

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

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

Version 3
August 20, 2018

Cable Communications Board

Variances, Rulemaking, Contested Cases, Delegation of Authority, Definitions, Renewal of a Certificate of Confirmation, Franchise Procedures, Standards and Amendments, Interconnection, Cable System Report to Board, and Cable Service Territories

Notice of hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room 83, of the State Office Building, Wabasha St., St. Paul, Minnesota, on June 21, 1977, commencing at 1:30 p.m., reconvening at 7:30 p.m., and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Mr. Howard Kaibel, State Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104, either before the hearing or within 20 days after the close of the hearing.

The statutory authority of the Minnesota Cable Communications Board to promulgate the proposed rules is contained in Minn. State. § 238.06, subd. 1 (1976).

The following changes in Board rules are proposed for adoption:

Definitions-

Add definitions of "Twin Cities Metropolitan Area" and "Board"; add "municipality" to the definition of "person."

Variances-

Add a provision requiring that requests for variances be submitted 20 days in advance of the Board meeting at which action is requested.

Rulemaking-

Change rules to conform with the Rules of the Office of the Hearing Examiners and Minn. Stat. Ch. 15 (1976).

Contested Cases-

Change rules to conform with Minn. Stat. ch. 15 (1976) and the Rules of the Office of Hearing Examiners. Amend remaining rules regarding the Board's decision in contested cases.

Cable System Reports to Board-

Amend rule by clarifying that annual reports by cable communications system operators are due on the first of May each year.

Cable Service Territories-

Add provision to rule specifying a period for comment by the Metropolitan Council on a proposed cable service territory.

The following changes will be made in the MCAR (Cable Board Rules and Regulations) at the time of their revised final printing:

1. The word "Commission" will be changed to "Board" pursuant to Minn. State. § 15.012.

2. All statutory cites will be updated so as to reflect the most recent edition of Minnesota Statutes.

3. Rule citations will be changed from MCCC to MCCB.

4. All rules will be changed to conform to the following format:

MCCB 1

A.

1.

a.

(1)

(a)

(i)

(aa)

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand and may be presented either orally or in writing at the public hearing or by mailing a statement to Mr. Howard Kaibel, State Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104. If the person submitting a statement cannot be present to read their statement at the time of the hearing, the statement will be entered into the record. For those wishing to submit written statements or exhibits, it is requested that at least three copies of such statement, exhibit or summary be furnished at the hearing. The record will remain open for receipt of briefs or other written material relative to the proposed rule for 20 days subsequent to the public hearing.

Copies of the proposed rules will be available after May 16, 1977, at the Cable Board's offices and free copies may be obtained by writing to the Minnesota Cable Communications Board, 500 Rice St., St. Paul, Minnesota, 55103. Additional copies will be available at the door on the date of the hearing. A "Statement of Need" explaining why the Minnesota Cable Communications Board feels the proposed rules are necessary and a "Statement of Evidence" outlining the testimony the Cable Board will be introducing will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, phone (612) 296-5615.

Robert J. McDonald, Executive Director
MINNESOTA CABLE COMMUNICATIONS BOARD

RULES AS ADOPTED

Chapter One

MCCB 2 Definitions. As used in these Rules the following words and phrases shall have the meanings given them herein unless a different meaning clearly appears in the text.

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

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

[(1)] **1.** Any system which serves fewer than 50 subscribers;

[(2)] **2.** Any master antenna television system;

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

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

[(c)] **C.** ["Commission"] **"Board"** [means the commission on cable communications] **shall mean the cable communications board** created by the provisions of [Minnesota Statutes, 1973 Supplement, Section 238.04.] **Laws of 1973, ch. 568.**

[(d)] **D.** "Franchise" means any authorization granted by a municipality in the form of a franchise, privilege, permit, license or other municipal authorization to construct, operate, maintain, or manage a cable communications system in any municipality.

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

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

[(g)] **G.** "Master antenna television system" means any system which serves only the residents of one or more apartment dwellings under common ownership, control or management and any commercial establishment located on the premises of such apartment house and which transmits only signals broadcast over the air by stations which may be normally viewed or heard locally without objectionable in-

terference, and which does not provide any additional service over its facilities other than closed-circuit security viewing services.

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

[(i)] **I.** "Person" means any individual, trustee, partnership, **municipality,** association, corporation or other legal entity.

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

[(k)] **K.** "State" means the State of Minnesota.

[(a)] **L.** "State agency" means any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of the state.

M. "Twin Cities metropolitan area" means that area comprised of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties.

MCCB 20 Variances. The [Commission] **Board** may grant a variance from any of its rules, regulations or standards, except where inconsistent with or otherwise prohibited by law, to promote the public interest, to avoid undue hardship and to promote the effective and reasonable application of its rules, regulations or standards relating to cable communications. Any person may petition the [Commission] **Board** for a variance from a rule, regulation or standard. The petition shall set forth the text of the rule, regulation or standard from which a variance is sought, the specific variance requested, and all facts, views, arguments and data deemed to support the granting of a variance. **Any such petition shall be submitted to the Board at least 20 days prior to the Board meeting for which it is requested to be heard.** The petitioner shall cause to be published once each week for two successive weeks in a newspaper of general circulation in the municipality in which the system for which the variance is requested is located, a concise statement of the variance sought and the time, date and place of the [Commission] **Board** meeting at which the variance is to be considered. Any interested person may file with the [Commission] **Board** a petition in opposition to the granting of the variance. Any such petition shall state with particularity the reasons why the variance should not be granted. The [Commission] **Board** may hear testimony from all interested persons concerning the granting of a variance. If the granting of a variance is substantially contested, the [Commission] **Board** may deem the matter a contested case to which the [Commission] **Board** is not a party for disposition under Chapter Four of these Rules. A variance shall be granted if, upon good cause shown, there is a finding that the granting of the variance is necessary or proper to avoid undue hardship on the petitioner and to promote the development and utilization of cable communications in the State of Minnesota. A variance which differs from that requested may be granted and it may be of a specific limited duration.

Chapter Three

MCCC 46-55 **are repealed.**

MCCB 56 Rule making proceedings. The Board shall adopt, amend, suspend, or repeal its rules in accordance wit the procedures set forth in Minn. Stat. ch. 15 (1976).

Chapter Four

MCCC 61-62 **are repealed.**

MCCB 64 Commencement of contested case. Within ten days following receipt of a complaint or application or the adoption of an order by the [Commission] **Board** initiating a contested case, the [Commission shall appoint a hearing officer and commence the contested case by serving upon all known parties a copy of the document of initiation and a notice stating:

(a) The commencement of the contested case;

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

(c) The purpose of the prehearing conference;

(d) The name of the hearing officer;

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

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

(g) These Rules or a citation thereto.

If the hearing officer decides that no prehearing conference will be held, notice of hearing pursuant to MCCC 74 shall be given.]

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

Board shall proceed to commence a contested case hearing in accordance with the procedures set forth in the rules of the Office of the Hearing Examiners.

MCCC 65-75 **are repealed.**

MCCB 76 The [Commission] **board** decision.

[(a) Basis for Determination:

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

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

(b) Proposal for Decision:

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

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

(aa) A statement of the proposed decision.

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

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

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

(c) Decisions and Orders:

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

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

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

(bb) A statement of the reasons therefor;

(cc) An affidavit of service.]

A. Parties adversely affected by the report of the hearing examiner shall have 20 days from the date of service of the report to file exceptions with the Board and request an opportunity to present arguments to the majority of the Board.

B. If there has been a request for an opportunity to present arguments the Board shall, as soon as practicable, set a date for the hearing of the arguments and give reasonable notice of same to all parties to the contested case and to the public in the same manner as in the case of a regular and special meeting of the Board. The arguments may be heard at the next regularly-scheduled Board meeting provided there is sufficient time for notice.

C. Within 60 days after the presentation of arguments or if there are no arguments within 60 days from the expiration of the 20 day period in A. above the Board shall issue a decision or order in the contested case. The decision or order shall be in writing or stated in the record and shall be accompanied by a statement of the reasons therefore. The statement of reasons shall consist of a concise statement of the conclusions upon each contested issue of fact necessary to the decision. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying statement of reasons together with a certificate of service shall be delivered or mailed upon request of each party or to his attorney of record.

MCCB 77 Rehearing.

[(a)] **A.** [Commission] **Board's** right to hear. The [Commission] **Board** may, upon request or its own motion and for good cause shown, reopen, rehear and redetermine a contested case after a final decision adverse to a party to the contested case other than the [Commission] **Board** has been rendered. This right may be exercised until it is lost by

appeal or the granting of a writ of certiorari or until a reasonable time has run, but in no event shall the time exceed the time allowed by statute for appeal or six months, whichever is shorter.

[(b)] **B.** Obtaining a rehearing:

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

[(aa)] **a.** The name and address of the petitioner;

[(bb)] **b.** The [Commission] **Board** designation for the case;

[(cc)] **c.** The reasons for the petition.

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

[(3)] **3.** Default judgments. A party against whom a default has been adjudged pursuant to [MCCC 68] **Office of the Hearing Examiners Rule 208** may obtain a rehearing upon a timely showing of good cause for his failure to appear or plead.

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

[(c) Notice of Rehearing. Notice of rehearing must be provided in the same manner prescribed for notice of hearing as provided in MCCC 74.]

[(d)] **C.** Rehearing procedure. A rehearing in a contested case shall be conducted in the same manner prescribed [for a hearing as provided in MCCC 75.] **by the rules of the Office of the Hearing Examiners.**

[(e)] **D.** Decision after rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing as provided in MCCB 76.

MCCB 80 **is repealed.**

Chapter Five

MCCB 91 Authority delegated to executive director. The Board's Executive Director is delegated authority upon application being made by any franchising authority to review applications, and determine eligibility for use of the alternative franchising procedures set forth in MCCB 113.

Chapter Six

MCCB 99 Necessity for a certificate of confirmation. Any cable communications company which is not authorized by law to receive a special or interim certificate of confirmation pursuant to MCCB 97 or MCCB 98 shall be required to secure a regular certificate of confirmation from the [Commission] **Board** before becoming operational. Such certificate may be [granted] **issued only upon compliance with MCCB 111 or 113 and MCCB 121,** after full [Commission] **Board** proceedings and shall be for a period of ten years[.] **from the effective date of the municipal franchise ordinance.**

MCCB 103 Renewal of a certificate of confirmation. Upon expiration of its certficate of confirmation or the renewal of its cable communications franchise, a cable communications company must obtain renewal of its certificate of confirmation. The renewal of any certificate of confirmation shall be issued only after compliance with MCCB 121. ~~**A certificate of confirmation being renewed because of the renewal of a cable communications franchise must also be in compliance with MCCB 112.**~~ **The** [A] renewal **of a** certificate of confirmation shall be issued only after full [Commission] **Board** proceedings and shall be valid for a period of [five] **ten** years [.] **from the expiration date of the previously issued certificate, except when a certificate is renewed before its expiration date, the term of the renewed certificate shall begin on the date of its issue, and any remaining term of a previously issued certificate shall then be expired.** [A certificate of confirmation is a renewal certificate if it is issued to the same cable communications company, or its successor in interest, for the same cable communications

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

system for which an interim, special or regular certificate of confirmation was previously issued by the Commission.] The procedure for obtaining **the** [a] renewal **of a** certificate of confirmation shall be the same as is herein provided for obtaining a regular certificate of confirmation. **Nothing in this rule shall prohibit a cable communications company from renewing its certificate of confirmation prior to the expiration of any existing certificate of confirmation.**

Chapter Seven

MCCB 111 Initial franchise.

[(a)] **A.** The procedure described in [Rule] **MCCB** 111 of this Chapter shall be observed by all franchising authorities before and during the awarding of any cable communications franchise, except as provided in Minn. Stat. [1973 Supplement, Section 238.09, Subdivisions 3, 4 and 5 or in Laws 1974, Chapter 506, Section 10,] § 238.09, subd. 3, 4, 5 and 9 (1976), and Rule of this Chapter.

[(b)] **B.** The proposed boundaries for all cable service territories must be approved by the [Commission] **Board** in accordance with Rules of the [Commission] pertaining to cable service territories before a franchising authority shall adopt an invitation for applications for a cable communications franchise as described in MCCB 111 [(c)] **C.** of this Rule.

[(c)] **C.** Except as provided in MCCB [111 (a)] **111 A.** of of this Chapter, no cable communications franchise may be awarded, nor may any application for any such franchise be invited, without the research and planning required by this Rule. The franchising authority shall appoint a group of persons residing within the boundaries of the franchising authority as an advisory body to make recommendations on cable communications to the franchising authority. Persons commercially involved in cable communications activities or other communications media shall not serve as member of the advisory body, but may offer information and advice to the advisory body. The advisory body shall inform itself about cable communications through at least a review of published information, state and federal statutes and rules and regulations, and the experience of other municipalities that have or have studied cable communications. The advisory body shall also assess the communications needs of the persons residing within the franchising authority, make a report to the franchising authority, and make publicly available the procedures and results of such study. The advisory body shall make recommendations to the franchising authority on the means to satisfy the communications needs of the persons residing within the franchising authority. After consideration of the recommendations of the advisory body, the franchising authority shall determine the advisability of continuing the franchising process. If the franchising authority determines that the franchising process should continue, then the franchising authority shall officially adopt in a public hearing, affording reasonable notice and a reasonable opportunity to be heard, an invitation for applications for a cable communciations franchise which invitation shall include, but not necessarily be limited to, the following items:

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

[(2)] **2.** Critieria and priorities [against which the applicants for the cable franchise shall be evaluated.] **which the municipality has developed to review franchise applications;**

[(3)] **3.** Information regarding applications for the cable communications franchise including:

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

[(bb)] **b.** The closing date for submission of applications;

[(cc)] **c.** A statement of the application fee, if any, and the method for its submission;

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

The franchising authority within 10 days after adoption of an invitation for applications for a cable communications franchise shall mail a copy of the invitation to the [Commission] **Board** and make a copy available for public inspection at the city offices during normal business hours.

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

[(d)] **D.** Not less than 45 days prior to the holding of the public meeting on the franchise as required by MCCB 111 [(f)] **F.** of this Rule, the franchising authority shall give public notice of the availability of the invitation for applications for a cable communications franchise. The notice shall be published at least once in a newspaper of general circulation within the boundaries of the franchising authority and at least once in at least two publications contained in a list approved by the [Commission] **Board** and on

file with the executive director of the [Commission.] **Board.** The published notice shall contain the following information: the name(s) of the municipalities within the franchising authority inviting the application; the date by which all applications must be submitted; the name, address and telephone number of the municipal official from whom the invitation for applications for a cable communications franchise may be obtained; the amount of any application fee; and a statement that the application for a cable communications franchise must be submitted taking into account the system design and services as outlined by the franchising authority in its invitation for a cable communications franchise. [and on a standard form to be supplied by the franchising authority.] In addition to the published notice, the franchising authority should mail copies of the invitation for applications for a cable communications franchise to any persons it has identified as being potential candidates for the franchise. A copy of the notice shall be provided to the [Commission] **Board** on the date of initial publication together with an affidavit of publication.

[(e)] **E.** A franchising authority shall require that all applications for a cable communications franchise be notarized and contain [the applicant's proposed service and system design for the franchising authority's cable communications system submitted on a standard form supplied by the franchising authority, which form shall include,] but not necessarily be limited to, the following information:

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

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

[(3)] **3.** Description of the proposed system design and planned operation, including at least the following items:

[(aa)] **a.** General area for location of antenna(e) and headend(s);

[(bb)] **b.** Schedule for activating two-way capability;

[(cc)] **c.** Type of automated services to be provided;

[(dd)] **d.** Number of channels and services to be made available for access cablecasting, and a schedule of charges for facilities and staff assistance for access cablecasting.

[(4)] **4.** The terms and conditions under which particular service is to be provided to educational and governmental entities;

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

[(6)] **6.** A time schedule for construction of the entire system with the time sequence for wiring the various parts of the franchising authority;

[(7)] **7.** A statement indicating the applicant's qualifications and/or experience in the cable communications field, if any;

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

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

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

[(11)] **11.** A notation and explanation of any omissions or other variations with respect to the requirements of the proposal.

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

[(g)] **G.** The franchise shall be granted by ordinance and within 10 days of the date on which the ordinance takes effect, the franchising authority shall forward a copy of the franchise ordinance to the [Commission] Board for approval in accordance with Minn. Stat. [1973 Supplement.] § 238.09, subd. 1 **(1976).**

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

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

[(i)] **I.** Nothing contained in any rule of the [Commission] **Board** shall prohibit a franchising authority from franchising a nonprofit or municipally-operated system, provided that pursuant to Minn. Stat. [1973 Supplement,] **(1976),** [Section 238.01-238.16 and Laws 1974, Chapter 506,] the municipality or the nonprofit entity shall be considered an applicant for purposes of these Rules.

MCCB 112 [Renewal] Franchise renewal.

[(a)] **A.** For purposes of these Rules a franchise is renewed whenever the franchising authority awards a subsequent franchise to the same cable communications company or its successor in interest [after the award of the initial franchise.] **which extends the franchise term beyond its previous termination date.**

[(b) (1)] **B.1.** Three months prior to the expiration of a franchise and to the expiration of a certificate of confirmation, the advisory body created in MCCB 121[(bb)] **B.** of these Rules shall submit a report to the franchising authority, to the cable communications system operator and to the [Commission,] **Board,** which report shall include a written appraisal of the performance of the franchisee during the franchise term with regard to the provisions of the franchise. The report shall also include recommendations for revised or additional provisions of the franchise, considering at least the following items: channel capacity; channels for access cablecasting; facilities and staff assistance available for access cablecasting; two-way capability; and the need for further service to be extended within the franchised area based upon a reassessment of the communications needs of the persons residing within the franchised area in relation to the services generally offered by the cable industry.

[(b) (2)] **2.** At least six months prior to the expiration of the franchise, franchising authorities which are being served by cable communications systems which are operating under a franchise which expires before May 1, 1979, shall create an advisory body to submit the report to the franchising authority, required by MCCB 112 [(b) (1)] **B.1.** of this Rule.

[(c)] **C.** The franchising authority shall commence renegotiation of the franchise at least 30 days prior to the expiration of the franchise in accordance with MCCB 121 [(b) (3)] **B. 3.** of these Rules, and may proceed with a renewal of the franchise unless the governing body determines not to reissue the franchise to the franchisee or desires to consider additional applicants for a franchise.

[(d)] D. The renewal shall be granted only after holding a public hearing thereon with reasonable notice and a reasonable opportunity to be heard. Notice of any such hearing shall be given by publishing two notices in a newspaper of general circulation within the boundaries of the franchising authority. First publication shall appear not less than 30 days prior to the date of the hearing. Second publication shall appear not less than 15 days prior to the hearing. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the franchising authority.

[(e)] **E.** If the franchising authority determines that additional applicants are to be sought, the franchising authority must follow the procedure prescribed in MCCB 111 of this Chapter.

MCCB 113 Alternative initial franchising procedures.

A. The procedure described in this rule may be used by a franchising authority if it meets the eligibility requirements of subdivision F. of this rule.

B. No franchising authority determined eligible for the use of this rule shall award a cable communications franchise, unless the procedures of this subdivision have been followed as required.

1. Before a franchising authority may use this procedure, it must submit to the Board a complete application containing such information as the Board may deem necessary, for determining eligibility to use the procedures of this rule. Within 10 days after receipt, the Board's Executive Director shall review each application and give a written determination of eligibility to the requesting franchising authority.

2. The proposed boundaries of all cable service territories must be approved by the Board in accordance with the Rules of the Board pertaining to cable service territories before a franchising authority shall publish notice of intent to franchise as described in this rule.

3. The franchising authority shall cause to be published once each week for two successive weeks in a newspaper of general circulation in each municipality within the cable service territory, a notice of intent to franchise, requesting applications for such franchise. Such notice shall include at least the following information:

a. Name of municipality making the request;

b. The closing date for submission of applications;

c. A statement of the application fee, if any, and the method for its submission;

d. A statement by the franchising authority of the desired system design and services to be offered;

e. A statement by the franchising authority of criteria and priorities against which the applicants for the franchise shall be evaluated;

f. A statement that all applications for the franchise must contain at least the information required by Rule MCCB 111 E.;

g. Date, time, and place for the public hearing to hear proposals from franchise applicants;

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

C. In addition to the published notice, the franchising authority should mail copies of the notice of intent to franchise to any person it has identified as being potential candidates for the franchise. A copy of the notice shall be provided to the Board on the date of initial publication together with an affidavit of publication.

1. The franchising authority shall allow at least 20 days from the first date of published notice to the closing date for submitting applications.

2. A public hearing before the franchising authority affording reasonable notice and a reasonable opportunity to be heard with respect to all applications for the franchise shall be completed at least 7 days prior to the introduction of the franchise ordinance in the proceedings of the franchising authority.

D. The franchise shall be granted by ordinance and within 10 days of the date on which the ordinance takes effect, the franchising authority shall forward a copy of the franchise ordinance to the Board for approval in accordance with Minn. Stat. § 238.09, subd. 1 (1976).

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

F. In order to be eligible for the use of the procedures described in this rule,

1. At least one municipality within the Cable Service Territory shall meet one of the following requirements:

a. Be adjacent to an already approved Cable Service Territory having a Cable Communications System from which the extension of Cable Communications service has been offered or is desired, or;

b. Be adjacent to pre-existing or proposed cable communications facilities such as: microwave relay stations, satellite earth terminals, or trunk cable used to connect one or more operating cable communications systems to a headend located in another municipality, or;

c. Have a population of less than 1200, and

2. The proposed cable service territory does not exceed the following:

a. No one municipality within the Cable Service Territory may have a population over 1200, except in the expansion of an already approved cable service territory.

b. The total aggregate population of all municipalities within the cable service territory may not exceed 2,500 except in the expansion of an already approved cable service territory.

c. No municipality within the cable service territory may be located within the Twin Cities metropolitan area.

G. The Board may also allow the use of the procedures of this rule, in cases which it determines that, the requiring of a franchising authority to comply with the procedures of MCCB 111, would not be in the public interest or would bring undue hardship to any of the parties involved.

H. Nothing contained in any rule of the Board shall prohibit a franchising authority from franchising a non-profit or municipally owned system. The municipality or non-profit entity shall be considered an applicant for purposes of these rules.

Chapter Eight

MCCB 121 Required contents of franchises. Where a cable communications franchise is awarded or renewed after April 1, 1973, except as provided in Minn. Stat. [1973 Supple-

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

ment,] § 238.09, subd. 3, 4, [and] 5, **and 9, (1976)** [or in Laws 1974, Chapter 506, Section 10,] a regular or renewal **of a** certificate of confirmation will be issued only if the franchise ordinance contains recitations and provisions consistent with the following requirements:

Note: No changes in MCCC 121 A. through F.

[(g)] **G.** A provision establishing the minimum system-wide channel capacity that the franchisee shall [provide:] **make available.**

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

1. For each system served by a single headend that: is located in the Twin Cities metropolitan area; or is located in a franchise territory having a population of 15,000 or more persons; or serves 3,500 or more subscribers,

a. the provision shall require the construction of a cable system with a channel capacity, available for immediate or potential use, equal to a minimum of 120 MHZ of bandwidth (the equivalent of 20 television broadcast channels).

b. Systems that are already constructed pursuant to a pre-existing franchise requiring fewer than 120 MHZ of bandwidth (the equivalent of fewer than 20 television broadcast channels) shall have until June 21, 1986 to increase the system's channel capacity to a minimum of 120 MHZ of bandwidth. However, nothing in this rule shall be construed so as to preclude the parties to a franchise from negotiating an agreement calling for an increase to a minimum of 120 MHZ of bandwidth prior to June 21, 1986.

c. For the purposes of this rule, a cable system with a channel capacity, available for immediate or potential use, equal to a minimum of 120 MHZ of bandwidth shall mean: the provision of a distribution system designed and constructed so that a minimum of 120 MHZ of bandwidth (the equivalent of 20 television broadcast channels) can be put into use with only the addition of the appropriate headend and subscriber terminal equipment.

[(2)(aa) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time, and will be served by a cable communications system that will not have been constructed at the time the franchise is to be granted, the provision shall require the franchisee to construct the cable system with a minimum of 72 MHZ of bandwidth (the equivalent of 12 television broadcast channels) available for immediate or potential use;]

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

2. For each system served by a single headend that: is located outside of the Twin Cities metropolitan area; and is located in a franchise territory having a population of fewer than 15,000 persons, and serves fewer than 3,500 subscribers,

a. the provision shall require the construction of a cable system with a channel capacity, available for immediate or potential use, equal to a minimum of 72 MHZ of bandwidth (the equivalent of 12 television broadcast channels).

b. For the purposes of this rule, a cable system with a channel capacity, available for immediate or potential use, equal to a minimum of 72 MHZ of bandwidth shall mean: the provision of a distribution system designed and constructed so that a minimum of 72 MHZ of bandwidth (the equivalent of 12 television broadcast channels) can be put into use with only the addition of the appropriate headend equipment.

[(h)] **H.** A provision establishing the minimum number of public, educational, governmental and leased access channels that the franchisee shall [provide for each system served by a single headend:] **make available.**

[(1)] **1.** For each system served by a single headend [which is within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time,] **that: is located in the Twin Cities metropolitan area; or is located in a franchise territory having a population of**

15,000 or more persons, or serves 3,500 or more subscribers,

a. The provision shall require that the franchisee shall, **to the extent of the system's available channel capacity,** [maintain] **provide to each of its subscribers who receive all, or any part of, the total services offered on the system, reception on** at least one specially designated noncommercial public access channel available **for use by the general public** on a first come, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel for local government use; and at least one specially designated access channel available for lease on a first come, nondiscriminatory basis by commercial and noncommercial users. The VHF spectrum shall be used for at least one of the specially designated **noncommercial** public access channels required in this subdivision. The provision shall require that [facilities] **no charges shall be made** for **channel time or** playback of prerecorded programming [, personnel and time for use of] **on** at least one of the specially designated **noncommercial** public access channels required by this subdivision [shall be provided without charge,] provided, however, that **personnel, equipment, and** production costs may be assessed for live studio presentations exceeding five minutes **in length. Charges for** such production costs and any fees for use of other public access channels shall be consistent with the goal of affording the public a low-cost means of television access.

b. Those systems which offer subscribers the option of receiving programs on one or more special service channels without also receiving the regular subscriber services may comply with this rule by providing the subscribers who receive the special service only at least one specially designated composite access channel composed of the programming on the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated local government access channel required in this rule.

c. On those systems without sufficient available channel capacity to allow for activation of all the specially designated access channels required in this subdivision, or where demand for use of the channels does not warrant activation of all the specially designated access channels required in this subdivision, public, educational, governmental, and leased access channel programming may be combined on one or more cable channels. To the extent time is available therefor, access channels may also be used for other broadcast and nonbroadcast services, provided that such services are subject to immediate displacement if there is demand to use the channel for its specially designated purpose. Each such system shall, in any case, provide at least one full channel on the VHF spectrum for shared access programming.

[(2)] **2.** For each system served by a single headend [which is not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time,] **that: is located outside of the Twin Cities metropolitan area; and is located in a franchise territory having a population of fewer than 15,000 persons; and serves fewer than 3,500 subscribers,**

a. The provision shall require that the franchisee shall provide **to each of its subscribers who receive all, or any part of, the total services offered on the system, reception on** at least one specially designated access channel available for use by the general public on a first come, nondiscriminatory basis. **Channel** time [for use] **and playback of prerecorded programming** on this specially designated access channel shall be provided without charge to the general public[.], **provided, however, that personnel, equipment, and production costs may be assessed for live studio presentations exceeding five minutes in length. Charges for such production costs shall be consistent with the goal of affording the public a low-cost means of television access.** The specially designated access channel may be [utilized] **used** by local educational authorities and local government on a first come, nondiscriminatory basis **during those hours** when the channel is not in use by the general public. **During those hours that the specially designated access channel is not being used by the general public, local educational authorities, or local government,** the franchisee shall lease time [on this specially designated access channel] to commercial or noncommercial users on a first come, nondiscriminatory basis if the demand for such time arises. [and the channel is not being utilized by the general public, local educational authorities and local government users.] The franchisee may also [utilize] **use** this **specially** designated **access** channel for local origination **during those hours** when the channel is not in use by [either] the general public, **local** educational [users] **authorities**, [and] local government, or commercial or noncommercial users who have leased time on this specially designated **access** channel. The VHF spectrum shall be used for the specially designated access channel required in this subdivision.

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

3. The provision shall require that whenever the specially designated noncommercial public access channel, the specially designated educational access channel, [or] the specially designated **local** government[al] access channel, **or the specially designated leased access channel** required in MCCB 121 [(h)(1)] **H. 1. a., b., and c.** of this rule or the specially designated access channel required in MCCB 121 [(h) (2)] **H.2.a.**, of this Rule [are] **is** in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive 3 hour period for six weeks running, **and there is demand for use of an additional channel for the same purpose,** the system [will] **shall** then have six months in which to [make] **provide a** [the appropriate] new specially designated access channel [available.] **for the same purpose, provided that provision of such additional channel or channels shall not require the cable system to install converters. However, nothing in this rule shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.**

4. The provision shall also require that [for the public access, educational access, the specially designated channel and leased access channels,] the franchisee shall establish rules pertaining to the administration of [those channels.] **the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel required in MCCB 121 H. 1. a., b., and c. of this Rule or the specially designated access channel required in MCCB 121 H.2.a. of this Rule.** The rules shall be consistent with the requirements of [Section 76.251 of] the Federal Communications Commission rules and regulations relating to operating rules for access channels. **The operating rules established by the franchisee governing the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel required in MCCB 121 H. 1. a., b., and c. of this Rule or the specially designated access channel required in MCCB 121 H. 2. a., of this Rule shall be filed with the Minnesota Cable Communications Board within 90 days after any such channels are put into use.**

[(i)] **I.** A provision establishing the minimum equipment that the franchisee shall [provide] **make available** for public use[:].

[(1)] **1.** For each system served by a single headend [which is within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules, and as the same may be modified from time to time,] **that: is located in the Twin Cities metropolitan area; or is located in a franchise territory having a population of 15,000 or more persons; or serves 3,500 or more subscribers.**

a. The provision shall require that the franchisee shall [operate and] make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the **specially designated noncommercial** public access channel required by MCCB 121 [(h) (1)] **H. 1.a.** of this Rule. The franchisee shall also make readily available, upon need being shown, the minimum equipment necessary to make it possible to record programs at remote locations with battery operated portable equipment. Need within the meaning of this Rule shall be determined by subscriber petition. [A successful petition must meet at least one of the following conditions:

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

(2) Signatures of at least 10% of the subscribers of the system to a petition attesting to the need with a minimum of 100 signatures.] **The petition must contain the signatures of at least 10 percent of the subscribers of the system, but in no case more than 500 nor fewer than 100 signatures.**

[(2)] **2.** For each system served by a single headend [which is not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time,] **that: is located outside of the Twin Cities metropolitan area; and is located in a franchise territory having a population of fewer than 15,000 persons; and serves fewer than 3,500 subscribers,**

a. The provision shall require that the franchisee shall [operate and] make readily available for public use, upon need being shown, at least the minimal equipment necessary to perform good quality playback of prerecorded programming, and to make it possible to record programs at remote locations with battery operated portable equipment. Need within the meaning of this Rule shall be determined by subscriber petition. [A successful petition must meet at least one of the following conditions:

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

(2) Signatures of at least 10% of the subscribers of the system to a petition attesting to the need with a minimum of 100 subscribers.] **The petition must contain the signatures of at least 10 percent of the subscribers of the system, but in no case more than 350 nor fewer than 100 signatures.**

Note: No changes in MCCB 121 J. through E_1. are proposed.

[zz6] F_1. A provision that the franchise shall cease to be of any force and effect if the franchisee fails to obtain either a regular **certificate of confirmation** or renewal **of a** certificate of confirmation from the [Commission,] Board, provided, however, that the franchisee may operate his cable communications system while the [Commission] Board is considering the application for [a] **the renewal of his** certificate of confirmation.

[zz7] G_1. A provision establishing how the franchising authority and the cable communications company shall determine who is to bear the cost of any required special testing.

Chapter Nine

MCCB 134 [Renewal.] **Franchise renewal.** When any franchise is renewed, the franchisee shall agree to abide by all rules and regulations of the [Commission.] **Board.** No franchise shall be renewed for a period longer than ten years. A franchise is renewed for purposes of these Rules whenever the [municipality] **franchising authority** awards a subsequent franchise [to a cable communications company after the award of the initial franchise] to the same company or its successor in interest [.] **which extends the franchise term beyond its previous termination date.**

MCCB 136 Approval of franchise amendments. Any amendment of a provision of a franchise which is within the required content of a franchise prescribed by Chapter Eight of these Rules, **except amendments which change monthly subscriber service charges,** shall not be effective unless approved by the [Commission.] **Board.** Such approval shall be given if consonant with the public interest and shall not be unreasonably withheld by the [Commission.] **Board.**

Chapter Twelve

MCCB 166 Interconnection. These rules shall be liberally construed to effectuate the purposes and provisions of Minn. Stat. [1973 Supplement,]§ 238.05, subd. **2(c),** 2(d), and 12 **(1976)** [, and Laws 1974, Chapter 506].

MCCB 167. Definitions. As used in this Chapter, the following words and phrases shall have the meanings given them herein unless a different meaning clearly appears in the text.

[(a)] **A.** "Interconnection" is the provision of broadband electronic linkage between cable communications systems as defined in Minn. Stat. [1973 Supplement,] § 238.02, subd. 3 **(1976),** by means of coaxial cable, microwave or other means whereby the electrical impulses of television, radio and other intelligences, either analog or digital, may be interchanged, provided that the term "interconnection" does not include the relaying by coaxial cable, microwave or other means of television broadcast signals intended for redistribution by the cable communications system or systems receiving such signals.

[(b)] **B.** "Interconnection entity" is an entity involved in the construction and operation of an interconnection system, either cable or microwave, providing interconnection services to cable communications systems as defined by Minn. Stat. [1973 Supplement,] § 238.02, subd. 3 **(1976).**

[(c)] **C.** "Interim interconnection" is the provision of temporary interconnection between two or more existing cable communications systems brought about through the mutual participation of those systems and without the intervention of a separate interconnection entity, as defined in paragraph [(b)] **B.** of [his] **this** Rule.

[(d)] **D.** "Regional channel" is a segment of the electromagnetic spectrum provided by cable communications systems or an interconnection entity operating within the Twin Cities metropolitan area for programming on the standard VHF Channel 6 [reserved for public use].

[(e)] **E.** "Regional channel entity" is an entity [recognized] **designated** by the [Commission] **Board** for purposes of scheduling the programming and facilitating the use of the regional channel.

MCCB 168 Interim interconnection.

[(a)] **A.** In accordance with the provisions of Minn. Stat. [1973 Supplement,] § 238.05**, subd. 2 (c) and § 238.06, subd. 5, (1976)** [and Laws 1974, Chapter 506] **the Board** upon suitable showing of [interest and] need, [the Commission will vigorously encourage] **may order the** interim interconnection between cable communications systems. Before an interim interconnection occurs, the parties designated herein shall submit to the [Commission] **Board** the information specified herein.

[(1)] **1.** The cable companies involved shall submit the following information:

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

[(aa)] **a.** A full schedule of capital costs anticipated for such interconnection;

[(bb)] **b.** A projection of expected operating costs;

[(cc)] **c.** An identification of the economic effect of such proposed interconnection upon existing cable service.

[(2)] **2.** The parties seeking to arrange the interim interconnection shall submit the following information:

[(aa)] **a.** A description of available sources of capital for construction and operating, including programming, of the interconnection system;

[(bb)] **b.** An identification of the uses, with a description of the attendant benefits, of such interconnection.

[(b)] **B.** The [Commission] **Board** may hold a meeting to receive testimony from interested persons concerning the proposed interim interconnection. At least 30 days notice shall be provided to all interested persons. Any cable communications system potentially involved in the interconnection shall carry an appropriate notice of the hearing on its system for at least five consecutive days immediately preceding the hearing. The [Commission] **Board** may [recognize a request] **order interim interconnection** incorporating the interconnection plan if it is satisfied from all available evidence that such plan is in the public interest, will be fair both to participating systems and the public and will not impair the ability of any system to deliver other services to subscribers and users. In determining whether to [grant recognition to] **order** an interim interconnection, [plan,] the [Commission] **Board** may also consider the extent to which the interim interconnection plan is compatible with the applicable operational objectives contained in MCCB 172. [Such recognition shall be conditioned upon the receipt of all licenses and permits from appropriate agencies necessary for the construction and operation of interim interconnection systems.]

[(c)] **C.** In the event that interim interconnection occurs, the [Commission] **Board** may assume jurisdiction over the provision of such interim interconnection. The [Commission] **Board** shall have the following responsibilities and duties:

[(1)] **1.** Assisting in the resolution of complaints, disputes or disagreements between subscribers and participating cable communications systems and franchising authorities should the parties not first be able to resolve such disagreements;

[(2)] **2.** Requiring and reviewing reports regarding the operation of such interim interconnection as may be deemed appropriate;

[(3)] **3.** Assuring that all tariffs and rules pertinent to the operation of the interim interconnection have been filed with the [Commission] **Board.**

[(d)] **D.** The [Commission] **Board** shall require interim interconnections within the Twin Cities metropolitan area to provide capacity for two-way transmission on a regional channel. In addition, as usage of the regional channel expands to such point as it is in use during 80 percent of the time between 8:00 a.m. and 10:00 p.m. during any consecutive six-week period, the persons providing interim interconnection shall have two months in which to make an additional channel available for regional channel entity use [.] **provided that provision of such additional channel or channels shall not require the cable system to install converters. However, nothing in this rule shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.**

[(e)] **E.** Nothing contained in this rule shall be applicable to an interim interconnection operational on or before January 1, 1975 for a period of five years beginning January 1, 1975; provided, however, that the [Commission] **Board** may require substantiation of the date on which an interim interconnection became operational.

MCCB 170 Regional Channel Entity.

[(a)] **A.** The [Commission] **Board** [hereby reserves the prerogative, upon a suitable showing of interest and need, to recognize] **upon the activation of the regional channel as defined in MCCB 167, shall designate** a regional channel entity for the Twin Cities metropolitan area.

[(b)] **B.** [Specific recognition of the Twin Cities metropolitan area] **The Board may designate the** regional channel entity [may be extended by the Commission] after the [Commission] **Board** has reviewed and [recognized] **approved** an applicant's qualifications in accordance with the procedures provided hereinafter:

[(1)] **1.** The [Commission] **Board** may, [at any time,] **upon the activation of the regional channel,** entertain requests for consideration of the [recognition] **designation** of a regional channel entity. In the event the [Commission] **Board** determines [that it desires] to [recognize] **designate** a regional channel entity, the [Commission] **Board** shall give public notice of that intention.

[(2)] **2.** The [Commission] **Board** shall require

that all requests for [recognition] **designation** for the regional channel entity contain a description of the applicant's proposed operation along with such other supporting information as the [Commission] **Board** may require.

[(3)] **3.** The [Commission] **Board** shall, in its [recognition] **designation** of an applicant for programming and facilitation of use of the regional channel, consider the following criteria:

[(aa)] **a.** the plans for programming including identification of sources, users, and revenues;

[(bb)] **b.** plans for fostering extended regional participation in existing and expanded regional channel uses;

[(cc)] **c.** terms and conditions under which regional channel usage is made available to participants [;] **insuring that priority is given to public use of the channel;**

[(dd)] **d.** participatory representation of users in the entity operational structure and the demonstrated identification of such applicants with the regional public interest.

[(c)] **C.** The [Commission] **Board** shall consider such applications at a public meeting providing reasonable opportunity for all interested parties to be heard.

[(d)] **D.** The [Commission] **Board** shall confer [recognition] **designation** on such regional channel entity for a period of three years.

[(e)] **E.** Renewal of such [recognition] **designation** shall be issued only after full [Commission] **Board** proceedings and shall be for a period specified by the [Commission.] **Board.** The procedure for obtaining a renewal of such [recognition] **designation** shall be the same as is herein provided for obtaining the initial [recognition.] **designation.**

MCCB 171 Interconnect entity.

[(a)] **A.** No person shall, without prior notification to the [Commission,] **Board,** construct, install, maintain or operate within the State of Minnesota any equipment or facilities for an interconnection entity and unless such activity complies fully with all standards provided in MCCB 172 and the provisions of this Rule.

[(1)] **1.** The interconnection entities shall be responsible for the establishment and maintenance of facilities and personnel necessary to the provision of interconnection services between cable communications companies and interconnection entities within the State and the provisions of interconnection with interstate telecommunications network as they may develop.

[(2)] **2.** The interconnection entities shall be responsible for the provision of service of such interim interconnection and the acquisition of such interim interconnection equipment as may be of demonstrable benefit to the entities in the provision of their operation, provided the owners of such interim interconnection equipment desire such purchase by the interconnection entities.

[(3)] **3.** An interconnection entity operating in the Twin Cities metropolitan area shall, in addition to other requirements as may be deemed necessary by the [Commission,] **Board**, assume the responsibility from cable communications companies for providing two-way transmission of a regional channel.

[(b)] **B.** Before an interconnection entity commences operation, it shall submit to the [Commission] **Board** the following information:

[(1)] **1.** Plans for channel capacity including both immediate and eventual capacity;

[(2)] **2.** Plans for the interconnection system layout design operation and service area;

[(3)] **3.** The terms and conditions, including tariffs, under which services are to be provided;

[(4)] **4.** The time schedule for construction of the entire system including a timetable for acquisition of existing interim interconnection systems;

[(5)] **5.** The entity's qualifications and/or experience in the broadband telecommunications field;

[(6)] **6.** The operation's pro forma identifying anticipated expenditures and revenues associated with the construction and operation of the proposed system;

[(7)] **7.** The plans for financing the proposed system;

[(8)] **8.** Descriptions of the equipment used in providing interconnection;

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

[(9)] **9.** Such other information as the [Commission] **Board** may deem relevant.

[(c)] **C.** The [Commission] **Board** shall hold a meeting to receive testimony from interested persons concerning the operation of any proposed interconnection entity. At least 30 days notice shall be provided to all interested persons by publication at least once in a newspaper of general circulation in each municipality involved in the interconnection. The [Commission] **Board** may [recognize] **approve** a request incorporating the plan of operation of any interconnection entity if it is satisfied from all available evidence that [recognition] **approval** of such plan is in the public interest, will be fair to participating systems and the public and will not impair the ability of any system to deliver services to subscribers and users. The [Commission] **Board** shall issue written findings based on its enunciated standards in determining whether to [recognize] **approve** an interconnection entity. Such [recognition] **approval** shall be conditioned upon the receipt of all licenses and permits from appropriate agencies necessary for the construction and operation of any interconnection entity.

Chapter Fourteen

MCCB 201 Operator Required to File Reports with [Commission] **Board.** A copy of the form entitled ~~"Annual Report of Cable Television Systems" (FCC Form 325) and a copy of the form entitled~~ "Cable Television Annual Financial Report" (FCC Form 326) shall be filed annually with the [Commission,] **Board,** by every cable communications company for each cable communications system operating in the State of Minnesota, substantially at the same time as the reports ~~are~~ filed with the Federal Communications Commission. The [Minnesota State Commission] **Board requires an annual report of cable system data from each system operator which is due on the first of May of each year and the Board** may require such additional information **and supporting documentation** to be filed at such time and in such form as the [Commission] **Board** [shall by resolution determine.] **may deem appropriate.** ~~etc.~~

Chapter Sixteen

MCCB 225 [Commission] **Board** procedures.

[(a)] **A.** Pursuant to the requirements of MCCB 111[(b)] **B.**, a cable service territory may be proposed to the [Commission] **Board** by a municipality, a group of municipalities in a joint powers agreement, or a cable communications operator applicant. At least 30 days prior to submitting a cable service territory proposal to the [Commission] **Board** for approval, the party or parties proposing the cable service territory shall deliver written notice of its intentions to propose a cable service territory to the governing body of each adjacent municipality and may discuss with such officials the feasibility and advisability of developing a cable service territory and the adoption of a procedure to pursue this objective. At substantially the same time as written notice is delivered to the governing bodies of each adjacent municipality, the party(ies) proposing the cable service territory shall publish or cause to be published at least once in a newspaper of general circulation in the proposed territory, a statement indicating the intention of submitting a cable service territory proposal to the [Minnesota Cable Communications Commission] **Board.**

[(b)] **B.** All proposals must be in the form of a written application containing the following information: a map showing the boundaries of the cable service territory to be franchised and areas within this territory for which cable communications service is planned, provided that if a cable service territory is proposed which encompasses less than 100% of the area within a municipality or group of municipalities, the [Commission] **Board** shall require and consider the plans for franchising the remaining unserved area; detailed demographic data; resolutions from the governing bodies of all municipalities contacted by the party or parties proposing the cable service territory stating their approval or disapproval of such a proposal; a statement describing the efforts the party or parties proposing the cable service territory made to contact all adjacent municipalities and the results of such contacts; and any other information which the [Commission] **Board** may deem necessary.

[(c)] **C.** A copy of the proposal shall be submitted simultaneously to the Metropolitan Council or the appropriate regional development commission, the [Commission] **Board** and the governing body of each adjacent municipality.

[(d)] **D.** The [Metropolitan Council or] appropriate regional development commission shall have 30 days to submit written comment on the proposal to the [Commission,] **Board,** which period of time may be extended by the [Commission] **Board** for another 30 day period for good cause shown. **If the proposed boundaries, in whole or part, are within the seven county metropolitan area, the Metropolitan Council shall be allowed 90 days to review and comment on the proposed boundaries.** The [Commission] **Board** shall also accept written comment from any other interested persons during [this period.] **these periods.**

[(e)] **E.** The [Commission] **Board** shall take initial action within sixty days after the thirty day period set forth in [(d)] **D.** Before taking final action, the [Commission] **Board** shall hold a public meeting upon reasonable notice and accept oral and written comments.

[(f)] **F.** If the [Commission] **Board** determines not to approve a proposal, it shall specify its reasons for rejec-

tion in a written statement within sixty days of such rejection.

[(g)] **G.** A proposal rejected by the [Commission] **Board** may be introduced with appropriate modifications at any time after such rejection. All reintroduced proposals shall be subject to the same procedures of this Chapter as the original proposal.

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

APPROVED AS TO FORM AND LEGALITY

NOV 10 1977 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Joel M. Paul B. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 17 1977
Joan Anderson Growe
Secretary of State
3:25 PM

PROPOSED RULES

Cable Communications Board

Variances, Rulemaking, Contested Cases, Delegation of Authority, Definitions, Renewal of a Certificate of Confirmation, Franchise Procedures, Standards and Amendments, Interconnection, Cable System Report to Board, and Cable Service Territories

Notice of hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room 83, of the State Office Building, Wabasha St., St. Paul, Minnesota, on June 21, 1977, commencing at 1:30 p.m., reconvening at 7:30 p.m., and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Mr. Howard Kaibel, State Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104, either before the hearing or within 20 days after the close of the hearing.

The statutory authority of the Minnesota Cable Communications Board to promulgate the proposed rules is contained in Minn. State. § 238.06, subd. 1 (1976).

The following changes in Board rules are proposed for adoption:

Definitions-

Add definitions of ''Twin Cities Metropolitan Area'' and ''Board''; add ''municipality'' to the definition of ''person.''

Variances-

Add a provision requiring that requests for variances be submitted 20 days in advance of the Board meeting at which action is requested.

Rulemaking-

Change rules to conform with the Rules of the Office of the Hearing Examiners and Minn. Stat. Ch. 15 (1976).

Contested Cases-

Change rules to conform with Minn. Stat. ch. 15 (1976) and the Rules of the Office of Hearing Examiners. Amend remaining rules regarding the Board's decision in contested cases.

Cable System Reports to Board-

Amend rule by clarifying that annual reports by cable communications system operators are due on the first of May each year.

Cable Service Territories-

Add provision to rule specifying a period for comment by the Metropolitan Council on a proposed cable service territory.

The following changes will be made in the MCAR (Cable Board Rules and Regulations) at the time of their revised final printing:

1. The word ''Commission'' will be changed to ''Board'' pursuant to Minn. State. § 15.012.

2. All statutory cites will be updated so as to reflect the most recent edition of Minnesota Statutes.

3. Rule citations will be changed from MCCC to MCCB.

4. All rules will be changed to conform to the following format:

MCCB 1

A.

1.

a.

(1)

(a)

(i)

(aa)

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand and may be presented either orally or in writing at the public hearing or by mailing a statement to Mr. Howard Kaibel, State Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104. If the person submitting a statement cannot be present to read their statement at the time of the hearing, the statement will be entered into the record. For those wishing to submit written statements or exhibits, it is requested that at least three copies of such statement, exhibit or summary be furnished at the hearing. The record will remain open for receipt of briefs or other written material relative to the proposed rule for 20 days subsequent to the public hearing.

Copies of the proposed rules will be available after May 16, 1977, at the Cable Board's offices and free copies may be obtained by writing to the Minnesota Cable Communications Board, 500 Rice St., St. Paul, Minnesota, 55103. Additional copies will be available at the door on the date of the hearing. A "Statement of Need" explaining why the Minnesota Cable Communications Board feels the proposed rules are necessary and a "Statement of Evidence" outlining the testimony the Cable Board will be introducing will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, phone (612) 296-5615.

Robert J. McDonald, Executive Director
MINNESOTA CABLE COMMUNICATIONS BOARD

Rules as Proposed

Chapter One

MCCB 2 Definitions. As used in these Rules the following words and phrases shall have the meanings given them herein unless a different meaning clearly appears in the text.

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

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

[(1)] **1.** Any system which serves fewer than 50 subscribers;

[(2)] **2.** Any master antenna television system;

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

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

[(c)] **C.** ["Commission"] **"Board"** [means the commission on cable communications] **shall mean the cable communications board** created by the provisions of [Minnesota Statutes, 1973 Supplement, Section 238.04.] **Laws of 1973, ch. 568.**

[(d)] **D.** "Franchise" means any authorization granted by a municipality in the form of a franchise, privilege, permit, license or other municipal authorization to construct, operate, maintain, or manage a cable communications system in any municipality.

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

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

[(g)] **G.** "Master antenna television system" means any system which serves only the residents of one or more apartment dwellings under common ownership, control or management and any commercial establishment located on the premises of such apartment house and which transmits only signals broadcast over the air by stations which may be normally viewed or heard locally without objectionable in-

terference, and which does not provide any additional service over its facilities other than closed-circuit security viewing services.

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

[(i)] **I.** "Person" means any individual, trustee, partnership, **municipality,** association, corporation or other legal entity.

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

[(k)] **K.** "State" means the State of Minnesota.

[(a)] **L.** "State agency" means any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of the state.

M. "Twin Cities metropolitan area" means that area comprised of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties.

MCCB 20 Variances. The [Commission] **Board** may grant a variance from any of its rules, regulations or standards, except where inconsistent with or otherwise prohibited by law, to promote the public interest, to avoid undue hardship and to promote the effective and reasonable application of its rules, regulations or standards relating to cable communications. Any person may petition the [Commission] **Board** for a variance from a rule, regulation or standard. The petition shall set forth the text of the rule, regulation or standard from which a variance is sought, the specific variance requested, and all facts, views, arguments and data deemed to support the granting of a variance. **Any such petition shall be submitted to the Board at least 20 days prior to the Board meeting for which it is requested to be heard.** The petitioner shall cause to be published once each week for two successive weeks in a newspaper of general circulation in the municipality in which the system for which the variance is requested is located, a concise statement of the variance sought and the time, date and place of the [Commission] **Board** meeting at which the variance is to be considered. Any interested person may file with the [Commission] **Board** a petition in opposition to the granting of the variance. Any such petition shall state with particularity the reasons why the variance should not be granted. The [Commission] **Board** may hear testimony from all interested persons concerning the granting of a variance. If the granting of a variance is substantially contested, the [Commission] **Board** may deem the matter a contested case to which the [Commission] **Board** is not a party for disposition under Chapter Four of these Rules. A variance shall be granted if, upon good cause shown, there is a finding that the granting of the variance is necessary or proper to avoid undue hardship on the petitioner and to promote the development and utilization of cable communications in the State of Minnesota. A variance which differs from that requested may be granted and it may be of a specific limited duration.

Chapter Three

MCCC 46-55 **are repealed.**

MCCB 56 Rule making proceedings. The Board shall adopt, amend, suspend, or repeal its rules in accordance wit the procedures set forth in Minn. Stat. ch. 15 (1976).

Chapter Four

MCCC 61-62 **are repealed.**

MCCB 64 Commencement of contested case. Within ten days following receipt of a complaint or application or the adoption of an order by the [Commission] **Board** initiating a contested case, the [Commission shall appoint a hearing officer and commence the contested case by serving upon all known parties a copy of the document of initiation and a notice stating:

(a) The commencement of the contested case;

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

(c) The purpose of the prehearing conference;

(d) The name of the hearing officer;

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

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

(g) These Rules or a citation thereto.

If the hearing officer decides that no prehearing conference will be held, notice of hearing pursuant to MCCC 74 shall be given.]

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

Board shall proceed to commence a contested case hearing in accordance with the procedures set forth in the rules of the Office of the Hearing Examiners.

MCCC 65-75 **are repealed.**

MCCB 76 The [Commission] **board** decision.

[(a) Basis for Determination:

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

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

(b) Proposal for Decision:

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

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

(aa) A statement of the proposed decision.

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

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

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

(c) Decisions and Orders:

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

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

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

(bb) A staement of the reasons therefor;

(cc) An affidavit of service.]

A. Parties adversely affected by the report of the hearing examiner shall have 20 days from the date of service of the report to file exceptions with the Board and request an opportunity to present arguments to the majority of the Board.

B. If there has been a request for an opportunity to present arguments the Board shall, as soon as practicable, set a date for the hearing of the arguments and give reasonable notice of same to all parties to the contested case and to the public in the same manner as in the case of a regular and special meeting of the Board. The arguments may be heard at the next regularly-scheduled Board meeting provided there is sufficient time for notice.

C. Within 60 days after the presentation of arguments or if there are no arguments within 60 days from the expiration of the 20 day period in A. above the Board shall issue a decision or order in the contested case. The decision or order shall be in writing or stated in the record and shall be accompanied by a statement of the reasons therefore. The statement of reasons shall consist of a concise statement of the conclusions upon each contested issue of fact necessary to the decision. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying statement of reasons together with a certificate of service shall be delivered or mailed upon request of each party or to his attorney of record.

MCCB 77 Rehearing.

[(a)] **A.** [Commission] **Board's** right to hear. The [Commission] **Board** may, upon request or its own motion and for good cause shown, reopen, rehear and redetermine a contested case after a final decision adverse to a party to the contested case other than the [Commission] **Board** has been rendered. This right may be exercised until it is lost by

appeal or the granting of a writ of certiorari or until a reasonable time has run, but in no event shall the time exceed the time allowed by statute for appeal or six months, whichever is shorter.

[(b)] **B.** Obtaining a rehearing:

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

[(aa)] **a.** The name and address of the petitioner;

[(bb)] **b.** The [Commission] **Board** designation for the case;

[(cc)] **c.** The reasons for the petition.

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

[(3)] **3.** Default judgments. A party against whom a default has been adjudged pursuant to [MCCC 68] **Office of the Hearing Examiners Rule 208** may obtain a rehearing upon a timely showing of good cause for his failure to appear or plead.

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

[(c) Notice of Rehearing. Notice of rehearing must be provided in the same manner prescribed for notice of hearing as provided in MCCC 74.]

[(d)] **C.** Rehearing procedure. A rehearing in a contested case shall be conducted in the same manner prescribed [for a hearing as provided in MCCC 75.] **by the rules of the Office of the Hearing Examiners.**

[(e)] **D.** Decision after rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing as provided in MCCB 76.

MCCB 80 **is repealed.**

Chapter Five

MCCB 91 Authority delegated to executive director. The Board's Executive Director is delegated authority upon application being made by any franchising authority to review applications, and determine eligibility for use of the alternative franchising procedures set forth in MCCB 113.

Chapter Six

MCCB 99 Necessity for a certificate of confirmation. Any cable communications company which is not authorized by law to receive a special or interim certificate of confirmation pursuant to MCCB 97 or MCCB 98 shall be required to secure a regular certificate of confirmation from the [Commission] **Board** before becoming operational. Such certificate may be [granted] **issued only upon compliance with MCCB 111 or 113 and MCCB 121,** after full [Commission] **Board** proceedings and shall be for a period of ten years[.] **from the effective date of the municipal franchise ordinance.**

MCCB 103 Renewal of a certificate of confirmation. Upon expiration of its certficate of confirmation or the renewal of its cable communications franchise, a cable communications company must obtain renewal of its certificate of confirmation. The renewal of any certificate of confirmation shall be issued only after compliance with MCCB 121. A certificate of confirmation being renewed because of the renewal of a cable communications franchise must also be in compliance with MCCB 112. The [A] renewal **of a** certificate of confirmation shall be issued only after full [Commission] **Board** proceedings and shall be valid for a period of [five] **ten** years [.] **from the expiration date of the previously issued certificate, except when a certificate is renewed before its expiration date, the term of the renewed certificate shall begin on the date of its issue, and any remaining term of a previously issued certificate shall then be expired.** [A certificate of confirmation is a renewal certificate if it is issued to the same cable communications company, or its successor in interest, for the same cable communications

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

system for which an interim, special or regular certificate of confirmation was previously issued by the Commission.] The procedure for obtaining **the** [a] renewal **of a** certificate of confirmation shall be the same as is herein provided for obtaining a regular certificate of confirmation. **Nothing in this rule shall prohibit a cable communications company from renewing its certificate of confirmation prior to the expiration of any existing certificate of confirmation.**

Chapter Seven

MCCB 111 Initial franchise.

[(a)] **A.** The procedure described in [Rule] **MCCB** 111 of this Chapter shall be observed by all franchising authorities before and during the awarding of any cable communications franchise, except as provided in Minn. Stat. [1973 Supplement, Section 238.09, Subdivisions 3, 4 and 5 or in Laws 1974, Chapter 506, Section 10,] § 238.09, subd. 3, 4, 5 and 9 (1976), and Rule of this Chapter.

[(b)] **B.** The proposed boundaries for all cable service territories must be approved by the [Commission] **Board** in accordance with Rules of the [Commission] pertaining to cable service territories before a franchising authority shall adopt an invitation for applications for a cable communications franchise as described in MCCB 111 [(c)] **C.** of this Rule.

[(c)] **C.** Except as provided in MCCB [111 (a)] **111 A.** of of this Chapter, no cable communications franchise may be awarded, nor may any application for any such franchise be invited, without the research and planning required by this Rule. The franchising authority shall appoint a group of persons residing within the boundaries of the franchising authority as an advisory body to make recommendations on cable communications to the franchising authority. Persons commercially involved in cable communications activities or other communications media shall not serve as member of the advisory body, but may offer information and advice to the advisory body. The advisory body shall inform itself about cable communications through at least a review of published information, state and federal statutes and rules and regulations, and the experience of other municipalities that have or have studied cable communications. The advisory body shall also assess the communications needs of the persons residing within the franchising authority, make a report to the franchising authority, and make publicly available the procedures and results of such study. The advisory body shall make recommendations to the franchising authority on the means to satisfy the communications needs of the persons residing within the franchising authority. After consideration of the recommendations of the advisory body, the franchising authority shall determine the advisability of continuing the franchising process. If the franchising authority determines that the franchising process should continue, then the franchising authority shall officially adopt in a public hearing, affording reasonable notice and a reasonable opportunity to be heard, an invitation for applications for a cable communciations franchise which invitation shall include, but not necessarily be limited to, the following items:

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

[(2)] **2.** Critieria and priorities [against which the applicants for the cable franchise shall be evaluated.] **which the municipality has developed to review franchise applications;**

[(3)] **3.** Information regarding applications for the cable communications franchise including:

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

[(bb)] **b.** The closing date for submission of applications;

[(cc)] **c.** A statement of the application fee, if any, and the method for its submission;

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

The franchising authority within 10 days after adoption of an invitation for applications for a cable communications franchise shall mail a copy of the invitation to the [Commission] **Board** and make a copy available for public inspection at the city offices during normal business hours.

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

[(d)] **D.** Not less than 45 days prior to the holding of the public meeting on the franchise as required by MCCB 111 [(f)] **F.** of this Rule, the franchising authority shall give public notice of the availability of the invitation for applications for a cable communications franchise. The notice shall be published at least once in a newspaper of general circulation within the boundaries of the franchising authority and at least once in at least two publications contained in a list approved by the [Commission] **Board** and on

file with the executive director of the [Commission.] **Board.** The published notice shall contain the following information: the name(s) of the municipalities within the franchising authority inviting the application; the date by which all applications must be submitted; the name, address and telephone number of the municipal official from whom the invitation for applications for a cable communications franchise may be obtained; the amount of any application fee; and a statement that the application for a cable communications franchise must be submitted taking into account the system design and services as outlined by the franchising authority in its invitation for a cable communications franchise. [and on a standard form to be supplied by the franchising authority.] In addition to the published notice, the franchising authority should mail copies of the invitation for applications for a cable communications franchise to any persons it has identified as being potential candidates for the franchise. A copy of the notice shall be provided to the [Commission] **Board** on the date of initial publication together with an affidavit of publication.

[(e)] **E.** A franchising authority shall require that all applications for a cable communications franchise be notarized and contain [the applicant's proposed service and system design for the franchising authority's cable communications system submitted on a standard form supplied by the franchising authority, which form shall include,] but not necessarily be limited to, the following information:

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

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

[(3)] **3.** Description of the proposed system design and planned operation, including at least the following items:

[(aa)] **a.** General area for location of antenna(e) and headend(s);

[(bb)] **b.** Schedule for activating two-way capability;

[(cc)] **c.** Type of automated services to be provided;

[(dd)] **d.** Number of channels and services to be made available for access cablecasting, and a schedule of charges for facilities and staff assistance for access cablecasting.

[(4)] **4.** The terms and conditions under which particular service is to be provided to educational and governmental entities;

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

[(6)] **6.** A time schedule for construction of the entire system with the time sequence for wiring the various parts of the franchising authority;

[(7)] **7.** A statement indicating the applicant's qualifications and/or experience in the cable communications field, if any;

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

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

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

[(11)] **11.** A notation and explanation of any omissions or other variations with respect to the requirements of the proposal.

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

[(g)] **G.** The franchise shall be granted by ordinance and within 10 days of the date on which the ordinance takes effect, the franchising authority shall forward a copy of the franchise ordinance to the [Commission] Board for approval in accordance with Minn. Stat. [1973 Supplement.] § 238.09, subd. 1 **(1976).**

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

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

[(i)] **I.** Nothing contained in any rule of the [Commission] **Board** shall prohibit a franchising authority from franchising a nonprofit or municipally-operated system, provided that pursuant to Minn. Stat. [1973 Supplement,] **(1976),** [Section 238.01-238.16 and Laws 1974, Chapter 506,] the municipality or the nonprofit entity shall be considered an applicant for purposes of these Rules.

MCCB 112 [Renewal] Franchise renewal.

[(a)] **A.** For purposes of these Rules a franchise is renewed whenever the franchising authority awards a subsequent franchise to the same cable communications company or its successor in interest [after the award of the initial franchise.] **which extends the franchise term beyond its previous termination date.**

[(b) (1)] **B.1.** Three months prior to the expiration of a franchise and to the expiration of a certificate of confirmation, the advisory body created in MCCB 121[(bb)] **B**$_1$**.** of these Rules shall submit a report to the franchising authority, to the cable communications system operator and to the [Commission,] **Board,** which report shall include a written appraisal of the performance of the franchisee during the franchise term with regard to the provisions of the franchise. The report shall also include recommendations for revised or additional provisions of the franchise, considering at least the following items: channel capacity; channels for access cablecasting; facilities and staff assistance available for access cablecasting; two-way capability; and the need for further service to be extended within the franchised area based upon a reassessment of the communications needs of the persons residing within the franchised area in relation to the services generally offered by the cable industry.

[(b) (2)] **2.** At least six months prior to the expiration of the franchise, franchising authorities which are being served by cable communications systems which are operating under a franchise which expires before May 1, 1979, shall create an advisory body to submit the report to the franchising authority, required by MCCB 112 [(b) (1)] **B.1.** of this Rule.

[(c)] **C.** The franchising authority shall commence renegotiation of the franchise at least 30 days prior to the expiration of the franchise in accordance with MCCB 121 [(b) (3)] **B. 3.** of these Rules, and may proceed with a renewal of the franchise unless the governing body determines not to reissue the franchise to the franchisee or desires to consider additional applicants for a franchise.

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

[(e)] **E.** If the franchising authority determines that additional applicants are to be sought, the franchising authority must follow the procedure prescribed in MCCB 111 of this Chapter.

MCCB 113 Alternative initial franchising procedures.

A. The procedure described in this rule may be used by a franchising authority if it meets the eligibility requirements of subdivision E. of this rule.

B. No franchising authority determined eligible for the use of this rule shall award a cable communications franchise, unless the procedures of this subdivision have been followed as required.

1. Before a franchising authority may use this procedure, it must submit to the Board a complete application containing such information as the Board may deem necessary, for determining eligibility to use the procedures of this rule. Within 10 days after receipt, the Board's Executive Director shall review each application and give a written determination of eligibility to the requesting franchising authority.

2. The proposed boundaries of all cable service territories must be approved by the Board in accordance with the Rules of the Board pertaining to cable service territories before a franchising authority shall publish notice of intent to franchise as described in this rule.

3. The franchising authority shall cause to be published once each week for two successive weeks in a newspaper of general circulation in each municipality within the cable service territory, a notice of intent to franchise, requesting applications for such franchise. Such notice shall include at least the following information:

a. Name of municipality making the request;

b. The closing date for submission of applications;

c. A statement of the application fee, if any, and the method for its submission;

Pages 1613-1660

State Register

STATE OF MINNESOTA

HIGHLIGHTS:

Minnesota Occupational Information System Board Established
—Executive Order from the Governor

Electric Utility Information Reporting
—Adopted Rules from the Energy Agency

Large Oil Storage Facilities Applications
—Adopted Rules from the Energy Agency

Cable Communications
—Proposed Rules from the Cable Communications Board

Maximum Lawful Interest Rate for Mortgages for June, 1977
—Notice from the Department of Commerce, Banking Division

Uniform Health Insurance Forms
—Notice of Public Opinion Sought by the Department of Commerce, Insurance Division

Wage Rates on Highway Construction Projects
—Notice from the Department of Labor and Industry

Railroad Conditions and Changes in St. Louis County, Deerwood, Ironton, and Cold Springs
—Notice of Hearings from the Department of Transportation

EQC Monitor:

Negative Declarations
EIS Preparation Notice
Final EIS Completion

VOLUME 1, NUMBER 45

May 16, 1977

Subscribers Hotline

Phone inquiries regarding subscriptions should be directed to Marjorie Borchard at (612) 296-8239.

How to Cite

Cite all material in the *State Register* by Volume number and page number.
Example: Volume 2, *State Register*, page 94 (short form: 2 S.R. 94).

State Register

Individual copies of the *State Register* may be purchased at either the Office of the State Register or the Documents Section, for $2.25.

Change of address notices, subscription or single-copy orders and undelivered copies should be sent to:

THE OFFICE OF THE STATE REGISTER
95 Sherburne, Suite 203
St. Paul, Minnesota 55103
296-8239

Materials published in the *State Register* are public records under Minn. Stat. § 15.17. Individual documents may be freely copied from the *State Register*. However, the State of Minnesota has reserved a copyright to cross reference tables, tables of contents, indices, numerical lists and codification guides, as provided in RGSTR 7 of the rules of the Office of the State Register.

The *State Register* is the official publication of the State of Minnesota. It contains all executive orders, rules and notices filed with the Office of the State Register as of noon of the second Thursday preceding the Monday of publication. The text of documents published in the *State Register* is to be accorded the following presumptions:

(1) The rule or order was duly adopted, issued or promulgated;

(2) The rule or order was duly filed with the Secretary of State and available for public inspection at the day and hour endorsed thereon; and

(3) The copy of the rule or order published in the *State Register* is a true copy of the original.

Judicial notice shall be taken of material published in the *State Register*.

The *State Register* is published weekly, on Monday, by the State of Minnesota, Department of Administration, Office of the State Register, Suite 203, 95 Sherburne Avenue, St. Paul, Minnesota 55103, pursuant to Minn. Stat. § 15.0411. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $110 per year, and $85 per year for second and additional subscriptions, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630.

Copyright © 1977 State of Minnesota

Rudy Perpich
Governor

Richard L. Brubacher,
Commissioner,
Department of Administration

George T. Morrow, II,
Director,
Office of the State Register

James T. Clancy
Editor

Louann Wood
Editor

Contents

EXECUTIVE ORDERS

Executive Order No. 147
Providing for the Establishment of an Occupational Information System Board of Directors 1616

RULES

Energy Agency
Adopted Rules Regarding Electric Utility Information Reporting 1619
Adopted Rules Regarding Contents of Applications for Certificates of Need for Large Oil Storage Facilities 1620

Higher Education Coordinating Board
Adopted Rules for Registration of Private Post-Secondary Institutions 1627

PROPOSED RULES

Cable Communications Board
Proposed Rules Governing Various Functions of the Board 1633

OFFICIAL NOTICES

Department of Commerce Banking Division
Notice of Maximum Rate of Interest for Mortgages for June, 1977 1650

Insurance Division
Public Opinion Sought Regarding Uniform Health Insurance Forms 1650

Department of Labor Prevailing Wage Division
Notice of Prevailing Wage Rates for Highway Construction 1650

Department of Transportation
Notice of Hearings Regarding Railroad Changes and Conditions in St. Louis County, Deerwood, Ironton, and Cold Springs 1650

EQC MONITOR

Negative Declarations 1655
EIS Preparation Notice 1655
Final EIS Completion 1655

List of MCAR Rules Affected*

List of rules within the Minnesota Code of Agency Rules affected by documents published in the State Register during the current quarter beginning with Vol. 1, No. 40:

Department of Agriculture
Agr 165, 169 1477

Cable Communications Board
MCCB 2, 20, 46-56, 61-62, 64-77, 80, 91, 99, 103, 111-113, 121, 134, 136, 166-168, 171, 201, 225 1633

Department of Education
EDU 44 (proposed) 1539

Energy Agency
EA 201-213 1619

Department of Labor and Industry
MOSHC 1 1560

Livestock Sanitary Board
LSB 41 1562

Public Service Commission
PSC 3 1477

*New rules, both proposed and adopted, and which have never been disseminated or published, are not included in the List of MCAR Rules Affected. Rules which are listed as "uncodified" have been disseminated, but have never been published in the MCAR.

EXECUTIVE ORDERS

Executive Order No. 147

Providing for the Establishment of an Occupational Information System Board of Directors to Perform Responsibilities and Accept Federal Funds under Title III of the Comprehensive Employment and Training Act of 1973, and Repealing Executive Orders Nos. 118 and 118A

I, Rudy Perpich, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution and applicable statutes, do hereby issue this Executive Order:

WHEREAS, Title III of the Comprehensive Employment and Training Act of 1973 provides funds to support the development and implementation of statewide occupational information systems for states and local areas within states;

WHEREAS, certain sums of money have been allocated through the Act to support the development and implementation of statewide occupational information systems in qualifying states;

WHEREAS, the availability of funds allocated to Minnesota for the development and implementation of an occupational information system is contingent on the establishment of a consortium policy board which is broadly representative of both the users and producers of occupational information, namely, schools and educational agencies, manpower agencies, and business and industry; and

WHEREAS, by Executive Orders 118 and 118A a board and executive committee were created and it is necessary to make certain changes and clarify certain responsibilities:

NOW, THEREFORE, I order:

1. The establishment of the board to be known as the Minnesota Occupational Information System Board.

2. The purpose of the Minnesota Occupational Information System Board shall be to accept and utilize federal funds and other funds as available to fulfill its responsibilities and to fulfill policy responsibilities designated under Title III of the Comprehensive Employment and Training Act of 1973 and such attendant regulations and guidelines as may be promulgated by the U.S. Secretary of Labor.

3. The Minnesota Occupational Information System Board shall be comprised of sixteen member as follows: the State Affirmative Action Officer or his designee, the Commissioner of Employment Services or his designee, the Commissioner of Education or his designee, the Executive Director of the Governor's Manpower Office or his designee, the Director of the State Planning Agency or his designee, the Commissioner of Administration or his designee, the Commissioner of Personnel or his designee, the Director of the Minnesota Higher Education Coordinating Board or his designee, and the Chancellor of the State Community College System or his designee representing the Higher Education Advisory Council. The Governor shall appoint one representative from the Minnesota business and industrial community and one from the labor community to serve at his pleasure coterminously with his term as Governor. The Director of the Higher Education COoordinating Board shall appoint one local office representative of the Minnesota Department of Employment Services nominated by the Commissioner of Employment Services, one student and one counselor nominated by the Commissioner of Education, one client of the Comprehensive Employment and Training Act Program nominated by the Executive

Director of the Governor's Manpower Office, and one student nominated by the Higher Education Advisory Council to serve terms coterminous with that of the Governor. The Executive Director of the Minnesota Higher Education Coordinating Board or his designee shall serve as Chairperson of the board. The Minnesota Occupational Information System Board shall select its Vice-Chairperson from among the other members.

4. There is created an Executive Committee of the MOIS Board consisting of the following members or their designees:

(a) Executive Director, Higher Education Coordinating Board; chairperson

(b) Commissioner of Administration

(c) Commissioner of Personnel

(d) Two other members of the Board selected by the Board

The Executive Committee shall act as a screening committee concerning MOIS personnel and shall make its recommendation to the Board on all personnel questions; it shall further act on behalf of the Board when this Board is not convened.

5. The Minnesota Occupational Information System Board shall be authorized to:

(a) prescribe its time and place of meeting

(b) determine its policies and procedures in accordance with state law except that personnel policies and procedures shall be subject to the approval of the Executive Director of the Higher Education Coordinating Board

(c) select and hire an Executive Director and other necessary staff who shall be appointed by the Executive Director of the Higher Education Coordinating Board

(d) adopt an annual operational budget

(e) transmit appropriate reports to the Governor and Legislature

(f) submit requests for funds to appropriate budget officers.

6. The Board shall contract with the Minnesota Higher Education Coordinating Board as personnel and fiscal agent, and shall submit an annual report to the Minnesota Higher Education Coordinating Board for administrative review and evaluation and to the boards and agencies represented on or before June 30 of each year.

7. The Higher Education Coordinating Board shall be responsible for maintenance of the consortium between boards and agencies, perform all necessary coordinating functions, provide administrative review and evaluation annually, contract with the Board to supply fiscal and personnel services, and appoint staff on recommendation of the Board.

8. Members of the Minnesota Occupational Information System Board may, at the discretion of the members, be reimbursed for expenses in the manner described in Minn. Stat. § 43.329, if sufficient federal funds are available for such expenses.

9. Executive Orders 118 and 118A are rescinded.

This Order shall be effective on the date of publication in the State Register and shall remain in effect until rescinded by the proper authority.

IN TESTIMONY WHEREOF, I hereunto set my hand on this 26th day of April, 1977.



Energy Agency
Electric Utility Information Reporting

The rules published at State Register Volume 1, No. 22, P. 880, December 7, 1976 (1 S.R. 880) are adopted and are identical in every respect to their proposed form with the following amendments:

EA 206 Basic forecast and current data.

A. Each utility shall submit annually to the director data for the last calendar year and a forecast for the present year and the 15 subsequent years of the generation, the peak demand, and the consumption of electrical energy.

B. The basic forecast and current data shall contain the following data for each year cited in rule EA 206 A. in the form requested below.

1. The annual electrical consumption, generation and peak demand forecast shall include:

a. annual total electrical consumption in kilowatt-hours by ultimate consumers within the utility's Minnesota service area;

b. annual total electrical consumption in kilowatt-hours by the utility's ultimate consumers outside its Minnesota service area;

EA 207 The extended forecast.

A. The following utilities must file an extended forecast: Northern States Power Company, Minnesota Power and Light Company, Otter Tail Power Company, Interstate Power Company, Minnkota Power Cooperative, Cooperative Power Association, United Power Association and Dairyland Power Cooperative. Data which is compiled within the same calendar year for either an extended forecast or a certificate of need application may be substituted interchangeably to satisfy those portions of both sets of rules which have identical data requirements. In such cases reference to the material substituted and a copy of the appropriate reference material shall be submitted to meet the reporting requirements.

EA 208 Generating facilities.

A. Present facilities. Each utility required to report under rule EA 204 A.1. shall provide the following information with regard to each power plant serving or capable of serving its Minnesota service area as of January 1 of the current year:

1. the name and type of the plant;

2. its location and address;

3. the primary fuel or blended primary fuels by estimated gross percentage of each which [[is]] are currently used to operate the plant;

4. the secondary fuels or blended secondary fuels by estimated gross percentage of each which are currently used to operate the plant;

5. name-plate capacity as measured by the sum total of the maximum name-plate rating of each unit of generating equipment in the plant;

6. actual plant capacity as measured by the maximum load that could be supplied by present equipment on a peaking basis of which the utility shall specify duration;

7. the total number of kilowatt-hours generated by the plant for nonplant use during the last calendar year;

8. the annual heat rate of the plant;

9. the quantities of primary and secondary fuels consumed during the last calendar year;

10. the year in which the plant or each unit of a multiunit plant began operation;

11. the name-plate number, kilowatt rating, power factor, voltage, phase and frequency for each unit of generating equipment in the plant.

EA 209 Transmission lines.

A. Existing transmission lines. Each utility shall report the following information in regard to each transmission line over 100 kilovolts now in existence:

1. a map showing the location of each line;

2. the design voltage of each line;

3. [[the design power capability of each line]] the size and type of conductor;

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

4. the approximate location of D.C. terminals or A.C. substations; and

5. the approximate length of each line and the portion of that length in Minnesota. [[; and]]

[[6. the estimated losses at the design voltage and at the design current for the length of the transmission line and at the terminals or substations.]]

Energy Agency

Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Oil Storage Facilities for Energy Users

Readers should note that the following rules are totally new.

Chapter Eight: EA 801-881

EA 801 Purpose of rules. The purpose of these rules is to specify the contents of applications for certificates of need and to specify criteria for assessment of need for large oil storage facilities for energy users pursuant to Minn. Stat. § 116H.13.

EA 802 Applicability of rules.

A. Each applicant for a certificate of need for a large oil storage facility to be used in conjunction with manufacturing, mining, heating, cooling, processing or generation of electricity, or for fuel storage for vehicles, locomotives or aircraft, shall provide all of the information required by these rules. The following types of oil storage facilities shall be subject to these rules:

1. a new large oil storage facility; and

2. an expansion of an existing oil storage facility, which expansion is itself of sufficient size to fall within the definition in EA 804 L.

B. Exception. The following types of facilities shall not be subject to these rules:

1. a large oil storage facility on which construction has begun or has been completed; and

2. a large oil storage facility to be constructed in conjunction with a large electric generating facility which itself requires a certificate of need, unless that proposed large oil storage facility is not covered by the certificate of need issued for the large electric generating facility and associated facilities.

EA 803 Application procedures and timing.

A. Each applicant for a certificate of need shall apply in a form prescribed by the director.

B. A minimum of seven (7) bound copies and one (1) unbound copy of the application shall be filed with the director. The director may require additional bound copies. All documents, forms, and schedules filed with the application must be typed on —4″ x 11″ paper except for blueprints, engineering drawings, maps, and similar materials. The date of preparation and the applicant's name shall appear on each page of the application, as well as on each document filed with the application. Each application shall contain a title page and a complete table of contents which includes the applicable rules by the titles and numbers given in these regulations.

C. Subsequent to the filing of an application, any changes or corrections to the application shall comply with rule EA 803 B as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page shall be marked with the word "REVISED" and with the date the revision was made. The original copy of the changes or corrections shall be filed with the hearing examiner, and the remaining copies shall be submitted to the director.

D. Each application for a certificate of need shall be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter shall specify the type of facility for which a certificate of need is requested, the number of copies filed, and the rules and subdivisions thereof to which the applicant has responded.

E. A hearing examiner shall be appointed and a public hearing shall be scheduled to commence no later than eighty days after the receipt of the application, in accordance with the Minnesota Energy Agency Rules of Procedure Governing Certificate of Need Program, rules EA 500 et seq., and the Hearing Examiner Rules of Contested Case Procedures, rules HE 201 et seq.

F. A decision on an application for a certificate of need shall be made by the director no later than six months from the receipt of the application, provided that the application as filed is substantially complete.

G. The director shall notify the applicant within 15 days of the receipt of an application if the application is not substantially complete. Upon such notification, the appli-

cant may correct the deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is substantially complete.

H. Prior to the submission of an application, a person may be exempted from any data requirement of these rules upon a written request to the director for exemption from specified rules and a showing by that person in the request that the data requirement 1) is unnecessary to determine the need for the proposed facility or 2) may be satisfied by submission of another document. A request for exemption must be filed at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt including reasons for his decision. The director shall file a statement of exemptions granted and reasons therefor prior to commencement of the hearing.

EA 804 Definitions. For purposes of these rules, the following definitions shall apply:

A. "Agency" means the Minnesota Energy Agency;

B. "Applicant" means the person or persons submitting a certificate of need application;

C. "Application" means a document submitted by a person or persons to the director for the purpose of obtaining a certificate of need, the contents of which are described in these rules;

D. "BTU" means British thermal unit, a common unit of energy measurement which is used in these rules for comparative purposes;

E. "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies;

F. "Demand" means the quantity of an energy product which the applicant is willing and able to purchase;

G. "Director" means the director of the Agency;

H. "Energy Product" means a product which may be used to provide energy;

I. "Forecast" means a prediction of future demand for some specified time period;

J. "Forecast Years" means the sixteen-year period consisting of the year in which an application is filed plus the next fifteen years;

K. "Joint Application" means an application submitted to the director by two or more persons;

L. "Large Oil Storage Facility" means a facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof;

M. "Peak Day" means that day during a calendar year when the demand is the greatest;

N. "Person" means an individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or a government or governmental subdivision, unit or agency, other than a court of law;

O. "Substantially Complete Application" means an application which is deemed by the director to be in substantial compliance with the informational requirements of these rules; and

P. "Ton" means 2000 pounds.

EA 805 Filing fees and payment schedule. The fee for processing an applicant shall be $1,500 plus $50 per one hundred thousand gallons of design oil storage capacity. The director may assess additional fees if they are reasonably necessary for completion of the evaluation of need for the proposed facility. In no event shall the total fee required of an applicant exceed the lesser of $50,000 or 200 percent of the fee set according to the above schedule. Fifty percent of the fee set according to the above schedule shall accompany the application, and the balance shall be paid 90 days after submission of the application. The applicant shall be notified when its application is acted on by the director of any additional fees and shall pay them within 30 days of notification. The billing for such additional fees shall be accompanied by an itemized statement. No certificate of need shall be issued unless all fees are paid in full.

EA 811 Criteria for assessment of need.

A. Purpose of the criteria. The criteria for assessment of need will be used by the director in the determination of the need for a proposed large energy facility pursuant to Minn. Stat. §§ 116H.01 through 116H.15. The factors listed under each of the criteria below will be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to these rules.

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

B. A certificate of need shall be granted to the applicant if it is determined that:

1. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states. In making this determination, the director shall consider:

a. the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

b. the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

c. the effects of promotional practices of the applicant which may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;

d. the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and

e. the effect of the proposed facility in making more efficient use of resources;

2. a more reasonable and prudent alternative to the proposed facility has not been demonstrated. In making this determination, the following factors shall be considered:

a. the appropriateness of the size, type, and timing of the proposed facility compared to those of reasonable alternatives;

b. the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

c. the impact of the proposed facility upon the natural and socioeconomic environments compared to the impacts of reasonable alternatives; and

d. the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

3. the consequences of granting the certificate of need outweigh the consequences of denying the certificate, considering:

a. the relationship of the proposed facility to overall state energy needs;

b. the impact of the proposed facility upon the natural and socioeconomic environments compared to the impact of not building the facility;

c. the effects of the proposed facility in inducing future development; and

d. socially beneficial uses of the output of the proposed facility, including its uses to protect or enhance environmental quality;

and that

4. it has not been demonstrated on the record that the design, construction or operation of the proposed facility will fail to comply with those relevant policies, rules and regulations of other state and federal agencies and local governments which have been considered during the hearing process.

EA 821 Contents of application.

A. Each application for a certificate of need for a large oil storage facility shall include the information required by rules EA 831-834 and 841-845.

B. An application for a certificate of need, if desired by the applicant, may contain information in response to rule EA 871.

C. Joint application. If the proposed application for a certificate of need is jointly submitted by two or more persons, then, when specified in these rules, each such person shall submit the information required by these rules.

D. Multi-Party ownership and use. Each application for a certificate of need for a facility which is owned and used by two or more persons shall be considered as a joint application for purposes of these rules.

EA 831 General information.

A. Each application shall contain a general information section which shall include the following information:

1. the applicant's complete name and address, telephone number, and standard industrial classification code(s);

2. the complete name, title, address, and telephone number of the official or agent to be contacted concerning the applicant's filing;

3. a brief description of the nature of the applicant's business and of the products which are manufactured, produced, or processed, or of the services rendered;

4. a brief description of the proposed facility, its complete address (if known) or general location, a brief description of its planned use, its estimated cost, its planned in-service date, and its design capacity in gallons;

5. the total fee for the application as prescribed by rule EA 805, and the amount of the fee submitted with the application; and

6. the signature(s), and title(s) of the applicant's officer(s) or executive(s) authorized to sign the application and the signature of the preparer of the application if prepared by an outside agent.

B. Each application shall contain a schedule in the general information section which shall list all known federal, state, and local agencies or authorities with which the applicant must file for the proposed facility. The following information shall be included on the schedule:

1. the names of all known federal, state, or local agencies or authorities with which the applicant must file;

2. the title of each required permit or certificate issued by the authorities named in response to rule EA 831 B.1. and needed by the applicant;

3. for each permit or certificate listed in response to rule EA 831 B.2, the date an application was filed or the projected date of future application;

4. for each permit or certificate listed in response to rule EA 831 B.2, the actual date a decision was made on the application, or the anticipated decision date; and

5. for each permit or certificate listed in response to rule EA 831 B.2, for which an application was filed, the disposition or status of the permit or certificate.

EA 832 Need summary. Each application shall contain a section which summarizes the major factors which justify the need for the proposed facility. This summary shall not exceed, without the approval of the director, 15 pages in length, including text, tables, schedules, graphs, and figures.

EA 833 Summary of additional considerations. Each application shall contain a section which discusses the socioeconomic considerations listed below. The applicant shall explain the relationship of the proposed facility to each of the following:

A. socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;

B. promotional activities which may have given rise to the demand for the facility; and

C. the effects of the facility in inducing future development.

EA 834 Conservation programs. Each application shall contain a section which relates to conservation of energy. Separate responses are required from each person submitting a joint application.

A. Does the applicant have an energy committee or an individual responsible for determination or coordination of its energy needs?

B. Has the applicant defined energy or conservation goals or objectives?

C. What specific energy or conservation programs has the applicant considered?

D. Have any energy or conservation programs been implemented? Explain the program(s) and the measured results achieved to date.

E. Has the applicant measured or studied the energy efficiency of the facilities which will use the proposed facility as an energy source? What were the results?

F. What major accomplishments in energy efficiency or conservation have been made by the applicant within the past five years?

EA 841 Historical energy data. Each applicant shall provide the following information on historical energy usage in a separate section of the application. The energy usage data provided shall be for the specific facility or facilities which will make use of the energy product from the proposed facility. In a joint application separate responses shall be provided by each person. Applicants who have operated for less than five years the facility or facilities which will use energy from the proposed facility should provide data for each year of operation.

A. List all energy products used for the five most recent calendar years. For each energy product used indicate the annual usage and peak day usage in the appropriate unit of measure, i.e., natural gas in thousands of cubic feet, oil by

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

type(s) and in gallons, coal by type(s) and in tons, electricity in kilowatt hours, and liquefied gas in gallons.

B. For each energy product listed in response to rule EA 841 A, provide the annual expense in dollars and the average cost per unit of measure for each of the five most recent calendar years.

C. For each energy product listed in response to rule EA 841 A, provide the annual usage for the five most recent calendar years in BTU's and express the annual usage for each type of energy as a percentage of total annual use.

D. For each energy product listed in response to rule EA 841 A, and for the five most recent calendar years, provide the percentage of energy usage that is accounted for by each of the following categories:

1. space heating and cooling;

2. lighting;

3. manufacturing or processing;

4. electric generation; and

5. other

E. Describe any significant changes in plant or equipment within the past five years which may have had an effect upon the mix or quantities of energy products used as indicated in response the paragraphs A. through D. of rule EA 841.

F. If the energy products listed include oil, liquefied gas, or coal, describe the type and size of existing storage capacity, including the average number of days supply which would normally be on hand during the winter season and during the summer season.

G. For each of the energy products listed in response to rule EA 841 F, describe the applicant's handling facilities, including the method of transportation.

EA 842 Forecast data. The applicant shall provide in a separate section of the application answers to each of the questions below. In the answer to each question the applicant shall provide the assumptions upon which the answer is based. Separate responses to the questions are required from each person submitting a joint application.

A. What are the applicant's projected total energy requirements in BTU's for the first six forecast years, the eleventh forecast year (the tenth year after the year of application), and the sixteenth forecast year (the fifteenth year after the year of application)?

B. For the first six forecast years, the eleventh forecast year, and the sixteenth forecast year, what percentage of the total energy requirement given in response to rule EA 842 A is projected to be utilized for each of the following: space heating and cooling, lighting, manufacturing or processing, electricity generation and other?

C. What different energy products does the applicant expect to use during the forecast years? With respect to the various energy products, what significant shifts from current usage are expected by the applicant during the forecast years?

D. What energy supply problems, if any, does the applicant anticipate during the forecast years?

E. How much reduction, if any, in energy requirements for future years does the applicant anticipate as a result of conservation programs or improvements in the energy efficiencies of equipment?

EA 843 Description of proposed facility. Each applicant shall provide a description of the proposed oil storage facility in a separate section of the application. Separate responses to items G. through K. of rule EA 843 are required from each person submitting a joint application. The following information, or as much as is known at the time of application, shall be provided:

A. a description of the proposed oil storage facility, including:

1. its design capacity in gallons;

2. the type(s) of energy products to be stored;

3. its dimensions;

4. its estimated cost;

5. its expected economic life; and

6. an appropriate drawing which shows interconnections with other facilities at the site;

B. the complete name and address of the engineer, or (if designed by an outside agent) the firm, which designed the storage facility;

C. the complete name and address of the contractor or firm which will construct the storage facility;

D. the approximate planned date for starting construction and the approximate planned in-service date;

E. a list of the sources or anticipated fuel suppliers and

any contractual arrangements which assure the applicant a source of supply, including:

1. length of the contract(s) in years;

2. contractual volume per year, month, day, or as appropriate;

3. name(s) of supplier(s);

4. notification, if any, required to terminate a contract;

5. method of delivery; and

6. anticipated supply cycle (weekly, monthly, seasonally, by spot purchase, etc.);

F. an explanation of the source of supply for the proposed storage facility, if the applicant does not have a firm contract for necessary additional supplies of fuel;

G. the purpose and planned use of the proposed storage facility, including its relationship to the facility which requires it;

H. the percentage of the annual energy requirements of the energy-consuming facility which will use the proposed storage facility as an energy source that will be provided by the proposed storage facility;

I. the estimated number of days of fuel requirements which are planned to be stored in the proposed storage facility during the winter season and during the summer season for the first full year of operation;

J. an explanation of the effects of the proposed storage facility upon the applicant's ability to supply its customers; and

K. an explanation of the impact, if any, of the proposed facility upon the energy efficiency of operation of the facility which will use the proposed storage facility as a fuel source.

EA 844 Alternatives. Each applicant shall respond to the following questions and submit the required data in a separate section of the application.

A. Was conservation of energy or improving the efficiency of the process requiring the proposed facility considered as an alternative to construction of the proposed facility? To what extent was it considered?

B. Are there any known restrictions or limitations on the types of alternatives available to the applicant's proposed facility?

C. Specifically, what other energy alternatives were examined? For each alternative examined provide the following information:

1. a description of the alternative;

2. when it was studied;

3. who performed the study;

4. why it was rejected;

5. whether economics was considered and to what extent; and

6. whether environmental data were considered and to what extent.

EA 845 Environmental data. Each applicant shall provide environmental data for the proposed facility and for each alternative large energy facility described in response to rule EA 844, to the extent that such data is reasonably available. Information relating to construction and operation of these facilities shall be provided as indicated below.

A. Location

1. If the specific location for the proposed facility is known, provide the county, township, range and section(s) of that site. If a specific location has not been chosen, provide the county, township, range and section(s) for each parcel of land which in the opinion of the applicant could serve as the site for the proposed facility.

2. For each site identified in response to rule EA 845 A.1, list:

a. the nature of the terrain at the site;

b. the general soil type at the site;

c. the depth to groundwater at the site;

d. the types of vegetation (including forest, brush, marsh, pasture, and cropland) on the site;

e. the predominate types of land use (such as residential, forest, agricultural, commercial, and industrial) within one mile of the site;

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

f. lakes, streams, wetlands or drainage ditches within one mile of the facility and any other lakes, streams, wetlands, drainage ditches, wells or storm drains into which liquid contaminants could flow;

g. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails and national waterfowl production areas within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

h. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency; and

i. national historic sites and landmarks, national monuments, National Register Historic Districts, registered state historic or archaeological sites, state historical districts, sites listed on the National Register of Historic Places, and any other Cultural Resources within one mile of the facility site, as indicated by the Minnesota Historical Society.

B. Wastewater, projected air emissions and noise sources.

1. Discharges to water.

a. Point discharges. Indicate the location, route and final receiving waters for any discharge points. For each discharge point indicate the source, the amount and the nature of the discharge. (Provide quantitative data if possible.)

b. Area runoff. Indicate the area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff.

2. Airborne emissions.

a. Point sources. Estimate the quantity of gaseous and particulate emissions that would occur during full operation from each emission source and indicate the location and nature of the release point.

b. Area sources. Indicate locations which may be sources of fugitive dust and indicate the nature of the source (including type of material, amount, and turnover rate).

3. Noise. Indicate the maximum noise levels (in decibels, A scale) expected at the property boundary. Also, indicate the expected maximum increase over ambient noise levels.

C. Pollution control and safeguards equipment.

1. Air pollution controls. Indicate types of emission control devices and measures that would be used.

2. Water pollution controls. Indicate types of pollution control equipment and runoff control measures that would be used to comply with applicable state and federal regulations and statutes.

3. Oil spill safeguards. Describe measures that would be taken to prevent oil spills or to minimize the environmental impact of a spill on surface waters and groundwaters of the state.

4. Other safeguards and controls. Indicate any other equipment or measures, including erosion control, that would be used to reduce impact of the facility. Indicate the types of environmental monitoring, if any, that are planned for the facility and describe relevant environmental monitoring data already collected.

D. Induced development.

1. Vehicular traffic. Estimate the amounts and types of vehicular traffic which would be generated by the facility.

2. Utility use. Indicate the extent to which the facility would create or add to the need for expanded utilities or public services.

3. Water use. Indicate the amount of water which would be appropriated and the amount which would be consumed by the facility, the expected source of the water, and how the water would be used.

EA 871 Other data filed with the application. In addition to the information required by the director, the applicant may desire to file other data. If, in the opinion of the applicant, additional relevant data should be submitted for consideration, such data should be filed in a separate section of the application.

EA 881 Certificate of need modifications.

A. Issuance of a certificate may be made contingent upon modifications required by the director. When the director denies an application, he shall state the reason(s) for the refusal and the changes, if any, which would make the facility certifiable.

B. The following changes in a facility previously certified by the director shall not require recertification:

1. oil storage capacity additions or subtractions of less than ten (10) percent of the capacity approved by the director; and

2. changes of less than two years in the in-service date.

C. If an applicant determines that a change greater than those specified in rule EA 881 B. is necessary or desirable, it shall inform the director of the desired change, accompanied by a written statement detailing the reasons for the proposed change. The director shall evaluate these reasons and within 45 days of receipt of said statement notify the applicant whether the proposed change is acceptable without recertification.

Higher Education Coordinating Board

Registration of Private Post-Secondary Institutions

Chapter Nine: HECB 901-1000 Private Institutions Registration

HECB 901 Purpose. The purpose of this chapter is to [[augment Minnesota Session Laws, Chapter 201 (1975) and to provide assistance and protection for persons choosing private institutions and programs by providing policies, procedures, standards, and criteria assuring the authenticity and legitimacy of private post-secondary institutions and programs.]] provide for the registration of private post-secondary institutions and the approval of degrees to be granted and names to be used under Minn. Stat. §§ 136A.61-136A.71.

HECB 902 Definitions. The following terms, words and phrases shall have the meanings hereinafter ascribed to them for the purpose of this chapter:

A. "Act" means: [[Minnesota Session Laws (1975), Chapter 201]] Minn. Stat. §§ 136A.61-136A.71;

B. "Registration" means: the process by which a school pursuant to [[section 3 of the act]] Minn. Stat. § 136A.63 and HECB 903 files an application, submits required information pursuant to [[section 4 of the act]] Minn. Stat. § 136A.64 and HECB 904[[,]] and pays fees pursuant to [[section 9 of the act]] Minn. Stat. § 136A.69 and HECB 914;

C. "School" means: any individual, partnership, company, firm, society, trust, association, corporation[[,]] or any combination thereof[[,]] operating or doing business in Minnesota[[,]] which

1. is, owns or operates a private, non-profit post-secondary education instutition,

2. provides a post-secondary instructional program or course leading to a degree whether or not for profit[[,]] or

3. is, owns or operates a private post-secondary education institution which uses the term "college", "academy", "institute"[[,]] or "university" in its name or advertising;

D. "Schools located outside Minnesota which offer programs or courses within Minnesota" in [[section 3 of the act]] Minn. Stat. § 136A.63 means: schools located outside Minnesota which offer any course, program[[,]] or education activity which is available to residents of Minnesota and which does not require them to leave the state for the completion of such;

E. "Degree" means: any award given by a school which signifies or is generally taken to signify completion of a program or course and which is designated by the term degree, associate, bachelor, baccalaureate, master's or doctorate;

F. "Records" means: those school documents and files containing student data relating to academic credits, grades, degrees awarded[[,]] and periods of attendance. School transcripts or documents on which are recorded each student's data relating to academic credits earned, courses completed, grades awarded, degrees awarded[[,]] and periods of attendance qualify as "records";

G. "Authentic" means: real, genuine, reliable, bona fide;

H. "Legitimate" means: lawful, reasonable, in accordance with accepted standards;

I. "Approval" means: [[determination by the Board that a school meets minimal requirements]] authorization from the Board for a school to offer specified degrees or to use the terms "college", "academy", "institute" [[,]] or "universty" in its name[[,]] or both of the foregoing pursuant to [[section 5 of the act]] Minn. Stat. § 136A.65, HECB 905 and HECB 906;

J. "Board" means: The Minnesota Higher Education Coordinating Board;

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

K. ''Executive Director'' means: The Executive Director of the Minnesota Higher Education Coordinating Board.

HECB 903 Registration. All schools located within Minnesota and those schools located outside of Minnesota which offer programs or courses within Minnesota shall annually register with the Board. The Board shall by annual resolution adopt and publish a list of those schools registered pursuant to Minn. Stat. 136A.63. A school is registered when it has filed an application, submitted required information pursuant to Minn. Stat. § 136A.64 and HECB 904 and pays fees pursuant to Minn. Stat. § 136A.69 and HECB 914. A school need not be approved to be registered.

HECB 904 Information [[For Application]] required for registration.

Pursuant to [[section 4 of the act]] Minn. Stat. § 136 A.64[[,]] schools subject to registration [[or approval]] shall provide the Board with such information as the Board needs to determine the nature and activities of the school. The Board shall have the authority to verify the accuracy of the information submitted to it by inspection, visitation[[,]] or any other means it deems necessary. Any and all information submitted to the Board for the purpose of registration [[and approval]] shall be public information in accordance with existing state and federal law.

[[As a basis for the review by the Board,]] Each applicant for registration [[or approval]] shall submit the following accompanied by an affidavit attesting to the accuracy and truthfulness of the [[submissions]] same:

A. a copy of the school articles of incorporation, constitution, by-laws[[, charter,]] or other operating [[policies]] documents;

B. a duly adopted statement of the school's missions and goals;

[[(c) evidence of registration with the Minnesota Secretary of State, if appropriate;]]

[[(d)]] C. evidence of any school or program licenses granted by agencies of the State of Minnesota or any other state;

[[(c)]] D. a copy of the current school catalog and if not contained in the catalog:

1. a list of members of the board of trustees or directors, if any;

2. a list of current institutional officers;

3. a list of current faculty, full-time and part-time, with degrees held or applicable experience;

4. a list and description of all school facilities;

5. a list and description of all current course offerings;

6. a list of all requirements for satisfactory completion of courses, programs[[,]] and degrees;

7. a statement of the school's policy pertaining to freedom or limitation of expression and inquiry;

8. [[an accurate, up-to-date, and detailed]] a current schedule of fees, charges for tuition, required supplies, student activities, housing and all other [[typical]] standard charges;

9. a statement of the school policy regarding refunds and adjustments;

10. a statement of the school policy relating to granting of credit for prior education, training[[,]] and experience;

11. a statement of the school policies relating to student admission, evaluation, suspension[[,]] and dismissal;

[[(f)]] E. a copy of the fiscal balance sheet on an accrual basis or of a certified audit of the immediate past fiscal year for the school;

[[(g)]] F. one copy of all promotional and recruitment materials and advertisements;

[[(h)]] G. a plan for the preservation of student records pursuant to HECB [[907]] 908.

If on the basis of the above information the Board is unable to determine the nature and activities of a school [[and its programs or to approve degrees or names]], the Board will require any additional information needed to make such [[judgments]] determination.

HECB 905 Approval of degrees. [[The Board shall approve]] Degrees granted by registered schools [[deemed authentic and legitimate by the Board if said degrees meet the requirements of HECB 908.06, HECB 908.07, and HECB 908.08. Degrees granted by schools which are not deemed legitimate and authentic shall not be approved by the Board. Degrees which do not meet the requirements of HECB 908.06, HECB 908.07, and HECB 908.08 shall not be approved by the Board unless granted conditional approval under HECB 911. No school subject to registration,]] which meet the requirements of this section, HECB 904, HECB 908 and the policies and standards of HECB 907 shall be approved by the Board if said schools provide:

A. teaching personnel to provide the educational programs for each degree for which approval is sought;

B. educational programs leading to each degree for which approval is sought;

C. appropriate and accessible library, laboratory and other physical facilities to support the educational program for each degree for which approval is sought;

D. a rationale showing that degree programs are consistent with the school mission and goals.

Degrees granted by registered schools which do not meet these requirements shall not be approved by the Board unless granted conditional approval under HECB 911. No school located in Minnesota even if otherwise registered pursuant to the act and this chapter and no school located outside Minnesota which offers programs or courses within Minnesota even if otherwise registered pursuant to the act[[,]] shall grant a degree to students in Minnesota where the student has not left Minnesota for the major portion of the program or course unless such [[a]] degree [[has been]] is approved by the Board. After reviewing the recommendations of its staff and advisory committee, the Board shall by resolution annually adopt and publish a list of schools approved to offer degrees together with a list of the specified degrees so approved.

HECB 906 Aprpoval of names. The Board shall approve a school using the term ''academy'', ''institute'', ''college''[[,]] or ''university'' in its name provided the school meets the minimum requirements of this chapter. No school subject to registration under HECB 903 shall use the terms ''academy'', ''institute'', ''college''[[,]] or ''university'' in its name in maintaining, advertising, promoting[[,]] or conducting any program or educational activity in Minnesota without the approval of the Board.

The Board shall approve any school using the above terms in its name if the school meets all the following requirements:

[[.10]] A. Any school using the term ''academy'' in its name [[must be deemed legitimate and authentic by the Board and]] must meet the policies and standards of HECB 907 and the minimum requirements of this chapter.

[[.20]] B. Any school using the term ''institute'' in its name [[must be deemed legitimate and authentic by the Board and]] must meet the policies and standards of HECB 907 and the minimum requirements of this chapter.

[[.30]] C. Any school using the term ''college'' in its name must [[be deemed legitimate and authentic by the Board]] meet the policies and standards of HECB 907, must meet the minimum requirements of this chapter[[,]] and must offer at least one program leading to an associate degree [[which is approved as a degree under HECB 905]]. If it so chooses, it may use the term ''academy'' or ''institute'' in its name.

[[.40]] D. Any school using the term ''university'' in its name must [[be deemed legitimate and authentic by the Board]] meet the policies and standards of HECB 907, must meet the minimum requirements of this chapter[[,]] and must offer at least one program leading to a baccalaureate, master's[[,]] or doctorate degree [[which is approved as a degree under HECB 905]]. If it so chooses, it may use the term ''academy'', ''institute'' [[,]] or ''college'' in its name.

[[.50]] E. A school subject to registration will be granted approval to use the term ''college'' in its name if the school [[is deemed legitimate and authentic by the Board]] meets the standards of HECB 907, does not offer an associate degree[[,]] but proposes to use the term ''college'' in conjunction with the terms ''business'' (''commercial''), ''barber''[[,]] or ''beauty'' to signify the offering of technical and specialized programs providing preparation for career opportunities in the fields of business and barber and beauty services.

HECB [[908]] 907 Policies and standards. After reviewing the recommendations of its staff and advisory committee, [[pursuant to HECB 904,]] the Board by resolution shall annually adopt and publish a list of registered schools [[which have been judged as legitimate and authentic]] pursuant to HECB 903, of schools approved to offer specified degrees pursuant to HECB 905[[,]] and of schools approved to use the names ''college'', ''academy'', ''institute''[[,]] and ''university'' in Minnesota[[.]] pursuant to HECB 906. The criteria which will be used to make these determinations with respect to approval are those listed below:

[[A school shall be deemed authentic and legitimate if in the judgment of the Board it has a genuine educational program, sufficient finances, and sound institutional policies and practices. Among the criteria which will be used to determine if a school meets these standards are those listed below. Failure to meet any one of these criteria will not necessarily prevent a school from being judged authentic and legitimate. Rather a judgment will be made on the basis of a pattern which in the whole supports a legitimate educational program, sufficient finances, and sound institutional policies and practices.

A legitimate and authentic school is one which:]]

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

[[.01 has a statement of its mission and goals which is consistent with its charter, constitution, by-laws, or operating procedures;]]

[[.02]] A. has an organizational framework [[and publicly identified]] with administrative and teaching personnel to provide [[and to carry out]] the educational programs [[consistent with its duly adopted charter, constitution, by-laws, or operating policies]] it purports to offer;

[[.03 if it has a board of directors or trustees, clearly identifies in accounting procedures and makes available for inspection any compensation to board members as a result of board membership;]]

[[.04]] B. has [[a]] financial [[condition]] resources sufficient to meet the school's financial obligations[[; to refund]] including refuding [[all]] tuition and other charges[[, within a reasonable period of time,]] consistent with its stated policy in the event of dissolution of the [[school]] institution or in the event of [[any]] claims for refund against the [[school by the student body;]] institution, to provide [[purported]] service to [[its]] the students as purported[[;]] and [[for the proper use and support of the school to be maintained;]] to provide educational programs leading to degrees as purported;

[[.05]] C. operates in conformity with generally accepted budgeting and accounting procedures. [[The Board recommends the standards]] One such set of standards are those adopted by the National Association of College and University Business Officers.;

[[.06 has an educational]] D. provides for an educational program [[and curriculum which is a clearly defined sequence of learning experiences through courses, laboratory work, field experience, or independent work and which provides the student a depth and breadth of knowledge appropriate to the field and to the level of the]] leading to the degree it purports to offer;

[[.07 has educational programs and curriculum which are consistent with the school missions and goals;]]

[[.08 supports the curriculum with a faculty qualified by experience and training to teach the content of the program and to evaluate student performance and with]] E. provides appropriate and accessible library, laboratory[[,]] and other physical facilities to support the educational program offered;

[[.09]] F. has [[an official]] a policy on freedom or limitation of expression and inquiry for faculty and students which is published or available on request;

[[.10 promotes the welfare and educational advancement of the student by providing policies and information to students and prospective students including:]] G. provides information to students and prospective students concerning:

[[a. official school statistics pertaining to retention, graduation and readmission of students;]]

[[b. stated]] 1. comprehensive and accurate policies relating to student admission, evaluation, suspension and dismissal;

[[c. stated]] 2. clear and accurate policies relating to granting of credit for prior education, training[[,]] and experience and for courses offered by the school;

[[d. an accurate,]] 3. current [[, and detailed]] schedule of fees, charges for tuition, required supplies, student activities, housing and all other [[typical]] standard charges [[, and the school observes such schedules as are provided or published]];

[[e. an official]] 4. policy regarding refunds and adjustments [[to students who withdraw or alter enrollment status and the policy and procedures are observed as published]] for withdrawal or modification of enrollment status;

[[f. if the school has a financial aid program, a comprehensive and accurate description of the]] 5. procedures and standards used for the selection of recipients as well as the terms of payment and repayment for any financial aid program;

[[.11]].H. uses for promotion and student recruitment only publications and advertisements which are truthful and do not give any false, fradulent, deceptive, inaccurate[[,]] or misleading impression with respect to the school, its personnel, programs, services[[,]] or occupational opportunities for its graduates;

[[.12 requires]] I. has any compensated recruitment agents operating in Minnesota identify themselves as [[recruitment]] agents of the school when talking to or corresponding with students and prospective students.

Failure to meet any one of these criteria will not necessarily prevent a school from being given approval. Rather a judgment will be made on the basis of a pattern which in the whole supports a legitimate educational program, sufficient finances and sound institutional policies and practices.

HECB [[907]] 908 Records. [[Retroactive to August 1, 1975]] Any school located or operating within Minnesota must maintain permanent records for all students enrolled therein at any time. Each school must provide a plan for the preservation of such records which meet the following criteria:

A. There shall be at least one copy of the records held in a secure depository;

B. An appropriate [[school]] official shall be designated to provide copies of the record or transcript when requested to do so by the student;

C. Provision shall be made for the preservation of student records after the school shall cease to exist. Such provisions shall be consistent with clauses A. and B.;

D. In instances where the school does not have a binding [[contract]] agreement for the preservation of student records after the school shall cease to exist, the school shall demonstrate financial security for the preservation of student records after the school shall cease to exist in the form of a continuous surety bond or trust arrangement.

HECB 909 Disapproval and appeal. If approval for degree or name is not granted by the Board [[or a school is not deemed authentic and legitimate by the Board]], the applying school shall have the opportunity for a hearing pursuant to Minnesota Statutes, Chapter 15. If a school wishes a hearing, it has 30 days from the date of notification of the Board's decision to present a written request for a hearing.

HECB 910 Withdrawal of approval. The Board may, after notice and upon providing an opportunity for a hearing[[,]] pursuant to Minnesota Statutes, Chapter 15 if requested by the parties adversely affected, refuse to renew, revoke[[,]] or suspend any approval for any one or any combination of the following grounds:

A. violation of any provisions of the act or of this chapter;

B. furnishing to the executive director false, misleading[[,]] or incomplete information;

C. presenting to prospective students information relating to the school which is false, fradulent, deceptive, [[substantially]] inaccurate in a material respect or misleading;

D. refusal to allow reasonable inspection or supply reasonable information after written request therefor by the executive director.

HECB 911 Conditional approval. Notwithstanding anything in this chapter to the contrary, the Board may grant conditional approval of degrees[[,]] and names for periods of less than one year if to do so would be in the best interests of currently enrolled students or prospective students of registered schools.

HECB 912 Unauthorized representations. No school and none of its officials or employees shall advertise or represent in any manner that such school is approved or accredited by the Board or state of Minnesota except that any school which is duly registered with the Board[[,]] or any of its officials or employees[[,]] may represent that the school is registered with the Board with the following language: "_____ is registered with the Minnesota Higher Education Coordinating Board."

HECB 913 Non-Refundable fees. All fees collected by the Board pursuant to the act and this chapter are not refundable [[in the event that an application is not approved in whole or in parts]].

HECB 914 Delegation of authority. The Executive Director is hereby delegated the authority and responsibility for issuance of public information, designing of application forms, reviewing applications, securing information, making recommendations, setting guidelines and approving uses pursuant to HECB 906[[.50]] E., the appointment of appropriate advisory committees, the establishment of visitation teams[[,]] and prescribing of procedures and setting of fees for this program. The Executive Director shall at least annually advise and report to the Board the status of the program.

HECB 915 Advisory committee. The Executive Director shall appoint an Advisory Committee on Private Institutions of at least 10 but no more than 20 members. The members of the Advisory Committee should be qualified to give respected judgments in those areas covered by the act and this chapter. The principal purposes of the Advisory Committee shall be:

A. to assist in maintaining an appropriate and responsible environment in which applications for registration and approval will be fairly and equitably reviewed;

B. to review staff summaries of all applications within established guidelines and criteria;

C. to review reports of site visitations;

D. to forward recommendations on all active applications to the Board.

HECB 916 Schools licensed under Minnesota statutes. Any school subject to the provisions of Minn. Stat., ch. 141 (1974)[[,]] or any school required to be licensed by any board authorized under Minnesota law to issue such licens-

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

es[[,]] must have a currently valid license from the Commissioner of Education of the State of Minnesota or from any other licensing board to which that school is subject prior to [[registration]] any approval by the Board under the act. The Board will accept as final the determinations of the Commissioner of Education and of any other board as to whether a school is subject to the license requirements of Minn. Stat., ch. 141 or any other Minnesota licensing law and whether that school meets the requirements of ch. 141 and of any other Minnesota licensing law; the Board will not conduct separate inquiries into the substantive basis for those determinations.

The requirement of this rule is in addition to[[,]] and not a substitute for[[,]] any other requirements or obligations of this Chapter.

HECB 917 Rights, duties [[,]] and obligationsnot impaired by Minnesota Statutes, chapter 141. Except as expressly stated to the contrary in this chapter, any action taken pursuant to Minn. Stat. ch. 141 (1974) by the Commissioner of Education of the State of Minnesota in relation to any school, person[[,]] or other entity does not in any manner alter the rights, duties[[,]] and obligations of that school, person[[,]] or entity under this chapter or under [[Minnesota Laws of 1975, ch. 201]] Minn. Stat. §§ 136A. 61-136A.71.

HECB 900 Separability. If any rule [[,]] or portion thereof[[,]] within this chapter[[,]] or the application thereof to any school or other circumstances[[,]] is held or declared invalid, the remainder of the chapter[[,]] and the application of such rule or portion to other schools or circumstances shall not be affected thereby.

d. A statement by the franchising authority of the desired system design and services to be offered;

e. A statement by the franchising authority of criteria and priorities against which the applicants for the franchise shall be evaluated;

f. A statement that all applications for the franchise must contain at least the information required by Rule MCCB 111 E.;

g. Date, time, and place for the public hearing to hear proposals from franchise applicants;

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

C. In addition to the published notice, the franchising authority should mail copies of the notice of intent to franchise to any person it has identified as being potential candidates for the franchise. A copy of the notice shall be provided to the Board on the date of initial publication together with an affidavit of publication.

1. The franchising authority shall allow at least 20 days from the first date of published notice to the closing date for submitting applications.

2. A public hearing before the franchising authority affording reasonable notice and a reasonable opportunity to be heard with respect to all applications for the franchise shall be completed at least 7 days prior to the introduction of the franchise ordinance in the proceedings of the franchising authority.

D. The franchise shall be granted by ordinance and within 10 days of the date on which the ordinance takes effect, the franchising authority shall forward a copy of the franchise ordinance to the Board for approval in accordance with Minn. Stat. § 238.09, subd. 1 (1976).

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

F. In order to be eligible for the use of the procedures described in this rule,

1. At least one municipality within the Cable Service Territory shall meet one of the following requirements:

a. Be adjacent to an already approved Cable Service Territory having a Cable Communications System from which the extension of Cable Communications service has been offered or is desired, or;

b. Be adjacent to pre-existing or proposed cable communications facilities such as: microwave relay stations, satellite earth terminals, or trunk cable used to connect one or more operating cable communications systems to a headend located in another municipality, or;

c. Have a population of less than 1200, and

2. The proposed cable service territory does not exceed the following:

a. No one municipality within the Cable Service Territory may have a population over 1200, except in the expansion of an already approved cable service territory.

b. The total aggregate population of all municipalities within the cable service territory may not exceed 2,500 except in the expansion of an already approved cable service territory.

c. No municipality within the cable service territory may be located within the Twin Cities metropolitan area.

G. The Board may also allow the use of the procedures of this rule, in cases which it determines that, the requiring of a franchising authority to comply with the procedures of MCCB 111, would not be in the public interest or would bring undue hardship to any of the parties involved.

H. Nothing contained in any rule of the Board shall prohibit a franchising authority from franchising a non-profit or municipally owned system. The municipality or non-profit entity shall be considered an applicant for purposes of these rules.

Chapter Eight

MCCB 121 Required contents of franchises. Where a cable communications franchise is awarded or renewed after April 1, 1973, except as provided in Minn. Stat. [1973 Supple-

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

ment,] § 238.09, subd. 3, 4, [and] 5, **and 9, (1976)** [or in Laws 1974, Chapter 506, Section 10,] a regular or renewal **of a** certificate of confirmation will be issued only if the franchise ordinance contains recitations and provisions consistent with the following requirements:

Note: No changes in MCCC 121 A. through F.

[(g)] **G.** A provision establishing the minimum system-wide channel capacity that the franchisee shall [provide:] **make available.**

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

1. For each system served by a single headend that: is located in the Twin Cities metropolitan area; or is located in a franchise territory having a population of 15,000 or more persons; or serves 3,500 or more subscribers,

a. the provision shall require the construction of a cable system with a channel capacity, available for immediate or potential use, equal to a minimum of 120 MHZ of bandwidth (the equivalent of 20 television broadcast channels).

b. Systems that are already constructed pursuant to a pre-existing franchise requiring fewer than 120 MHZ of bandwidth (the equivalent of fewer than 20 television broadcast channels) shall have until June 21, 1986 to increase the system's channel capacity to a minimum of 120 MHZ of bandwidth. However, nothing in this rule shall be construed so as to preclude the parties to a franchise from negotiating an agreement calling for an increase to a minimum of 120 MHZ of bandwidth prior to June 21, 1986.

c. For the purposes of this rule, a cable system with a channel capacity, available for immediate or potential use, equal to a minimum of 120 MHZ of bandwidth shall mean: the provision of a distribution system designed and constructed so that a minimum of 120 MHZ of bandwidth (the equivalent of 20 television broadcast channels) can be put into use with only the addition of the appropriate headend and subscriber terminal equipment.

[(2)(aa) For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time, and will be served by a cable communications system that will not have been constructed at the time the franchise is to be granted, the provision shall require the franchisee to construct the cable system with a minimum of 72 MHZ of bandwidth (the equivalent of 12 television broadcast channels) available for immediate or potential use;]

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

2. For each system served by a single headend that: is located outside of the Twin Cities metropolitan area; and is located in a franchise territory having a population of fewer than 15,000 persons, and serves fewer than 3,500 subscribers,

a. the provision shall require the construction of a cable system with a channel capacity, available for immediate or potential use, equal to a minimum of 72 MHZ of bandwidth (the equivalent of 12 television broadcast channels).

b. For the purposes of this rule, a cable system with a channel capacity, available for immediate or potential use, equal to a minimum of 72 MHZ of bandwidth shall mean: the provision of a distribution system designed and constructed so that a minimum of 72 MHZ of bandwidth (the equivalent of 12 television broadcast channels) can be put into use with only the addition of the appropriate headend equipment.

[(h)] **H.** A provision establishing the minimum number of public, educational, governmental and leased access channels that the franchisee shall [provide for each system served by a single headend:] **make available.**

[(1)] **1.** For each system served by a single headend [which is within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time,] **that: is located in the Twin Cities metropolitan area; or is located in a franchise territory having a population of**

15,000 or more persons, or serves 3,500 or more subscribers,

a. The provision shall require that the franchisee shall, **to the extent of the system's available channel capacity,** [maintain] **provide to each of its subscribers who receive all, or any part of, the total services offered on the system, reception on** at least one specially designated noncommercial public access channel available **for use by the general public** on a first come, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel for local government use; and at least one specially designated access channel available for lease on a first come, nondiscriminatory basis by commercial and noncommercial users. The VHF spectrum shall be used for at least one of the specially designated **noncommercial** public access channels required in this subdivision. The provision shall require that [facilities] **no charges shall be made** for **channel time or** playback of prerecorded programming [, personnel and time for use of] **on** at least one of the specially designated **noncommercial** public access channels required by this subdivision [shall be provided without charge,] provided, however, that **personnel, equipment, and** production costs may be assessed for live studio presentations exceeding five minutes **in length. Charges for** such production costs and any fees for use of other public access channels shall be consistent with the goal of affording the public a low-cost means of television access.

b. Those systems which offer subscribers the option of receiving programs on one or more special service channels without also receiving the regular subscriber services may comply with this rule by providing the subscribers who receive the special service only at least one specially designated composite access channel composed of the programming on the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated local government access channel required in this rule.

c. On those systems without sufficient available channel capacity to allow for activation of all the specially designated access channels required in this subdivision, or where demand for use of the channels does not warrant activation of all the specially designated access channels required in this subdivision, public, educational, governmental, and leased access channel programming may be combined on one or more cable channels. To the extent time is available therefor, access channels may also be used for other broadcast and nonbroadcast services, provided that such services are subject to immediate displacement if there is demand to use the channel for its specially designated purpose. Each such system shall, in any case, provide at least one full channel on the VHF spectrum for shared access programming.

[(2)] **2.** For each system served by a single headend [which is not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time,] **that: is located outside of the Twin Cities metropolitan area; and is located in a franchise territory having a population of fewer than 15,000 persons; and serves fewer than 3,500 subscribers,**

a. The provision shall require that the franchisee shall provide **to each of its subscribers who receive all, or any part of, the total services offered on the system, reception on** at least one specially designated access channel available for use by the general public on a first come, nondiscriminatory basis. **Channel** time [for use] **and playback of prerecorded programming** on this specially designated access channel shall be provided without charge to the general public[.], **provided, however, that personnel, equipment, and production costs may be assessed for live studio presentations exceeding five minutes in length. Charges for such production costs shall be consistent with the goal of affording the public a low-cost means of television access.** The specially designated access channel may be [utilized] **used** by local educational authorities and local government on a first come, nondiscriminatory basis **during those hours** when the channel is not in use by the general public. **During those hours that the specially designated access channel is not being used by the general public, local educational authorities, or local government,** the franchisee shall lease time [on this specially designated access channel] to commercial or noncommercial users on a first come, nondiscriminatory basis if the demand for such time arises. [and the channel is not being utilized by the general public, local educational authorities and local government users.] The franchisee may also [utilize] **use** this **specially** designated **access** channel for local origination **during those hours** when the channel is not in use by [either] the general public, **local** educational [users] **authorities**, [and] local government, or commercial or noncommercial users who have leased time on this specially designated **access** channel. The VHF spectrum shall be used for the specially designated access channel required in this subdivision.

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

3. The provision shall require that whenever the specially designated noncommercial public access channel, the specially designated educational access channel, [or] the specially designated **local** government[al] access channel, **or the specially designated leased access channel** required in MCCB 121 [(h)(1)] **H. 1. a., b., and c.** of this rule or the specially designated access channel required in MCCB 121 [(h) (2)] **H.2.a.,** of this Rule [are] **is** in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive 3 hour period for six weeks running, **and there is demand for use of an additional channel for the same purpose,** the system [will] **shall** then have six months in which to [make] **provide a** [the appropriate] new specially designated access channel [available.] **for the same purpose, provided that provision of such additional channel or channels shall not require the cable system to install converters. However, nothing in this rule shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.**

4. The provision shall also require that [for the public access, educational access, the specially designated channel and leased access channels,] the franchisee shall establish rules pertaining to the administration of [those channels.] **the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel required in MCCB 121 H. 1. a., b., and c. of this Rule or the specially designated access channel required in MCCB 121 H.2.a. of this Rule.** The rules shall be consistent with the requirements of [Section 76.251 of] the Federal Communications Commission rules and regulations relating to operating rules for access channels. **The operating rules established by the franchisee governing the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel required in MCCB 121 H. 1. a., b., and c. of this Rule or the specially designated access channel required in MCCB 121 H. 2. a., of this Rule shall be filed with the Minnesota Cable Communications Board within 90 days after any such channels are put into use.**

[(i)] **I.** A provision establishing the minimum equipment that the franchisee shall [provide] **make available** for public use[:].

[(1)] **1.** For each system served by a single headend [which is within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules, and as the same may be modified from time to time,] **that: is located in the Twin Cities metropolitan area; or is located in a franchise territory having a population of 15,000 or more persons; or serves 3,500 or more subscribers.**

a. The provision shall require that the franchisee shall [operate and] make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the **specially designated noncommercial** public access channel required by MCCB 121 [(h) (1)] **H. 1.a.** of this Rule. The franchisee shall also make readily available, upon need being shown, the minimum equipment necessary to make it possible to record programs at remote locations with battery operated portable equipment. Need within the meaning of this Rule shall be determined by subscriber petition. [A successful petition must meet at least one of the following conditions:

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

(2) Signatures of at least 10% of the subscribers of the system to a petition attesting to the need with a minimum of 100 signatures.] **The petition must contain the signatures of at least 10 percent of the subscribers of the system, but in no case more than 500 nor fewer than 100 signatures.**

[(2)] **2.** For each system served by a single headend [which is not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time,] **that: is located outside of the Twin Cities metropolitan area; and is located in a franchise territory having a population of fewer than 15,000 persons; and serves fewer than 3,500 subscribers,**

a. The provision shall require that the franchisee shall [operate and] make readily available for public use, upon need being shown, at least the minimal equipment necessary to perform good quality playback of prerecorded programming, and to make it possible to record programs at remote locations with battery operated portable equipment. Need within the meaning of this Rule shall be determined by subscriber petition. [A successful petition must meet at least one of the following conditions:

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

(2) Signatures of at least 10% of the subscribers of the system to a petition attesting to the need with a minimum of 100 subscribers.] **The petition must contain the signatures of at least 10 percent of the subscribers of the system, but in no case more than 350 nor fewer than 100 signatures.**

Note: No changes in MCCB 121 J. through E_1. are proposed.

[zz6] F_1. A provision that the franchise shall cease to be of any force and effect if the franchisee fails to obtain either a regular **certificate of confirmation** or renewal **of a** certificate of confirmation from the [Commission,] Board, provided, however, that the franchisee may operate his cable communications system while the [Commission] Board is considering the application for [a] **the renewal of his** certificate of confirmation.

[zz7] G_1. A provision establishing how the franchising authority and the cable communications company shall determine who is to bear the cost of any required special testing.

Chapter Nine

MCCB 134 [Renewal.] **Franchise renewal.** When any franchise is renewed, the franchisee shall agree to abide by all rules and rgulations of the [Commission.] **Board.** No franchise shall be renewed for a period longer than ten years. A franchise is renewed for purposes of these Rules whenever the [municipality] **franchising authority** awards a subsequent franchise [to a cable communications company after the award of the initial franchise] to the same company or its successor in interest [.] **which extends the franchise term beyond its previous termination date.**

MCCB 136 Approval of franchise amendments. Any amendment of a provision of a franchise which is within the required content of a franchise prescribed by Chapter Eight of these Rules**, except amendments which change monthly subscriber service charges,** shall not be effective unless approved by the [Commission.] **Board.** Such approval shall be given if consonant with the public interest and shall not be unreasonably withheld by the [Commission.] **Board.**

Chapter Twelve

MCCB 166 Interconnection. These rules shall be liberally construed to effectuate the purposes and provisions of Minn. Stat. [1973 Supplement,]§ 238.05, subd. **2(c),** 2(d), and 12 **(1976)** [, and Laws 1974, Chapter 506].

MCCB 167. Definitions. As used in this Chapter, the following words and phrases shall have the meanings given them herein unless a different meaning clearly appears in the text.

[(a)] **A.** "Interconnection" is the provision of broadband electronic linkage between cable communications systems as defined in Minn. Stat. [1973 Supplement,] § 238.02, subd. 3 **(1976),** by means of coaxial cable, microwave or other means whereby the electrical impulses of television, radio and other intelligences, either analog or digital, may be interchanged, provided that the term "interconnection" does not include the relaying by coaxial cable, microwave or other means of television broadcast signals intended for redistribution by the cable communications system or systems receiving such signals.

[(b)] **B.** "Interconnection entity" is an entity involved in the construction and operation of an interconnection system, either cable or microwave, providing interconnection services to cable communications systems as defined by Minn. Stat. [1973 Supplement,] § 238.02, subd. 3 **(1976).**

[(c)] **C.** "Interim interconnection" is the provision of temporary interconnection between two or more existing cable communications systems brought about through the mutual participation of those systems and without the intervention of a separate interconnection entity, as defined in paragraph [(b)] **B.** of [his] **this** Rule.

[(d)] **D.** "Regional channel" is a segment of the electromagnetic spectrum provided by cable communications systems or an interconnection entity operating within the Twin Cities metropolitan area for programming on the standard VHF Channel 6 [reserved for public use].

[(e)] **E.** "Regional channel entity" is an entity [recognized] **designated** by the [Commission] **Board** for purposes of scheduling the programming and facilitating the use of the regional channel.

MCCB 168 Interim interconnection.

[(a)] **A.** In accordance with the provisions of Minn. Stat. [1973 Supplement,] § 238.05**, subd. 2 (c) and § 238.06, subd. 5, (1976)** [and Laws 1974, Chapter 506] **the Board** upon suitable showing of [interest and] need, [the Commission will vigorously encourage] **may order the** interim interconnection between cable communications systems. Before an interim interconnection occurs, the parties designated herein shall submit to the [Commission] **Board** the information specified herein.

[(1)] **1.** The cable companies involved shall submit the following information:

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

[(aa)] **a.** A full schedule of capital costs anticipated for such interconnection;

[(bb)] **b.** A projection of expected operating costs;

[(cc)] **c.** An identification of the economic effect of such proposed interconnection upon existing cable service.

[(2)] **2.** The parties seeking to arrange the interim interconnection shall submit the following information:

[(aa)] **a.** A description of available sources of capital for construction and operating, including programming, of the interconnection system;

[(bb)] **b.** An identification of the uses, with a description of the attendant benefits, of such interconnection.

[(b)] **B.** The [Commission] **Board** may hold a meeting to receive testimony from interested persons concerning the proposed interim interconnection. At least 30 days notice shall be provided to all interested persons. Any cable communications system potentially involved in the interconnection shall carry an appropriate notice of the hearing on its system for at least five consecutive days immediately preceding the hearing. The [Commission] **Board** may [recognize a request] **order interim interconnection** incorporating the interconnection plan if it is satisfied from all available evidence that such plan is in the public interest, will be fair both to participating systems and the public and will not impair the ability of any system to deliver other services to subscribers and users. In determining whether to [grant recognition to] **order** an interim interconnection, [plan,] the [Commission] **Board** may also consider the extent to which the interim interconnection plan is compatible with the applicable operational objectives contained in MCCB 172. [Such recognition shall be conditioned upon the receipt of all licenses and permits from appropriate agencies necessary for the construction and operation of interim interconnection systems.]

[(c)] **C.** In the event that interim interconnection occurs, the [Commission] **Board** may assume jurisdiction over the provision of such interim interconnection. The [Commission] **Board** shall have the following responsibilities and duties:

[(1)] **1.** Assisting in the resolution of complaints, disputes or disagreements between subscribers and participating cable communications systems and franchising authorities should the parties not first be able to resolve such disagreements;

[(2)] **2.** Requiring and reviewing reports regarding the operation of such interim interconnection as may be deemed appropriate;

[(3)] **3.** Assuring that all tariffs and rules pertinent to the operation of the interim interconnection have been filed with the [Commission] **Board.**

[(d)] **D.** The [Commission] **Board** shall require interim interconnections within the Twin Cities metropolitan area to provide capacity for two-way transmission on a regional channel. In addition, as usage of the regional channel expands to such point as it is in use during 80 percent of the time between 8:00 a.m. and 10:00 p.m. during any consecutive six-week period, the persons providing interim interconnection shall have two months in which to make an additional channel available for regional channel entity use [.] **provided that provision of such additional channel or channels shall not require the cable system to install converters. However, nothing in this rule shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.**

[(e)] **E.** Nothing contained in this rule shall be applicable to an interim interconnection operational on or before January 1, 1975 for a period of five years beginning January 1, 1975; provided, however, that the [Commission] **Board** may require substantiation of the date on which an interim interconnection became operational.

MCCB 170 Regional Channel Entity.

[(a)] **A.** The [Commission] **Board** [hereby reserves the prerogative, upon a suitable showing of interest and need, to recognize] **upon the activation of the regional channel as defined in MCCB 167, shall designate** a regional channel entity for the Twin Cities metropolitan area.

[(b)] **B.** [Specific recognition of the Twin Cities metropolitan area] **The Board may designate the** regional channel entity [may be extended by the Commission] after the [Commission] **Board** has reviewed and [recognized] **approved** an applicant's qualifications in accordance with the procedures provided hereinafter:

[(1)] **1.** The [Commission] **Board** may, [at any time,] **upon the activation of the regional channel,** entertain requests for consideration of the [recognition] **designation** of a regional channel entity. In the event the [Commission] **Board** determines [that it desires] to [recognize] **designate** a regional channel entity, the [Commission] **Board** shall give public notice of that intention.

[(2)] **2.** The [Commission] **Board** shall require

that all requests for [recognition] **designation** for the regional channel entity contain a description of the applicant's proposed operation along with such other supporting information as the [Commission] **Board** may require.

[(3)] **3.** The [Commission] **Board** shall, in its [recognition] **designation** of an applicant for programming and facilitation of use of the regional channel, consider the following criteria:

[(aa)] **a.** the plans for programming including identification of sources, users, and revenues;

[(bb)] **b.** plans for fostering extended regional participation in existing and expanded regional channel uses;

[(cc)] **c.** terms and conditions under which regional channel usage is made available to participants [;] **insuring that priority is given to public use of the channel;**

[(dd)] **d.** participatory representation of users in the entity operational structure and the demonstrated identification of such applicants with the regional public interest.

[(c)] **C.** The [Commission] **Board** shall consider such applications at a public meeting providing reasonable opportunity for all interested parties to be heard.

[(d)] **D.** The [Commission] **Board** shall confer [recognition] **designation** on such regional channel entity for a period of three years.

[(e)] **E.** Renewal of such [recognition] **designation** shall be issued only after full [Commission] **Board** proceedings and shall be for a period specified by the [Commission.] **Board.** The procedure for obtaining a renewal of such [recognition] **designation** shall be the same as is herein provided for obtaining the initial [recognition.] **designation.**

MCCB 171 Inerconnect entity.

[(a)] **A.** No person shall, without prior notification to the [Commission,] **Board,** construct, install, maintain or operate within the State of Minnesota any equipment or facilities for an interconnection entity and unless such activity complies fully with all standards provided in MCCB 172 and the provisions of this Rule.

[(1)] **1.** The interconnection entities shall be responsible for the establishment and maintenance of facilities and personnel necessary to the provision of interconnection services between cable communications companies and interconnection entities within the State and the provisions of interconnection with interstate telecommunications network as they may develop.

[(2)] **2.** The interconnection entities shall be responsible for the provision of service of such interim interconnection and the acquisition of such interim interconnection equipment as may be of demonstrable benefit to the entities in the provision of their operation, provided the owners of such interim interconnection equipment desire such purchase by the interconnection entities.

[(3)] **3.** An interconnection entity operating in the Twin Cities metropolitan area shall, in addition to other requirements as may be deemed necessary by the [Commission,] **Board**, assume the responsibility from cable communications companies for providing two-way transmission of a regional channel.

[(b)] **B.** Before an interconnection entity commences operation, it shall submit to the [Commission] **Board** the following information:

[(1)] **1.** Plans for channel capacity including both immediate and eventual capacity;

[(2)] **2.** Plans for the interconnection system layout design operation and service area;

[(3)] **3.** The terms and conditions, including tariffs, under which services are to be provided;

[(4)] **4.** The time schedule for construction of the entire system including a timetable for acquisition of existing interim interconnection systems;

[(5)] **5.** The entity's qualifications and/or experience in the broadband telecommunications field;

[(6)] **6.** The operation's pro forma identifying anticipated expenditures and revenues associated with the construction and operation of the proposed system;

[(7)] **7.** The plans for financing the proposed system;

[(8)] **8.** Descriptions of the equipment used in providing interconnection;

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

[(9)] **9.** Such other information as the [Commission] **Board** may deem relevant.

[(c)] **C.** The [Commission] **Board** shall hold a meeting to receive testimony from interested persons concerning the operation of any proposed interconnection entity. At least 30 days notice shall be provided to all interested persons by publication at least once in a newspaper of general circulation in each municipality involved in the interconnection. The [Commission] **Board** may [recognize] **approve** a request incorporating the plan of operation of any interconnection entity if it is satisfied from all available evidence that [recognition] **approval** of such plan is in the public interest, will be fair to participating systems and the public and will not impair the ability of any system to deliver services to subscribers and users. The [Commission] **Board** shall issue written findings based on its enunciated standards in determining whether to [recognize] **approve** an interconnection entity. Such [recognition] **approval** shall be conditioned upon the receipt of all licenses and permits from appropriate agencies necessary for the construction and operation of any interconnection entity.

Chapter Fourteen

MCCB 201 Operator Required to File Reports with [Commission] **Board.** A copy of the form entitled ''Annual Report of Cable Television Systems'' (FCC Form 325) and a copy of the form entitled ''Cable Television Annual Financial Report'' (FCC Form 326) shall be filed annually with the [Commission,] **Board,** by every cable communications company for each cable communications system operating in the State of Minnesota, substantially at the same time as the reports are filed with the Federal Communications Commission. The [Minnesota State Commission] **Board requires an annual report of cable system data from each system operator which is due on the first of May of each year and the Board** may require such additional information **and supporting documentation** to be filed at such time and in such form as the [Commission] **Board** [shall by resolution determine.] **may deem appropriate. ate.**

Chapter Sixteen

MCCB 225 [Commission] **Board** procedures.

[(a)] **A.** Pursuant to the requirements of MCCB 111[(b)] **B.**, a cable service territory may be proposed to the [Commission] **Board** by a municipality, a group of municipalities in a joint powers agreement, or a cable communications operator applicant. At least 30 days prior to submitting a cable service territory proposal to the [Commission] **Board** for approval, the party or parties proposing the cable service territory shall deliver written notice of its intentions to propose a cable service territory to the governing body of each adjacent municipality and may discuss with such officials the feasibility and advisability of developing a cable service territory and the adoption of a procedure to pursue this objective. At substantially the same time as written notice is delivered to the governing bodies of each adjacent municipality, the party(ies) proposing the cable service territory shall publish or cause to be published at least once in a newspaper of general circulation in the proposed territory, a statement indicating the intention of submitting a cable service territory proposal to the [Minnesota Cable Communications Commission] **Board.**

[(b)] **B.** All proposals must be in the form of a written application containing the following information: a map showing the boundaries of the cable service territory to be franchised and areas within this territory for which cable communications service is planned, provided that if a cable service territory is proposed which encompasses less than 100% of the area within a municipality or group of municipalities, the [Commission] **Board** shall require and consider the plans for franchising the remaining unserved area; detailed demographic data; resolutions from the governing bodies of all municipalities contacted by the party or parties proposing the cable service territory stating their approval or disapproval of such a proposal; a statement describing the efforts the party or parties proposing the cable service territory made to contact all adjacent municipalities and the results of such contacts; and any other information which the [Commission] **Board** may deem necessary.

[(c)] **C.** A copy of the proposal shall be submitted simultaneously to the Metropolitan Council or the appropriate regional development commission, the [Commission] **Board** and the governing body of each adjacent municipality.

[(d)] **D.** The [Metropolitan Council or] appropriate regional development commission shall have 30 days to submit written comment on the proposal to the [Commission,] **Board,** which period of time may be extended by the [Commission] **Board** for another 30 day period for good cause shown. **If the proposed boundaries, in whole or part, are within the seven county metropolitan area, the Metropolitan Council shall be allowed 90 days to review and comment on the proposed boundaries.** The [Commission] **Board** shall also accept written comment from any other interested persons during [this period.] **these periods.**

[(e)] **E.** The [Commission] **Board** shall take initial action within sixty days after the thirty day period set forth in [(d)] **D.** Before taking final action, the [Commission] **Board** shall hold a public meeting upon reasonable notice and accept oral and written comments.

[(f)] **F.** If the [Commission] **Board** determines not to approve a proposal, it shall specify its reasons for rejec-

tion in a written statement within sixty days of such rejection.

[(g)] **G.** A proposal rejected by the [Commission] **Board** may be introduced with appropriate modifications at any time after such rejection. All reintroduced proposals shall be subject to the same procedures of this Chapter as the original proposal.

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

OFFICIAL NOTICES

Department of Commerce Banking Division

Mortgage Interest Rate for the Month of June, 1977

Notice is hereby given that the Banking Division, Department of Commerce, State of Minnesota, pursuant to the Conventional Home Loan Assistance and Protection Act, Laws of 1976, ch. 300, hereby determines that the maximum lawful rate of interest for home mortgages for the month of June, 1977, is nine and one-quarter (9.25) percent.

Robert A. Mampel
Commissioner of Banks

Insurance Division

Notice of Intent to Solicit Outside Information on Proposed Rules Governing Uniform Health Insurance Claim Forms

Notice is hereby given that the Department of Commerce, Insurance Division has begun consideration of proposed rules governing uniform health claim forms mandated by Minn. Stat. § 62A.025 (1976). In order to adequately determine the nature and utility of such rules, the Commerce Department, Insurance Division hereby request information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

All interested or affected persons/or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Mr. John T. Ingrassia
Supervisor, Life and Health Section
Insurance Division
Department of Commerce
500 Metro Square Building
Saint Paul, Minnesota 55101

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-2202 and in person at the above address.

All statements of information and comment must be received within thirty (30) days of the above date.

The proposed rules, if adopted, would require insurers issuing accident and sickness insurance policies or service plan corporation subscriber contracts, or state agencies that require health insurance claims for their records to use uniform claim forms.

Berton W. Heaton
Commissioner of Insurance

Department of Labor and Industry Prevailing Wage Division

Notice of Prevailing Wage Rates for Highway Construction

Minn. Stat. § 177.44 requires the Commissioner of Labor and Industry to certify at least once a year, the prevailing wage rates for highway construction under contracts based on bids as provided for in Minn. Stat. § 161.32, Title 8, Minnesota Code of Agency Rules, Section 1.8010 (8 MCAR § 1.8010) requires notice of those certifications to be published in the State Register.

On April 29, 1977, the Commissioner certified wage rates for highway construction for all 87 counties in Minnesota.

A copy of the determined wage rates may be obtained by writing to the Department of Labor and Industry, Prevailing Wage Division, 444 Lafayette Road, St. Paul, Minnesota 55101.

A check or money order for $15.00, payable to the Department of Labor and Industry, must accompany each request to cover the cost of copying and mailing.

Department of Transportation

Notice of Contested Case Hearing Regarding Safety and Traffic Conditions at Duluth, Missabe and Iron Range Railway Company Grade Crossing

It is hereby ordered, and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held on June 6, 1977, at 1:30 P.M. in the Civil Service Conference Room, 5th Floor, St. Louis County Court House, 5th Avenue West at 1st Street, Duluth, Minnesota.

The hearing will be held before Mr. Bernard Singer, a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. §§ 15.0411 through 15.052 and Minnesota Code of Agency Rules HE 201 through 222. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Frederick S. Suhler, Jr., 5th Floor Transportation Building, Saint Paul, Minnesota 55155, (Telephone: 612-296-3257).

The purpose of the hearing is that the County Board of St. Louis County, Minnesota has requested that a public hearing be held to investigate the public safety conditions surrounding two grade crossings of the trackage of the Duluth, Missabe and Iron Range Railway Company and County Road 310 located just west of County State Aid Highway 7 in Section 35, Township 57, Range 18, pursuant to Minn. Stat. §§ 219.84 and 219.39.

The resolution recites that the Town of Clinton has requested the hearing, through the St. Louis County Board, to determine the need for the placement of automatic flashing light signals at said locations.

The resolution maintains that increased rail traffic caused by the expansion of the Eveleth Taconite Company and the construction of large rail yards by the Duluth, Missabe and Iron Range Railway Company will have an adverse effect upon the public's safety.

All parties are advised that if a party intends to appear at the hearing scheduled for June 6, 1977 at 1:30 P.M., the Notice of Appearance form enclosed with this order must be completed and returned to the Hearing Examiner at least 10 days before the hearing date. Should a party fail to appear at the hearing, the allegations made in the resolution may be taken as true.

The above cited procedural rules are available at the Office of Hearing Examiners or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-2874). They provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a pre-hearing conference, rights to present evidence and cross-examine witnesses, and right to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the agency and any other parties.

Jim Harrington
Commissioner of Transportation

In the matter of the Resolution of the Board of County Commissioners of St. Louis County, Minnesota requesting a hearing regarding the public safety and rail traffic conditions at two Duluth, Missabe and Iron Range Railway Co. grade crossings in Section 35, Township 57, Range 18 and Crossing County Road 310

Notice of Appearance

Date of Hearing: June 6, 1977

Name and Telephone Number of Hearing Examiner:
Bernard Singer
1745 University Avenue
Saint Paul, Minnesota 55104
296-8110

To the Hearing Examiner:

You are advised that the party named below will appear at the above hearing.

Name of Party: _____

Address: _____

Telephone Number: _____

Party's Attorney or Other Representative: _____

_____

Signature of Party or Attorney: _____

Date: _____

Notice of Contested Case Hearing Regarding Termination of Rail Service at Ironton, Minnesota

It is hereby ordered, and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held on June 8, 1977, at 10:00 A.M. in Meeting Room #1, at the Crow Wing County Service Building, 4th Street at Laurel Street, Brainerd, Minnesota.

The hearing will be held before Mr. Bernard Singer, 1745

University Avenue, Saint Paul, Minnesota 55104, (Telephone: 612-296-8113), a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. §§ 15.0411 through 15.052 and Minnesota Code of Agency Rules HE 201 through 222. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Frederick S. Suhler, Jr., 5th Floor Transportation Building, Saint Paul, Minnesota 55155, (Telephone: 612-296-2639).

The purpose of the hearing is to ensure that under the provisions of Minn. Stat. § 219.85 all parties and potential parties of interest are given an opportunity to be heard on the proposed discontinuance of agency service at Ironton, Minnesota.

The petition recites among other matters that the petitioners maintain a joint full-time base agent at Ironton to serve the patrons of both railroads thereat and at the joint blind sidings of Cuyuna, Trommald and Riverton, plus the Burlington Northern blind siding of Deerwood and the Soo Line blind siding of Crosby. Petitioners maintain a freight depot at Ironton for such railroad and public use.

The petition also recites that the petitioners propose to terminate base agency service at Ironton and to relocate the agency to freight depot and headquarter facilities at Deerwood. Thereafter, it is proposed, joint, full-time base agency service will be maintained at Deerwood; and Ironton, Crosby, Cuyuna, Trommald, and Riverton will become blind sidings for the agent at Deerwood.

Further, the petition recites that the freight depot at Ironton will be retained and maintained by Burlington Northern, Inc. for internal railroad use only; that there is no passenger service at either Deerwood or Ironton and no known intention that such will commence in the foreseeable future.

Finally, the petition recites that the quality of rail service to affected patrons will not be diminished and full and adequate freight service to the public will be maintained in satisfaction of the public convenience and necessity.

All parties are advised that if a party intends to appear at the hearing scheduled for June 8, 1977 at 10:00 A.M., the Notice of Appearance form enclosed with this order must be completed and returned to the Hearing Examiner at least 10 days before the hearing date. Should a party fail to appear at the hearing, the allegations made in the petition may be taken as true.

The above cited procedural rules are available at the Office of Hearing Examiners or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-2874). They provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross-examine witnesses, and right to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the agency and any other parties.

Jim Harrington
Commissioner of Transportation

Notice of Appearance

Date of Hearing: June 8, 1977

Name and Telephone Number of Hearing Examiner:
Mr. Bernard Singer
1745 University Avenue
Saint Paul, Minnesota 55104
296-8110

To the Hearing Examiner:

You are advised that the party named below will appear at the above hearing.

Name of Party: _____

Address: _____

Telephone Number: _____

Party's Attorney or Other Representative: _____

_____

Signature of Party or Attorney: _____

Date: _____

Notice of Contested Case Hearing Regarding the Petition of Burlington Northern, Inc. to Close the Station at Cold Spring, Minnesota

It is hereby ordered, and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held on June 9, 1977, at 10:00 A.M. in the City Council Chambers, City of Cold Spring, 27 Red River Street, Cold Spring, Minnesota 56320.

The hearing will be held before Mr. Bernard Singer, 1745 University Avenue, Saint Paul, Minnesota 55104, (Telephone: 612-296-8119), a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. §§ 15.0411 through 15.052 and Minnesota Code of Agency Rules HE 201 through 222. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Frederick S. Suhler, Jr., 5th Floor, Transportation Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-3257).

The purpose of the hearing is to ensure that under the provisions of Minn. Stat. § 219.85 all parties and potential parties of interest are given an opportunity to be heard on the proposed discontinuance of freight agency service at Cold Spring, Minnesota, and to assign to the Benson "Direct Service Agency" freight service for the cities of Cold Spring, Hawick, Paynesville, Roscoe, Richmond and Rockville, the "blind siding" of Hawick; and to assign to the base agent at St. Cloud the "blind sidings" of Cold Spring, Roscoe, Richmond, Rockville and Paynesville.

The petition recites, among other matters, that the petitioner maintains full-time agency and station service at St. Cloud, which includes therein the "blind sidings" of Rice, Sartell, Sauk Rapids, Reformatory, Clear Lake, Becker, and Clearwater; and that the petitioner presently maintains a Direct Service Agent headquartered at Benson, representing the cities of DeGraff, Murdock, Pennock, Kerkhoven, New London and Spicer.

Further, the petition recites that the depot building at Cold Spring will be retained and maintained for internal railroad use; and that the quality of rail service to affected patrons will not be diminished and adequate freight service to the public will be maintained in satisfaction of the public convenience and necessity.

All parties are advised that if a party intends to appear at the hearing scheduled for June 9, 1977 at 10:00 A.M., the Notice of Appearance form enclosed with this order must be completed and returned to the Hearing Examiner at least 10 days before the hearing date. Should a party fail to appear at the hearing, the allegations made in the petition may be taken as true.

The above cited procedural rules are available at the Office of Hearing Examiners or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-2874). They provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross-examine witnesses, and right to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the agency and any other parties.

Jim Harrington
Commissioner of Transportation

Notice of Appearance

Date of Hearing: June 9, 1977

Name and Telephone Number of Hearing Examiner:
Bernard Singer
1745 University Avenue
Saint Paul, Minnesota 55104
296-8110

To the hearing examiner:

You are advised that the party named below will appear at the above hearing.

Name of Party: _____

Address: _____

Telephone Number: _____

Party's Attorney or Other Representative: _____

_____

Signature of Party or Attorney: _____

Date: _____

EQC MONITOR

Minnesota Environmental Quality Council, 550 Cedar Street, St. Paul, MN., (612) 296-2723

Negative Declarations (No EIS)

The Environmental Assessment Worksheets (EAWs) listed below have been filed with the EQC. These EAWs determined that EISs are not needed on these projects because they are not major actions and do not have the potential for significant environmental effects. **No EIS's will be required on these projects unless objections are filed with the EQC by June 15, 1977.** MEQC Rule 28B indicates the procedures for filing objections to a Negative Declaration.

Bluffs East/West, Hennepin County

Proposer: Hustad Development Corporation

Responsible Agency: City of Eden Prairie

Project Description: 400 acre residential development of approximately 850 dwelling units.

Project Location: Eden Prairie, Hennepin County, Parts of Sections 25, 26, 35 and 36, R22W, Twp. 116N.

Copies of the EAW and supporting documentation are on file for public review from 8:00 a.m. to 4:30 p.m. at:

8950 Eden Prairie Rd.
Eden Prairie, MN 55343
(612) 941-2262

For further information on this EAW contact Richard Putnam, City of Eden Prairie at the above address and telephone number.

Woodlane Hills Planned Unit Development, Washington County

Proposer: Woodlane Hills, Inc.

Responsible Agency: City of Woodbury

Project Description: Planned unit development of 326 single family lots and approximately 406 multiple units consisting of townhouses/condominiums and duplexes.

Project Location: Woodbury, Washington County, Sections 17 and 20, R21W, Twp. 28N.

Copies of the EAW and supporting documentation are on file for public review from 8:00 a.m. to 4:30 p.m. at:

City of Woodbury Municipal Bldg.
2100 Radio Drive
Woodbury, MN 55042
(612) 739-5972

For further information on this EAW contact Dwight Picha at the above address and telephone number.

EIS Preparation Notice

Department of Transportation I-35, Duluth

The Minnesota Department of Transportation, District 1, intends to issue a Draft Environmental Impact Statement (EIS) on the proposed construction of a section of a 4-lane controlled access freeway, Interstate 35.

The proposed project constitutes a 1.8 mile section with project limits from Mesaba Avenue to 10th Street East, Duluth, St. Louis County.

Completion of the Draft EIS is anticipated for June, 1977. For further information on this project contact:

Don Olson, Project Manager
Mn. Dept. of Transportation, District 1
1123 Mesaba Avenue
P.O. Box 39
Duluth, Minnesota 55811
(218) 723-4861

Comments on this project should be directed to John Pawlak, DOT, District 1 at the above address, telephone (218) 723-4803.

Final EIS Completion
Northern Pipeline Company's
Proposed Crude Oil Pipeline from
Potoka, Illinois to Pine Bend, Minnesota

The EQC has received the Final Environmental Impact Statement (EIS) on Northern Pipeline Company's (formerly Minnesota Pipeline Company) proposed Potoka, Illinois to Pine Bend, Minnesota crude oil pipeline from the Minnesota Department of Natural Resources (DNR).

The proposed large diameter pipeline would extend 99 miles in Minnesota from the southeast corner of Sec. 33, York Township, Fillmore County to Minnesota Pipeline Company's Pine Bend Terminal, Sec. 34, Twp. 115N, R19W, Rosemount, Dakota County.

For further information on this Final EIS contact:

David Brostrom
Minnesota DNR
Division of Minerals
345 Centennial Office Building
St. Paul, MN 55155
(612) 296-4807

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

95 Sherburne, Suite 203
St. Paul, Minnesota 55103
(612) 296-8239

ORDER FORM

Please send me:

_____ Annual subscription(s) to the *State Register* at $110.00 (second and additional subscriptions are $85.00 each).

_____ Single weekly copy(ies) of the *State Register* at $2.25 each. Send me Issue(s) #_____ (please list).

_____ Annual subscription(s) to the *EQC Monitor* at $50.00 (second and additional subscriptions are $35.00 each). Contains all items of environmental concern.

NOTE: The above items are not subject to Minnesota sales tax. *State Register* binders, listed below, do require either sales tax or your tax exempt number.

_____ *State Register* binder(s) at $5.00 + $ .20 sales tax, for a total of $5.20 per binder. Please fill in your tax exempt number, if necessary: #_____.

These are 3-½ inch durable plastic self-locking binders, imprinted with the *State Register* logo.

Please enclose full amount of items ordered with a check or money order made out to "Minnesota State Treasurer." Remember to include sales tax on binders only.

Name of Company or Organization_____

Attention to: _____

Street _____

City _____ State_____ Zip_____

Telephone_____ [S.R. 3/14/77]

Robert Nardi
Special Assistant
Attorney General

November 30, 1977

- Rules relating to Variances, Rule-Making Contested Cases, Delegation of Authority, Definitions Renewal of Certificate of Confirmation, Cable System Report to Board

STATE OF MINNESOTA

OFFICE OF HEARING EXAMINERS

FOR THE CABLE COMMUNICATIONS BOARD

In the Matter of Rules Relating to Variances, Rule-Making, Contested Cases, Delegation of Authority, Definitions, Renewal of a Certificate of Confirmation, Franchise Procedures, Franchise Standards, Franchise Amendments, Interconnection, Cable System Report to Board, and Cable Service Territories.

File No. CCB-77-001-HK

STATEMENT OF THE MINNESOTA CABLE COMMUNICATIONS BOARD IN RESPONSE TO THE HEARING EXAMINER'S REPORT CONCERNING MCCB PROPOSED RULES 121 G., 121 H., 103, 112, and 113.

PROPOSED RULES MCCB 121 G. AND 121 H.

The Minnesota Cable Communications Board (hereinafter "Board") has proposed minimum standards relative to cable system channel capacity (MCCB 121 G.) and the provision of access channels (MCCB 121 H.) that require:

1. 20-channel capacity and 4 dedicated access channels of any system serving a community within the 7 county metropolitan area, or serving a franchise territory with a population of 15,000 or more, or serving 3,500 or more subscribers;

2. 12-channel capacity and 1 composite access channel of any system located outside the 7 county metropolitan area serving fewer than 3,500 subscribers in a franchise territory having a population of less than 15,000.

The Hearing Examiner has recommended that, absent further showings of statutory authority, need and reasonableness, these proposed rules (MCCB 121 G. & H.) not be adopted. The Board maintains that sufficient evidence was provided indicating its statutory authority, the need for, and the reasonableness of the rules in question to support their adoption as proposed.

Statutory Authority

In Finding #8 the Hearing Examiner states that "the Staff has not yet fully documented the Board's authority to promulgate proposed Rules 121 (g) . . . and 121 (h). . . ." Citing the possibility of federal preemption of the proposed

rules the Hearing Examiner states "the Staff failed to produce any evidence or legal argument to show the Board is not preempted by FCC regulation. . . .the Staff must demonstrate this authority affirmatively on the record." (H.E. Report, p.3)

It is Board's understanding that the Hearing Examiner is not referring to its statutory authority to promulgate the proposed rules, per se. Rather, that the Board failed to affirmatively demonstrate its authority to promulgate rules which exceed federal regulations.

In fact, the Board did affirmatively demonstrate its authority to promulgate proposed Rules MCCB 121 G. and H. Specifically, the Board reviewed current FCC regulations relative to channel capacity and access channels in some detail in the Statement of Need (pp. 17-18) in order to show that the proposed State and existing Federal requirements are substantially the same; i.e., both require systems that meet certain criteria to provide 20-channel capacity and 4 dedicated access channels. The proposed State and existing Federal regulations differ only in the criteria to be used in determining which systems must comply with the requirements. (The need for, and reasonableness of the Board's proposed criteria is discussed in detail on pp. 17-21 of the Statement of Need). The effect of the Board's proposed criteria would be to require 20-channel capacity and 4 access channels from more and smaller systems than are affected by the same FCC requirement. The Board demonstrated that this was allowable under FCC regulations by paraphrasing, and making direct reference to (State. of Need, p. 18), the following FCC determination:

> ". . .with respect to systems with under 3,500 subscribers we will not preclude local authorities from mandating channel capacity and access obligations as long as these do not exceed what our rules require of systems with 3,500 or more subscribers."

(See Exhibit L, In the Matter of Amendment of Part 76 of the Commission's Rules and Regulations Concerning the Cable Television Channel Capacity and Access Channel Requirements of Section 76.251, Docket 20508, p. 41)

The Board maintains that the requirements of proposed Rules MCCB 121 G. and H. do not exceed FCC requirements for systems with 3,500 or more subscribers, and therefore are allowable under FCC regulations and practices.

Need and Reasonableness

In Finding #9 the Hearing Examiner states that "Staff failed to document the need for the recommended capacity and the economic impact these Rules would have on the subscriber, and the benefits the subscriber would receive." (H. E. Report, p. 4)

It appears that the Hearing Examiner is saying that the Board failed to affirmatively demonstrate the reasonableness of both the costs incurred in complying with the proposed Rules MCCB 121 G. and H., and the need for and benefits derived from these proposed Rules.

Costs

In regard to costs, the Board introduced evidence (State. of Need, p. 15) indicating that the generally estimated cost of cable system construction is $4-6,000 per mile of plant, and that the difference in cost to construct a system with 20-channel capacity rather than 12-channel capacity is estimated to be around $100 per mile. Therefore, to require certain systems to spend an additional $100 per mile during construction does not seem unreasonable when the estimated costs are $4-6,000 per mile.

Further evidence was introduced in the Statement of Need indicating the reasonableness of proposed Rule MCCB 121 G. in terms of cost. The major cost in providing 20-channel service on a cable system is related to the hardware (channel modulators and converters) that must be installed in the cable system headend and in subscriber's homes in order to use the additional channels. This cost could represent 15-20% of total system capital investment (State. of Need, p. 22), therefore the Board felt that it would be unreasonable to require cable systems, and thus their subscribers, to undertake this expense "unless demand for their [the additional channels] use actually exists or is reasonably anticipated." (Ibid.) Thus under the proposed Rule "a system is in compliance with the rule if it has constructed its distribution plant with cable and amplifiers that will allow at least twenty 6 MHZ channels to be put into use with only the addition of a converter and the necessary channel modulators." (State. of Need, pp. 22-23) Proposed Rule MCCB 121 H. is similarly designed so that the provision of more than one access channel is based on actual demand for use of the

additional channel(s). Thus the cost of compliance with proposed Rule MCCB 121 H. may be no more than the cost of a single channel modulator, estimated at $800-1,000. (State. of Need, p. 22) At such time as an actual demand arises for additional channels, the cable operator or some independent person or group presumably will find it economically advantageous to install the necessary headend and subscriber terminal equipment. In any case, most of the cost to provide full 20-channel service and access channels in excess of one is put off until actual demand for the additional channels arises, at which time there should be ample opportunity to recover much of the expense from the users of the channels--rather than from the subscribers. (State. of Need, p. 21)

In Finding #9 the Hearing Examiner further stated, in reference to the cost of compliance, that "in response to a specific query about these costs, Mr. Randolph indicated that they are 'nearly impossible to determine' but that they would 'be almost negligible'" (H.E. Report, p. 4). Mr. Randolph understood the query to be about what rate increases are likely to occur as a result of a requirement to increase from 12 to 20-channel capacity. (Public Hearing Transcript, p. 10) To that question Mr. Randolph responded that, while it is possible that the cost to rebuild a cable system could be passed on to the subscribers in the form of a rate increase, "as to how much a particular rebuild would end up [as] a rate increase I would think is nearly impossible to determine. It depends in large part on the size of the system and the amount of rebuild necessary. . .." (P.H. Trans., p. 11) Mr. Randolph went on to explain that the proposed Rule is designed so that the expansion from 12 to 20-channel capacity would most likely occur at the time of natural rebuild; as existing 12-channel equipment is amortized and replaced. (This point is also discussed on pp. 21-22 of the Statement of Need.) As to its cost to the subscriber, Mr. Randolph stated ". . .when we're talking about a cost of four to six thousand dollars per mile to replace cable plant and an additional $100 per mile to do the [job with] 20 rather than 12 [channel equipment], when that broke out into a rate increase I think the impact of that would be almost negligible." (P.H. Trans., p. 11) "That" being the additional $100 to use 20-channel equipment, not the total cost of a rebuild. In other words, if cable subscribers will be asked to pay the cost of a $4-6,000 per mile rebuild, the impact of an additional $100 (2% of total cost) would be almost negligible when spread over all the subscribers to the system and amortized over the life of the equipment.

Need and Benefits

The Board also believes sufficient evidence was provided establishing the reasonableness of proposed Rule MCCB 121 G. and H. in regard to the need for, and benefits of, expanded channel capacity and provision of access channels. As expressed in the Statement of Need: "There is a complementary relationship between MCCB 121 G. Channel Capacity and MCCB 121 H. Access Channels; MCCB 121 G. guarantees that there will be sufficient channel capacity available to encourage the development of communications-type services. and MCCB 121 H. guarantees that at least some of this expanded capacity will be dedicated to public service uses, i.e., "local expression, and educational and governmental services." (State. of Need, p. 24)

These rules are proposed as reasonable methods of carrying out the Board's legislated mandate:

> "The major reason for requiring the construction of cable systems with twenty, as opposed to twelve channel capacity is to accommodate communications-type services in addition to the retransmission of broadcast signals. The Minnesota Legislature stated, in the Declaration of Legislative Findings and Intent, Cable Communications Act; '. . . that the public and the business community would benefit if served by cable channels sufficient to meet the needs of producers and distributors of program and other communications content services. . .' and vested authority in the MCCB to 'assure channel availability for municipal services, educational television, program diversity, local expression and other program and communications content services' (Minn. Stat. 238.01 (1976)." (State. of Need, p. 16)

The Board affirmatively demonstrated that existing State rules are inadequate to carry out that mandate. Of the ten largest cable communications systems, serving 48% of the subscribers in the State, only one is currently required by State regulations to provide 20-channel service. Of the remaining nine, only one is 20-channel service. In addition, many of these larger systems are already filled, or nearly filled to capacity, allowing little or no room for expansion of services. (State. of Need, p. 16 and attached chart, Exhibit B) "It could be argued that there is a disincentive to the development of new services via cable communications where there is no channel space on the cable system to provide these services." (Ibid.)

As evidence of actual and potential demand for cable channels, the Board included examples of current users of cable channels in the Statement of Need (p. 20), and cited two reports which provide more detailed discussion of

actual and potential cable channel users and services. The first is a report of the Metropolitan Council which lays out communication service objectives for the metro area, many of which will require metropolitan cable systems to have large channel capacity (as those currently serving communities in the metro area already have). (State. of Need, p. 19) The second report cited by the Board in the Statement of Need (p. 20) is Section VI of Cable Communications in Minnesota, 1976, entitled "Current and Potential Cable Services Users" which details a variety of organizations and individuals currently making use of cable channels. The information contained in both reports serves as an indication of the demand that currently exists and can reasonably be expected to develop for additional channels on cable systems. In summary, the Board affirmatively demonstrated that the need is greatest in the larger communities where many actual and potential users of cable channels are concentrated, and where channel space is often severely limited. (State. of Need, pp. 16-17)

It was necessary for the Board to establish specific criteria for determining which systems would be required to comply with the requirements of proposed Rules MCCB 121 G. and H., especially in regard to systems serving large "outstate" communities. In doing so, the Board arrived at a criterion that it felt offered a reasonable balance between system economics and demand for services in large outstate communities; i.e., any such community having a population of 15,000 or more. As reasonable evidence of the actual or potential demand for services in this type of community, the Board referred to a report of the Upper Midwest Council, Recent Trends/Future Prospects (Exhibit K) which shows that, generally, communities of this size, in outstate Minnesota, are regional centers of information and services, and as such are the base of many organizations and institutions which represent potential users of cable channels. Although the Upper Midwest Council's report shows that communities with populations as low as 10,000 may also create substantial demand for cable channels (as evidenced by their classification as Regional Service Centers) the 15,000 population level is proposed due to factors of system economics, i.e., a community of that size can reasonably be expected to provide the economic base to support the expansion of channel capacity and the services that develop. (State. of Need, p. 21)

Responding, in his report, to this evidence the Hearing Examiner states:

> "As partial justification for lowering the minimum community size for 20 channels from the federal 25,000 population (FCC report finding 35) to 15,000, the Staff cites the Upper Midwest Council report Recent Trends/ Future Prospects classifying them as 'Regional Growth Centers' and listing services provided in such centers. Closer examination of that data shows that only three of the six communities with 1970 populations between 15,000 and 25,000 are regional centers. These three already have cable systems and two of the three already have 20-channel capacity. The other three affected communities are classified in the report as considerably less diversified 'Community Service Centers' and none is currently served by a cable system (Ex. M)." (Exhibit M is Cable Communications in Minnesota, 1976). (H.E. Report, p. 4)

The Board interprets the sum of these comments by the Hearing Examiner to be a rejection of this evidence as supportive of the Board's proposed 15,000 population criteria. At the same time, the Board believes that the Hearing Examiner has made several erroneous assumptions in reaching his conclusions.

First, the Hearing Examiner refers to a federal "minimum community size for 20 channels" of 25,000. In fact, there is no such "minimum community size" in the federal rules dealing with channel capacity. Rather, the FCC's criteria for requiring 20 channel capacity is stated in terms of system size, i.e., 3,500 subscribers. The FCC does make the observation, in the finding to which the Hearing Examiner refers, that generally a system must serve a community of 25,000 in order to reach the 3,500 subscriber level. (Exhibit L, Docket 20508, pp. 13-14) However, as the Board demonstrated in the Statement of Need (p. 21), in Minnesota a system operating in a community of 15,000 can reasonably be expected to serve 3,500 or more subscribers. Thus, the Board's proposed population criterion of 15,000. (An explanation of why the Board prefers to use community size in addition to system size as one criteria is included in the Statement of Need, p. 20).

Further, the Board did not rely on the Upper Midwest Council Report in arriving at the 15,000 population criteria, as the Hearing Examiner infers. Rather, the data in the Report confirmed the Board's determination that communities of this size in outstate Minnesota generally represent centers of information and services, and thereby offer a reasonable balance between system economics and demand for services. (State. of Need, p. 20) The Board arrived at the 15,000 population figure as outlined above.

The Board maintains that the Hearing Examiner has also incorrectly interpreted some of the data provided in the Recent Trends/Future Prospects Report

(Exhibit K). In his examination of that data, the Hearing Examiner has chosen to look only at those communities with populations between 15,000 and 25,000, presumably, based on the assumption that the federal regulations will take care of communities with populations in excess of 25,000. The Board has already shown that may not always be the case; a system serving a community of 25,000 may not necessarily have 3,500 subscribers. (See also, State. of Need, p. 18) But even if federal regulations did apply to all communities with populations of 25,000 or more, the Board cannot rely on the FCC to enforce the mandate given to them by the Minnesota Legislature to "assure channel availability for municipal services, educational television, program diversity, local expression, and other program and communications content services." (Minn. Stat. 238.01 (1976))

In addition, by looking only at communities with populations between 15,000 and 25,000, the Hearing Examiner has overlooked the fact that of the 8 systems serving communities of 25,000 or more in population, 5 have only a 12 channel capacity.

The Hearing Examiner has also observed that two of the systems serving communities in the 15-25,000 population range already have 20-channel service. The Board maintains that this fact is supportive of its proposal to require 20 channel capacity of all systems serving communities of that size or larger. Especially when a closer look is taken at the two 20-channel systems to which the Hearing Examiner refers; presumably in the communities of Albert Lea and Faribault. (See, Cable Communications in Minnesota, 1976 (Exhibit M) and Recent Trends/Future Prospects (Exhibit K). If these two systems had only 12 channel capacity, only Albert Lea would have any excess capacity, and then only a single channel. Brainerd, the third of the three communities to which the Hearing Examiner refers, is completely filled at its capacity of 12 channels.

In regard to the Hearing Examiner's observation that not all communities of 15,000 or more persons are "Regional Service Centers" and therefore, presumably may not offer sufficient demand for services, the Board feels compelled to further clarify its purpose in citing the Upper Midwest Council's Report. The Board referred to the Report and classification system as general support of its contention that most communities of 15,000 or more persons are centers of

substantial information and services, and therefore substantial demand for communication channels on cable systems serving those communities can reasonably be expected to develop. Obviously, no general rule will be applicable in all situations. Indeed, the Report was not cited as support for the proposed Rules in each of the specific communities. However, the Board maintains that the fact that 13 of the 17 communities in the Upper Midwest Council's list, of 15,000 or greater population, are classified as at least "Regional Service Centers" still supports the reasonableness of this proposed criterion. Further, the fact that a community is not currently served by cable does not reduce the Board's obligation, as stated in the Legislative Findings and Intent of the Cable Communications Act, to assure that the residents of those communities receive the full benefits of cable communications when a cable system is established there.

Alternative Proposals

In Finding #10 of his report, the Hearing Examiner discusses proposals for rules suggested by Mr. Nee, Mayor of Fridley, stating that the proposals "have obvious merit, and should be carefully considered by the Board." (H.E. Report, p.5)

Mayor Nee's first proposal is that no franchise be certified that allows the sale of "one program service separated from all other program services" in areas receiving "grade 2 broadcast service." (Ibid.) Without more information, the Board is unable to make a complete study of this proposal. For example, the Board is unsure what Mr. Nee means by "grade 2 broadcast service," and why this is an appropriate criterion on which to determine whether a single channel service can be offered. The Board shares Mayor Nee's concern that cable provide "total communications service," but at the same time feels that this matter has been adequately addressed in proposed Rule MCCB 121 H., considering the economic factors involved. Substantial discussion concerning this portion of proposed Rule MCCB 121 H. took place at the Public Hearing (P.H. Trans., pp. 15-31), and substantial evidence of the reasonableness of this part of the Board's proposed Rule MCCB 121 H. is included in the Statement of Need (pp. 24-26).

Mayor Nee's second proposal is that the provision of access channels should take precedence over allocation of channels for any other purpose. (H.E.

Report, p. 5) Again, the Board feels that insufficient information was provided on which to base a comprehensive study of this proposal. However, it appears that this proposal would be in excess of FCC regulations (See, Appendix, Docket 20508). The Board's proposed wording, which Mayor Nee feels is insufficient, states that cable systems shall, "to the extent of the systems' available channel capacity." provide access channels, but that providing access channels "shall not require the system to install converters." This wording is reasonable in light of economic factors, and is in compliance with FCC rules, as discussed on pages 26 and 28 of the Statement of Need. Therefore, the Board feels that the reasonableness of the proposed wording in Rule MCCB 121 H. has been demonstrated, and without further information no firm judgement can be made concerning Mr. Nee's proposals, especially in light of possible conflict with FCC rules.

However, the Board points out, as it did in the Statement of Need (p. 23) and at the Public Hearing (P.H. Trans., p. 21) that State regulations, including proposed Rules MCCB 121 G. and H., are minimum standards, and as such allow municipalities to include more stringent requirements in their franchises if they determine it is necessary, as long as the requirements are in compliance with State and Federal regulations. See MCCB 122 Additional Terms and Conditions Permitted. State Rules, by definition, must be designed to apply to conditions on a Statewide basis, and therefore may not always offer the most effective means of dealing with a situation in a specific community. However, MCCB 122 allows municipalities to design their franchise to speak specifically to their particular situation, while remaining in compliance with State and Federal law. Perhaps Mayor Nee will be able to resolve his concerns in this manner.

Summary

The Board maintains that an affirmative demonstration of its statutory authority to promulgate proposed Rules MCCB 121 G. and H. was made. The Board further maintains that an affirmative demonstration of the need, benefits, and the reasonableness of the costs of compliance with proposed Rules MCCB 121 G. and H. was also made.

PROPOSED RULE MCCB 103

The Board has proposed adding language to MCCB Rule 103 which would clarify when a renewal certificate of confirmation is needed and what has to be done before it will be issued. The proposed language specifically provides:

> Upon expiration of its certificate of confirmation or the renewal of its cable communications franchise, a cable communications company must obtain renewal of its certificate of confirmation. The renewal of any certificate of confirmation shall be issued only after compliance with MCCB 121.

This new language requires that a cable communications company obtain a renewal of its certificate of confirmation when its cable communications franchise is renewed, or when its current certificate of confirmation expires. It also requires that before a renewal certificate of confirmation can be issued, the franchise must comply with the franchise standards set forth in MCCB Rule 121.

In written comments filed subsequent to the public hearing (Comment C), Franklin R. Valentine, Jr. argued that this new proposed language would conflict with the legislative intent of Minn. Stat. § 238.09 subds. 3, 4 and 5 (1976). These three subdivisions provide in pertinent part:

> Subd. 3. Any cable communications company which, pursuant to an existing franchise was lawfully engaged in actual operations on May 24, 1973, may continue to exercise said franchise pursuant to the terms thereof . . . . The board shall issue a certificate of confirmation to such cable communications company valid for five years without further proceedings.
>
> Subd. 4 Cable communications companies which have been granted a franchise prior to April 1, 1973, and which were not in operation prior to May 24, 1973, shall be given a ten year certificate of confirmation . . . .
>
> Subd. 5 Notwithstanding the provisions of subdivision 6, a municipality may issue a franchise by September 15, 1973, if done so pursuant to a municipal enabling ordinance on cable communications enacted by April 1, 1973 . . . . Any cable communications company so franchised may exercise its franchise pursuant to the terms thereof . . . . The Board shall issue a certificate of confirmation to such cable communications company valid for ten years.

Application of the new language to the cable communications companies holding certificates of confirmation issued pursuant to subdivisions 3, 4 and 5, supra, (hereinafter these certificates will be referred to as special certificates) will result in the automatic expiration of their special certificates if and when they renew their franchises, even if their special certificates have not, by their own terms, expired. Also, the cable communications companies will have

to comply with the applicable Cable Board rules before a renewal certificate of confirmation will be issued.

Mr. Valentine argues that because the new language could result in the premature expiration of a special certificate, it is contrary to the legislative intent behind the special certificates. It is his position that the legislature, in providing for special certificates, intended that a cable communications company meeting the criteria for obtaining a special certificate, be allowed to operate without having to comply with certain Cable Board rules until such time as the special certificate expires (after 5 or 10 years), regardless of whether the franchise that triggered the application of the special certificate provisions has, by its terms, expired.

The Hearing Examiner, in paragraph 12 of his Report, cites Mr. Valentine's concerns and states that:

> This result [automatic expiration of the special certificate when the franchise is renewed], as Mr. Valentine notes, would be contrary to the legislative intent expressed in Minn. Stat. § 238.09, and consequently, beyond statutory authority. Such misapplication was doubtless never intended. Similar future public misunderstanding can be avoided by explicitly referencing the statutory exceptions.

The Hearing Examiner's recommendation appears to be based solely on Mr. Valentine's written comments, i.e., Mr. Valentines's interpretation of legislative intent. The Board did not address this issue of legislative intent in its Statement of Need because it was not aware that the intent behind the special certificates was unclear.

The Board has always taken the position that special certificates, like regular or renewal certificates of confirmation, confirm the franchise, and when the franchise is renewed, it must be confirmed again. Special certificates were designed to allow cable communications companies to operate pursuant to the terms of their franchise when, at the date of enactment of the Cable Communications Act, these companies had either (1) already been operating prusuant to a franchise agreement, (2) already negotiated a franchise agreement, or (3) had already obtained an enabling ordinance from the municipality. This can be seen by reading parts of section 238.09 subds. 3 and 5:

> Subd. 3 Any cable communications company which, pursuant to an existing franchise was lawfully engaged in actual operations on May 24, 1973, <u>may continue to exercise said franchise pursuant to the terms thereof</u> . . . .

Subd. 5. . . . Any cable communications company so franchised may exercise its franchise pursuant to the terms thereof . . . .

(Emphasis added.)

The legislature certainly never intended for a cable communications company holding a special certificate, to operate continuously, without having to comply with existing Board rules, for 5 or 10 years, even if the company's franchise expired prior to its 5 or 10 year special certificate. It was obviously intended that such a company be able to operate pursuant to the terms of its franchise until such time as either its special certificate expired or its franchise expired.

The Board's position is further supported by the fact that in 1974 MCCB rule 134 was adopted without any objection. This rule provides in pertinent part:

> When any franchise is renewed, the franchisee [cable communications company] shall agree to abide by all rules and regulations of the Commission. . . .

The above cited portion of rule 134 already requires a cable communications company to abide by the rules of the Board when its franchise is renewed. No exception for companies holding special certificates is contained in this rule.

Finally, the new language added to rule 103 would only significantly effect 6 out of approximately 80 cable communications companies currently holding special certificates.

In view of the above, the Board has adopted the new language to rule 103. The Board is acting contrary to the recommendations of the Hearing Examiner because his recommendations appear to be based solely on Mr. Valentine's written comments, which the Board does not feel adequately demonstrate legislative intent.

PROPOSED RULE MCCB 112

The Board has adopted this rules as originally proposed for the same reasons as set forth under MCCB rule 103.

PROPOSED RULE MCCB 113

In written comments subsequent to the public hearing, Mr. Valentine raised a question with respect to proposed new rule MCCB 113, Section F2(a), which states:

> a. No one municipality within the Cable Service Territory may have a population over 1200, except in the expansion of an already approved cable service territory.

(Emphasis added.)

As stated in paragraph 11 of the Hearing Examiner's Report, both Mr. Valentine and the Hearing Examiner interpret the underlined portion of section F2(a) to mean that the alternative franchising procedure is allowed in the expansion of an already approved cable service territory, even if the population is over 1200. The Hearing Examiner also stated that if this interpretation was not correct the rule would have to be redrafted.

The Board agrees with the interpretation of both the Hearing Examiner and Mr. Valentine, and has adopted the rule as originally proposed.

Dated: October 24, 1977

Robert J. McDonald

Robert J. McDonald, Executive Director
Minnesota Cable Communications Board

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

STATE OF MINNESOTA
CABLECOM COMMISSION

August 5, 1977

Mr. Robert Nardi
Special Assistant Attorney General
Cable Communications Board
500 Rice Street
St. Paul, Minnesota

RE: In the Matter of Rules Relating to Variances, Rule-Making, Contested Cases, Delegation of Authority, Definitions, Renewal of a Certificate of Confirmation, Franchise Procedures, Franchise Standards, Franchise Amendments, Interconnection, Cable System Report to Board, and Cable Service Territories
Our File No. CCB-77-001-HK

Dear Mr. Nardi:

I enclose herewith and serve upon you by mail the Report of the Hearing Examiner in the above-entitled matter, together with the official record, and I am closing our file in this case.

I am also certifying the original transcript to your office.

Yours very truly,

HOWARD L. KAIBEL, JR.
Hearing Examiner

HLK/eag
Encs.

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik, being first duly sworn, deposes and says that on the 5th day of August 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of Hearing Examiner CCB-77-001-HK

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof the individual named below.
on ~~all persons at the addresses shown on the attached mailing list~~.

Eileen A. Gaiovnik

Subscribed and sworn to before me
this 5th day of August, 1977.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

Mr. Robert Nardi
Special Assistant Attorney General
Cable Communications Board
500 Rice Street
St. Paul, Minnesota

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

AUG 8 19[illegible]

FOR THE CABLE COMMUNICATIONS BOARD

STATE OF MINNESOTA
CABLECOM COMMISSION

In the Matter of Rules Relating to Variances, Rule-Making, Contested Cases, Delegation of Authority, Definitions, Renewal of a Certificate of Confirmation, Franchise Procedures, Franchise Standards, Franchise Amendments, Interconnection, Cable System Report to Board, and Cable Service Territories.

REPORT OF HEARING EXAMINER

The hearing in the above-entitled matter was convened by Howard L. Kaibel, Jr., duly appointed Hearing Examiner, on June 21, 1977, at 1:30 p.m. in Room 83 of the State Office Building, St. Paul, Minnesota. To provide adequate opportunity for public response, the hearing was recessed at 2:00 p.m. and reconvened at 7:30 p.m. at the same location.

Robert Nardi, Special Assistant Attorney General, appeared as counsel for the Cable Communications Board. Also testifying on behalf of the Cable Communications Staff (hereinafter "Staff") were Peter Randolph, Anita Benda and Anne Davis. The hearing continued until all interested groups or persons had an opportunity to participate and to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Board shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall also clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Board on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Board shall be responsible for filing

the rules with the Attorney General.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

I. JURISDICTION.

1. On March 17, 1977, the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On May 16, 1977, a Notice of Hearing and a copy of the proposed rules were published at 1 State Register 1633. Due to certain errors and omissions in the May 16th printing, the entire text of the proposed rules was published on June 13, 1977 at 1 State Register 1797.

3. On May 18, 1977, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On May 26, 1977, the Board filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need; and
(g) The Statement of Evidence, including the names of witnesses to be called;
(h) The names of Board personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through July 11, 1977 for the receipt of written comments and statements.

II. THE PROPOSED RULES.

6. In this Report, the Hearing Examiner shall:

> . . . state his findings of fact and his conclusions and recommendations, taking notice of the degree to which the agency (a) documented its

statutory authority to take the proposed action, (b) fulfilled all relevant substantive and procedural requirements of law or rule, and (c) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts. (Minn. Rule HE 106)

7. The general statutory authority for the Minnesota Cable Communications Board (hereinafter Board) to promulgate these proposed rules is found in Minn. Stat. § 238.06, subd. 1 (1976). That statute gives the Board power to promulgate rules and regulations necessary to carry out the provisions of Chapters 238 and 15.

8. The statutory authority cited in the above Finding is sufficient authority to promulgate all but two of these proposed rules. The Staff has not yet fully documented the Board's authority to promulgate proposed Rules 121(g) (Required Contents of Franchises - Channel Capacity) and 121(h) (Required Contents of Franchises - Access Channels). It is possible that federal regulation preempts the standards proposed in Rules 121(g) and (h). The preemption issue was raised in comments (c) submitted subsequent to the hearing by Franklin R. Valentine, Jr., as General Counsel for GBAZ Television, Inc., and Northland Cable TV, Inc. The issue was also raised in an order of the Federal Communications Commission, admitted into evidence as Exhibit L, entitled: In the Matter of Amendment of Part 76 of the Commission's Rules and Regulations Concerning the Cable Television Channel Capacity and Access Channel Requirements of Section 76.251. The Staff failed to produce any evidence or legal argument to show the Board is not preempted by FCC regulation. The Board may very well have the authority to make regulations which exceed or otherwise conflict with FCC regulations, but the Staff must demonstrate this authority affirmatively on the record. The Hearing Examiner cannot make firm findings regarding the preemption issue at this juncture, as the Staff has not yet presented its side of the issue.

9. Assuming, arguendo, that the Board does have statutory authority to promulgate Rules 121(g) and (h), the Staff has moreover failed to demonstrate the need for and reasonableness of those Rules by affirmative presentation of facts. The Staff

failed to document the need for the recommended capacity and the economic impact these proposed Rules would have on the subscriber, and the benefits the subscriber would receive. The proposed increases in channel capacity and access services are intended to benefit the subscriber, and it is the subscriber who must bear the costs of these benefits. To determine the need for and reasonableness of Rules 121(g) and (h), the Examiner, the Board and reviewing courts must weigh the costs against the benefits and the specific evidence of need for those benefits. The Examiner has no means to make firm findings except that the Staff has not clearly presented what the costs, need and benefits are.

In response to a specific query about these costs, Mr. Randolph indicated that they are "nearly impossible to determine" but that they would "be almost negligible." (R.11) The above cited FCC Findings (Ex. L) contain specific cost figures which led the federal government to reject imposition of additional capacity as herein proposed. This record does not contain substantial evidence supporting contrary findings and conclusions.

As partial justification for lowering the minimum community size for 20 channels from the federal 25,000 population (FCC report finding 35) to 15,000, the Staff cites the Upper Midwest Council report Recent Trends/Future Prospects classifying them as 'Regional Growth Centers' and listing services provided in such centers. Closer examination of that data shows that only three of the six communities with 1970 populations between 15,000 and 25,000 are regional centers. These three already have cable systems and two of the three already have 20-channel capacity. The other three affected communities are classified in the report as considerably less diversified "Community Service Centers" and none is currently served by a cable system (Ex. M).

10. William J. Nee, Mayor of Fridley, was also concerned about proposed Rule 121(h). He argued, however, that the requirements of proposed Rule 121(h)(1), (2) and (3) are too lenient. The proposed Rule requires cable companies which offer a pay-only option to provide one composite public access channel to pay-only subscribers. Mr. Nee argued that one access channel

would not provide total system service. Total communications service was the objective, at least for the City of Fridley, which prompted the issuance of a cable franchise. Therefore, Mr. Nee proposed the following policies:

1. No franchise will be certified in areas receiving grade 2 broadcast service which permit the sale of one program service separated from all other program services.

2. That the reservation of public agency and "access" channels will be absolute and take precedence over any other allocation. (Without need for any showing of "need" or other justification.

Mr. Nee's proposals have obvious merit, and should be carefully considered by the Board. However, any modifications of proposed Rule 121(h) to conform with Mr. Nee's proposals would also obviously result in a substantially different rule in that it would affect classes of persons not represented at the previous hearing. Such modifications would be a major substantive change that was not raised by the original Notice of Hearing so as to invite reaction at the hearing. The modified rule would be fundamentally different from that contained in the Notice of Hearing. A new Notice and Hearing would consequently be required to pursue such modifications.

11. In written comments subsequent to the hearing, Mr. Valentine raised a question with respect to Proposed New Rule MCCB 113, Section e(1), which states:

> (1) No one municipality within the Cable Service Territory may have a population over 1200, except in the expansion of an already approved cable service territory.

As the Hearing Examiner reads this provision, the alternative franchising procedure is allowed in the expansion of an already approved cable service territory, even if the population is over 1200. Mr. Valentine apparently read the provision in this manner and asked the Board if his interpretation was correct. A Staff member pencilled in a reply comment (D) that the population of the municipality seeking the alternative franchising procedure cannot exceed 1200. If the Staff member's interpretation is correct, proposed Rule 113(e) must be redrafted. Such a modification would also result in a major substantive change that was not raised by the original Notice of Hearing in such a way as to

invite reaction at the hearing. A new Notice and Hearing would consequently be required to pursue the modification which would be necessary to comply with the Staff interpretation of proposed Rule 113.

12. With respect to proposed Rule 103, Mr. Valentine expresses concern over potential conflict with Minn. Stat. 238.09,subds. 4 and 5, whereby some cable companies were given ten-year grandfather certificates. Proposed Rule 103 requires a cable company to renew its Certificate of Confirmation upon expiration of the Certificate or the renewal of its cable communications franchise. If the renewal of the franchise would happen to fall within the ten-year grandfather period, proposed Rule 103 would require Certificate renewal. As certificates can only be renewed upon compliance with Rule 121, some companies would appear to be required to conform to new MCCB Rules and standards before expiration of the ten-year period. This result, as Mr. Valentine notes, would be contrary to the legislative intent expressed in Minn. Stat. § 238.09, and consequently beyond statutory authority. Such misapplication was doubtless never intended. Similar future public misunderstanding can be avoided by explicitly referencing the statutory exceptions. This non-substantive clarification would not result in a substantially different rule requiring further hearings.

13. For reasons similar to those supporting his objection to Rule 103, Mr. Valentine also objects to proposed Rule 112. Proposed Rule 112 defines the term "franchise renewal," and proposed Rule 103 states that a franchise renewal necessitates certificate renewal. If any extension of a franchise is deemed a renewal, Mr. Valentine contends, then many holders of grandfather certificates under Minn. Stat. § 238.09 might be required to obtain a new certificate before the running of the ten-year period. Explicitly referencing the statutory exception, as stated in Finding 11 above, would alleviate Mr. Valentine's concerns. Moreover, it is necessary and reasonable to define an extension of a franchise term beyond its previous termination date as a renewal of the franchise. If the recommended change is made in proposed

Rule 103, there is no need to alter the definition of "renewal" in proposed Rule 112.

14. Proposed Rule 99, which designates the date of the municipal franchise ordinance as the effective date of the Certificate of Confirmation, is reasonable. The proposed Rule implements the statutory directive of Minn. Stat. § 238.09, subd. 1 (1976), which clearly establishes a Certificate of Confirmation as the prerequisite to the effectiveness of a franchise. Mr. Valentine argues in opposition to Rule 99 that if the Certificate of Confirmation were not issued, and if the decision were contested, back-dating the Certificate might substantially reduce the actual operational time of the Certificate. The Examiner finds no reason why the existence of a contested case should delay the effective date of a Certificate. In fact, the dating procedure outlined in proposed Rule 99 serves the valid purpose of encouraging franchisees to apply for a Certificate of Confirmation soon after the franchise is granted.

15. Proposed Rule 76 is reasonable and necessary to comply with Minn. Stat. § 15.0421 and is consistent with HE 218(a)(1). Mr. Valentine contends that Rule 76, which allows parties adversely affected by the Report of the Hearing Examiner 20 days in which to file exceptions and present arguments to the Board, is inconsistent with HE 218(a)(1):

> No factual information or evidence. . . which is not a part of the record shall be considered by the Hearing Examiner or the agency in the determination of a contested case. (Emphasis added)

Mr. Valentine contends that arguments and exceptions which might be presented to the Board by adversely affected parties actually reopen the record, in direct conflict with the intent of HE 218 (a)(1). He 218(a)(1) is derived from Minn. Stat. § 15.0419, subd. 2, and Rule 76 is patterned after Minn. Stat. § 15.0421. In essence, then, Mr. Valentine argues that two Minnesota statutes are inconsistent. In so arguing, Mr. Valentine ignores the traditional legal distinction between "factual evidence" and "argument." HE 218(a)(1) requires an agency to decide a contested case without considering new evidence because considering additional evidence would rob the involved parties of procedural due

process. The agency may (and in this specific situation by statute must) consider argument concerning how the evidence already admitted is to be interpreted, however.

16. Throughout the proposed Rules, the title "State Commission on Cable Communications" is changed to the "State Cable Communications Board". This change is reasonable because the name change is set out in Minn. Laws 1975, Ch. 271, § 3, subd. 40. However, the Examiner respectfully suggests that the initials "MCCC," which preface the Rule numbers, be changed to "MCCB," to correspond to the new title. This modification would be merely for clarification; it would not be a substantial change requiring a new hearing.

17. Except as discussed above, the Board has demonstrated the need for and reasonableness of these proposed Rules by affirmative presentation of fact. The minor amendments presented at the hearing are also needed, reasonable and appear to be insubstantial.

CONCLUSIONS

1. That the Minnesota Cable Communiations Board duly acquired and now has jurisdiction over the within proceeding.

2. That all relevant, legal and procedural requirements of statute and rule have been properly complied with.

3. That the Board has documented its statutory authority to promulgate all the proposed rules except Rules 121(g) and (h).

4. That the need for and reasonableness of these proposed rules has been demonstrated with respect to all of the rules except 121(g) and (h).

RECOMMENDATIONS

IT IS HEREBY RECOMMENDED:

1. That, absent further showings of statutory authority, need and reasonableness, proposed Rules MCCB 121(g) and (h) not be adopted.

2. That the remaining proposed Rules discussed herein be promulgated, approved and adopted after attention to possible modifications suggested by the Findings.

Dated this 5th day of August, 1977.

HOWARD L. KAIBEL, JR.
Hearing Examiner

ADMIN. 1000

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MICHAEL B. MILLER
Special Assistant
Attorney General

DATE: October 24, 1977

FROM : ROBERT R. NARDI
Special Assistant
Attorney General

RRN

SUBJECT: ADOPTED RULES OF THE CABLE COMMUNICATIONS BOARD FOR REVIEW PURSUANT TO MINN. STAT. §15.0412 SUBD. 4 (1976)

Enclosed for your review is the complete Hearing Examiner's record and the Cable Board's response to the Hearing Examiner's Report. The Hearing Examiner's Record has been divided into individual files containing the following documents:

1. Agency's Response to Report of Hearing Examiner
2. Jurisdictional Documents
3. Comments
4. Transcript and Report of Hearing Examiner
5. Order Adopting Rules and the Chief Hearing Examiner's Report
6. Rules as Adopted
7. Proposed Rules
8. Exhibits

RRN:st
Enclosures