each cable communications system shall establish, maintain and carry out a positive continuing program of specific practices designed to assure equal opportunity in every aspect of system employment policy and practice;

(b) Under the terms of its program a system shall:

(1) Define the responsibility of each level of management to insure a positive application and vigorous enforcement of the policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employees organizations of the positive equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate the system's equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin or sex from the system's personnel policies and practices and working conditions;

(5) Conduct continuing review of job structure and employment practices and adopt positive recruitment, training, job design and other measures needed to assure genuine equality of opportunity to participate fully in all organizational units, occupations and levels of responsibility in the system.

(c) Where two or more cable communications systems under common ownership or control are so interrelated in their management, operations and utilization of employees as to constitute a single employment unit, the program shall be jointly established, maintained and carried out by them. Under other circumstances, the term "single employment unit" refers to an individual cable communications system or to a headquarters office.

MCCC-J-5 Additional Information to be Furnished

(a) Equal employment programs to be filed by operators of systems:

(1) The operator of each cable communications system shall file with the Commission and with the Department of Human Rights a statement of its equal employment opportunity program

not later than September 1, 1975, indicating specific practices to be followed in order to assure equal employment opportunity for females, Negroes, Orientals, American Indians and Spanish-surnamed Americans in such aspects of employment practices as recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff and termination. Any changes or amendments to existing programs shall be filed with the Commission and the Department of Human Rights on or before September 1st of each year thereafter;

(2) If the operator of a proposed system believes that the system will continuously during January, February and March of the year following commencement of operations satisfy the conditions of Section 76.311(c)(1)(i)(b) of the Rules of the Federal Communications Commission, he may submit a statement justifying that conclusion in lieu of a statement of the proposed system's equal employment opportunity program;

(3) If the system has fewer than five full-time employees and does not with other cable communications systems constitute a single employment unit with an aggregate total of five or more full-time employees, an equal employment opportunity program statement need not be filed for the employment unit which consists of or includes the system;

(4) Where,pursuant to Rule MCCC-J-4(c), a program is jointly established by two or more systems with an aggregate total of 10 or more full-time employees, a multiple system operator shall file a combined statement. A multiple system operator shall file a separate equal employment opportunity program statement for each headquarters office if that office has five or more full-time

employees, and its work is primarily related to the operation of more than one cable communications system under common ownership or control;

(5) If pursuant to subsection (a)(3) of this rule or subsection (a)(2) of this rule a cable operator has been exempted from the requirement that it file and equal employment opportunity program statement, but has failed to satisfy the conditions of that exemption at any time during the first three months of a calendar year, it shall file the statement on or before September 1st of that year.

(b) Contents of the equal employment program statement. The program should reasonably address itself to such specific areas as hereinafter set forth, to the extent that they are appropriate in terms of employment unit size and location;

(1) To assure nondiscrimination in employment:

(aa) Posting notices in the cable operator's offices and places of employment informing employees, and applicants for employment of their equal employment opportunity rights and their right to notify the federal equal employment opportunity commission, the federal communications commission, or the Minnesota Department of Human Rights if they believe they have been discriminated against. Where a significant percentage of employees, employment applicants or residents of the municipality of a cable communications system are Spanish-surnamed Americans, such notices shall be posted in Spanish and English. Similar use should be made of other languages in such posted equal employment opportunity notices, where appropriate;

(bb) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of sex, race, color, religion or national origin is prohibited and that they may notify the federal equal employment opportunity commission, the federal communications commission, or the Minnesota Department of Human Rights if they believe they have been discriminated against;

(cc) Placing employment advertisements in media that have significant circulation among minority-group people in the recruiting area;

(dd) Recruiting through schools and colleges with significant minority-group enrollment;

(ee) Maintaining systematic contacts with minority and human relations organizations, leaders and spokesman to encourage referral of qualified minority or female applicants;

(ff) Encouraging present employees to refer minority or female applicants;

(gg) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members and females are being sought for consideration whenever the cable operator hires.

(2) To assure non-discrimination in selection and hiring:

(aa) Instructing personally those on the staff of the system who make hiring decisions that all applicants for all jobs are to be considered without discrimination;

(bb) Where union agreements exist cooperating with the union or unions in the development of programs to assure that qualified

minority group persons or females of equal opportunity for employment, and including an effective non-discrimination clause in new or renegotiated union agreements;

(cc) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

(3) To assure non-discriminatory placement and promotion:

(aa) Instructing personally those of the system's staff that make decisions on placement and promotion that minority group employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination;

(bb) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interests and skills of all lower paid employees with respect to any of the higher paid positions, followed by assistance, counseling and effective measures to enable employees with interest and potential to qualify themselves for such positions;

(cc) Reviewing seniority practices to insure that such practices are non-discriminatory and do not have a discriminatory effect;

(dd) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

(4) To assure non-discrimination in other areas of employment practices:

(aa) Examining rates of pay and fringe benefits for present employees with equivalent duties and adjusting any inequities found;

(bb) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority group or female employees.

(c) Report of complaints filed against operators of systems. All operators of cable communications systems shall submit an annual report to the Commission and to the Department of Human Rights no later than September 1st of each year indicating whether any complaints regarding violations by the operator of equal employment provisions of federal, state or local law have been filed before any body having competent jurisdiction. The report shall state with respect to each such complaint: the parties involved, the date filed, the courts or agencies before which the matter has been heard; the appropriate file number, if any; and the respective disposition or current status of the complaint;

(d) Report of annual employment. Each operator of a cable communications system with five or more full-time employees, as defined by the Federal Communications Commission, shall file with the Commission and with the Department of Human Rights on or before September 1 of each year a copy of FCC Form 395, an annual employment report in such form as will satisfy the requirements of, Section 76.311 of the Federal Communications Commission Rules and Regulations;

(e) Where an equal employment opportunity program is jointly established by two or more cable communications systems with an aggregate total of five or more full-time employees, a combined (single employment unit) annual employment report shall be filed;

(f) A multiple system operator shall file a separate annual employment report for each headquarters office if that office has five or more full-time employees, and its work is primarily related to the operation of more than one cable communications system under common ownership or control;

(g) Where pursuant to subdivision (e) and (f) of this Rule, if more than annual employment report is filed with respect to cable communications systems under common ownership or control, or headquarters offices performing work related to such systems, a multiple cable system operator shall also file a consolidated report covering all systems and headquarters office employees included in those reports;

(h) The date contained in each annual employment report required by subdivision (d) of this Rule and subdivision (e) and (f) of this Rule shall reflect the figures from any one payroll period in January, February or March of the year during which the report is filed. The same payroll period shall be used in each year's annual employment report;

(i) Annual employment reports required by the Rule shall be filed on or before September 1 of each year;

(j) Anything to the contrary in this Chapter notwithstanding, the cable communications system operator shall not be required to file with the Minnesota State Commission or Department of Human Rights any report or data with respect to any cable communications system not located at least partially within the State of Minnesota.

MCCC-J-6 Records Available to the Public

(a) Commission records. A copy of every annual employment report, equal employment program and reports on complaints regarding violations of equal employment provisions of federal, state or local law, and copies of all exhibits, letters and other documents filed as part thereof, all amendments thereto are open for public inspection at the offices of the Commission and the offices of the Department of Human Rights;

(b) Records to be maintained locally for public inspection by operators:

(1) Each operator of a cable communications system required to file annual employment reports, equal employment opportunity programs and annual reports on complaints regarding violations of equal employment provisions of federal, state or local law shall maintain, for public inspection, a file containing a copy of each such report and copies of all exhibits, letters and other documents filed as part thereto. An employer who is required to file a consolidated annual employment report shall maintain an adequately indexed consolidated equal employment opportunity file,

containing copies of all the material included in the equal employment opportunity files of the headquarters offices and other employment units reported upon in his consolidated annual employment report;

(2) The documents specified in subsection (b) of this section shall be maintained for a period of five years;

(3) The equal employment opportunity file for a system, or a single employment unit including that system, shall be maintained at the principal workplace of the employment unit, or at any accessible location, such as a public registry for documents or an attorney's office, in the principal community served by the employment unit. The headquarters office equal employment opportunity file shall be maintained respectively, at the headquarters office and the principal office of the employer, or at any accessible place, such as a public registry for documents or an attorney's office, in the community in which the office is located. The employer shall provide reasonable accommodations at these locations for undisturbed inspection of his equal employment opportunity records by members of the public during regular business hours.

MCCC-J-7 Compliance Mechanism

The Minnesota Department of Human Rights shall be the compliance mechanism to oversee compliance with the provisions of this Chapter and to investigate complaints made pursuant thereto; provided, however, that only the Minnesota State Commission may revoke or suspend a certificate of confirmation for a cable communications company after an appropriate hearing.

COMPENSATION FOR VALUE OF ASSETS

MCCC-H-1(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.~~

A provision that:

(1) (a) If the municipality shall fail to renew the franchise of the present franchisee, any subsequent franchisee selected to replace the original franchisee shall be required to compensate the original franchisee for its system based on its market value in accordance with accepted appraisal and accounting practices, except that for purposes of this subparagraph no value shall be assigned to the franchise. If the parties cannot agree on an amount within 60 days of the commencement of operations by the new franchisee, the Senior District Judge of the Judicial District in which the system is located shall appoint an arbitrator who shall arbitrate the matter and render a decision within 60 days of his appointment. His decision shall be final and binding on both parties. The cost of arbitration shall be borne equally by the parties to the transaction.

(b) If the municipality shall revoke a franchise for continuous significant violations of the franchise, any subsequent franchisee selected to replace the original franchisee shall be required to compensate the original franchisee for its system based on its market value in accordance with accepted appraisal and accounting practices, except that no value shall be assigned to the franchise. If the parties cannot agree on an amount within 60 days of the commencement of operation by the new franchisee, the amount shall be determined as provided in subparagraph 1(q) (1) (a) of this Rule, except that no value shall be assigned to the franchise.

(2) (a) Municipal purchase of a cable communications system:

A municipality, upon revocation of the franchise for continuous significant violations of the franchise terms, may, if otherwise authorized by law or charter provision, purchase the property of a cable communications system upon notice to the franchisee as herein provided. The municipality shall be required to compensate the franchisee for its system based on its market value in accordance with accepted appraisal and accounting practices. If the parties cannot agree on an amount within 60 days of such revocation, the amount shall be determined as provided in subparagraph 1(q) (1) (a) of this Rule, except that no value shall be assigned to the franchise.

(b) Municipal procedure; notice; election:

Any municipality which desires to acquire the property of a cable communications system, as authorized by subparagraph 2 (a) of Rule H-1 (q) may determine to do so by resolution of the governing body of the municipality taken after a public hearing of which at least 30 days published notice shall be given as determined by the governing body. The determination shall become effective when ratified by a majority of the qualified electors voting on the question at a general or special election to be held for that purpose, not less than 60 or more than 120 days after the resolution of the governing body of the municipality.

(c) Acquisition by eminent domain:

Nothing herein shall be construed to preclude a municipality from acquiring the property of a cable communications system by eminent domain proceedings.

(3) Upon receipt of an application for approval of an assignment of the franchise, the municipality, if otherwise authorized by law or charter provision, shall have the non-exclusive right to bid for the purchase of the

ongoing system. The franchisee shall not be required to accept the bid of the municipality.

(4) Upon the expiration or revocation of a franchise, the municipality shall require the original franchisee to continue to operate the system either until a new franchisee or the municipality begins to operate the system, or the passage of 120 days from the date of such expiration or revocation, whichever condition sooner occurs. All provisions of the franchise shall be in full force and effect during said extension of the franchise and the original franchisee shall be accountable to the franchisee selected to replace the original franchisee or to the municipality, whichever is applicable, for the financial operation of the system during said extension of the franchise. Upon expiration of the 120 day period herein prescribed, if no franchisee has been selected to replace the original franchisee or the municipality has not purchased the system, the original franchisee shall have a license from the municipality to allow the original franchisee to continue to maintain his wires, cables, amplifiers and other equipment in the public streets and ways until a subsequent franchisee is selected to replace the original franchisee and a purchase price for the system is determined as provided for in MCCC-H-1(q)(1)(a) or 1(b) as applicable, or until the municipality purchases the system as provided for in MCCC-H-1(q)(2); provided, however, that the provisions of all pole, duct and conduit agreements shall be applicable to the period of the license and that the original franchisee shall not operate the system during the period of the license without a franchise from the municipality.

(5) A municipality shall, if it determines not to renew a franchise or to revoke a franchise, serve written notice on the franchisee of its intention to do so at least 60 days prior to such termination or revocation.