

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

OUR FILE NO. 488

Robert R. Nardi
Special Assistant
Attorney General

December 8, 1978

- Cable Communications Board Governing Board Meetings, Franchising Procedures, Franchise Standards and Cable Service Territories

cc: Duane Harves

#488 Cable Board Rules

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 11-28 Temporary Rule _____

Resubmitted and Received _____

DUE DATE 12/18

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved 12/8 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓ } Same
2. Rules as Proposed ✓ }
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable ✓
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N.A.
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
17. Petition by Public, where applicable N.A.

Exhibit A

RECEIVED
SEP 21 1978
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE CABLE COMMUNICATIONS BOARD GOVERNING BOARD MEETINGS, FRANCHISING PROCEDURES, FRANCHISE STANDARDS, AND CABLE SERVICE TERRITORIES

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules by held in the conference room of the Cable Communications Board offices, 500 Rice Street, St. Paul, Minnesota, 55103 on October 17, 1978, commencing at 9:30 a.m., and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Robert J. McDonald

Robert J. McDonald
Executive Director

Date:

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

RECEIVED
AUG 8 1978
OFFICE OF HEARING
EXAMINERS

I, Gertrude Ulrich, do hereby certify that I am chairman of the Minnesota Cable Communications Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a Resolution adopted at a meeting of the Minnesota Cable Communications Board duly and properly called and held on the 14th day of July, 1978, that a quorum was present at said meeting; that a majority of those members present voted in favor of the Resolution; that said Resolution is set forth in the minutes of said meeting or is incorporated by reference into said minutes and attached thereto as an addendum and has not been rescinded or modified:

> BE IT RESOLVED, that the Executive Director of the Minnesota Cable Communications Board is hereby granted the authority and directed to initiate a public rules hearing for the purpose of promulgating rules of the Minnesota Cable Communications Board, as well as perform any and all acts incidental thereto, including but not limited to, signing an order for hearing and notice of hearing.
>
> BE IT FURTHER RESOLVED, that the rules to be considered at the rules hearing hereby authorized have already been approved for public hearing by the Board and are listed below by Chapter and Rule number:
>
> Chapter 2, Board Meetings
> MCCB Rules §4.026
>
> Chapter 7, Franchising and Franchise Renewal Procedures
> MCCB Rules § 4.111 C. 3. a.
>
> Chapter 8, Franchise Standards
> MCCB Rules § 4.121 D.
>
> Chapter 16, Cable Service Territories
> MCCB Rules §4.222, 4.225, 4.226

IN WITNESS WHEREOF, I have hereunto subscribed my name this 14th day of July, 1978.

Gertrude Ulrich
Gertrude Ulrich
Chairman

Eugene A. Schroeder
Attest by one other member

STATE REGISTER

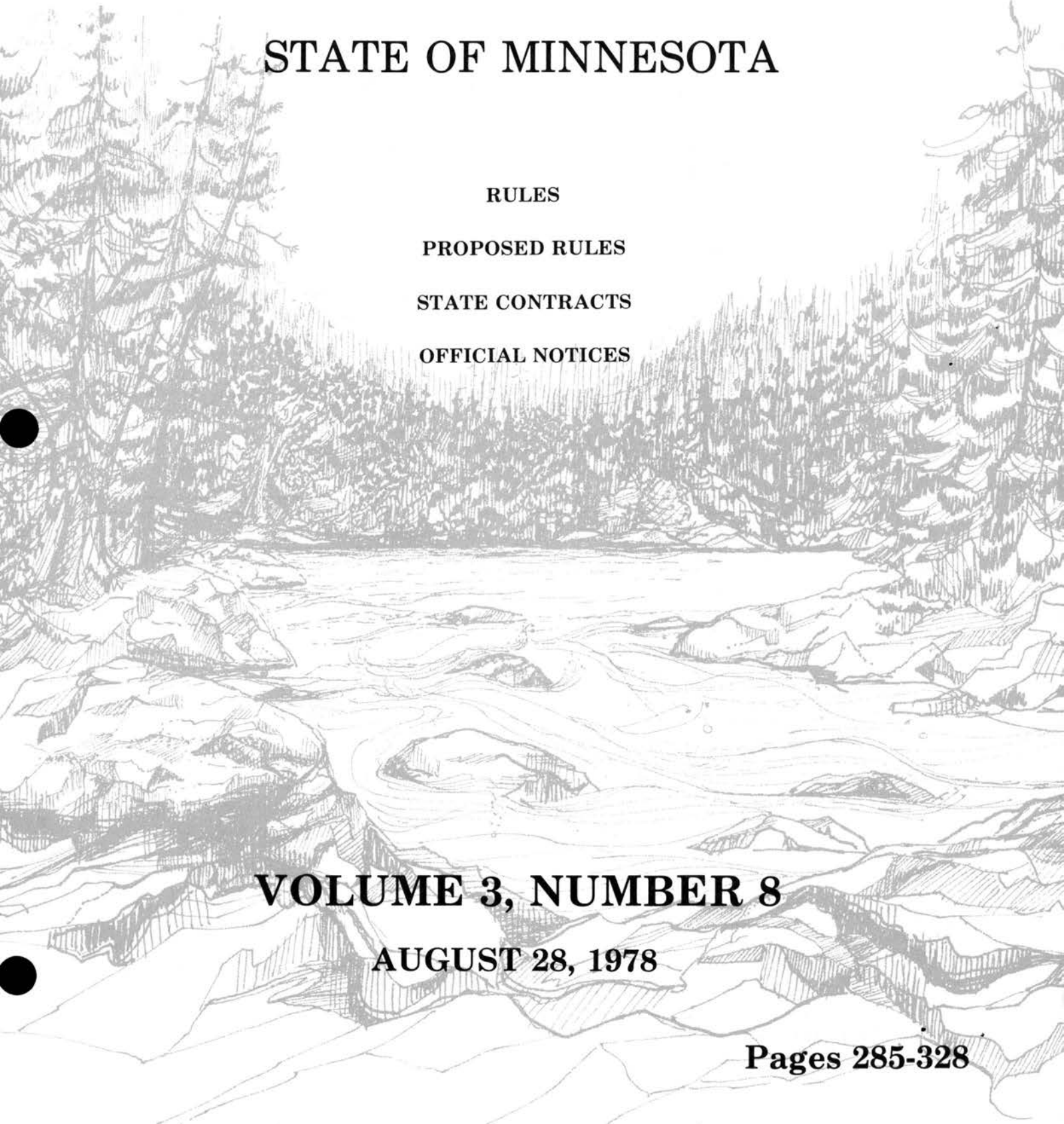
STATE OF MINNESOTA

RULES

PROPOSED RULES

STATE CONTRACTS

OFFICIAL NOTICES



VOLUME 3, NUMBER 8

AUGUST 28, 1978

Pages 285-328

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices.	Issue Date
	SCHEDULE FOR VOLUME 3		
9	Monday Aug 21	Monday Aug 28	Monday Sept 4
10	Monday Aug 28	Friday Sept 1	Monday Sept 11
11	Friday Sept 1	Monday Sept 11	Monday Sept 18
12	Monday Sept 11	Monday Sept 18	Monday Sept 25
13	Monday Sept 18	Monday Sept 25	Monday Oct 2
14	Monday Sept 25	Monday Oct 2	Monday Oct 9

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of Public Hearings on proposed rules are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

The *State Register* is published weekly, on Monday, by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, 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 additional subscriptions, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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The magnificent Canada goose is an extremely adaptable bird, nesting in a variety of habitats ranging from remote wilderness areas to wetlands within cities. With a wingspan of up to six feet, it may weigh over eighteen pounds. In the fall, Canadian geese gather in spectacular concentrations of thousands and fly in V formations. They are often seen near Minnesota lakes and wetlands where they stop to rest and feed during their southern migration. (Drawing by Jane Gstalder)

MCAR AMENDMENTS AND ADDITIONS

The following is a listing of all proposed and adopted rules published in this issue of the *State Register*. The listing is arranged in the same order as the table of contents of the *Minnesota Code of Agency Rules* (MCAR). All adopted rules published in the *State Register* and listed below amend the rules contained in the MCAR set. Both proposed temporary and adopted temporary rules are listed here although they are not printed in the MCAR due to the short term nature of their legal effectiveness. During the term of their legal effectiveness, however, adopted temporary rules do amend the MCAR. A cumulative listing of all proposed and adopted rules in Volume 3 of the *State Register* will be published on a quarterly basis and at the end of the volume year.

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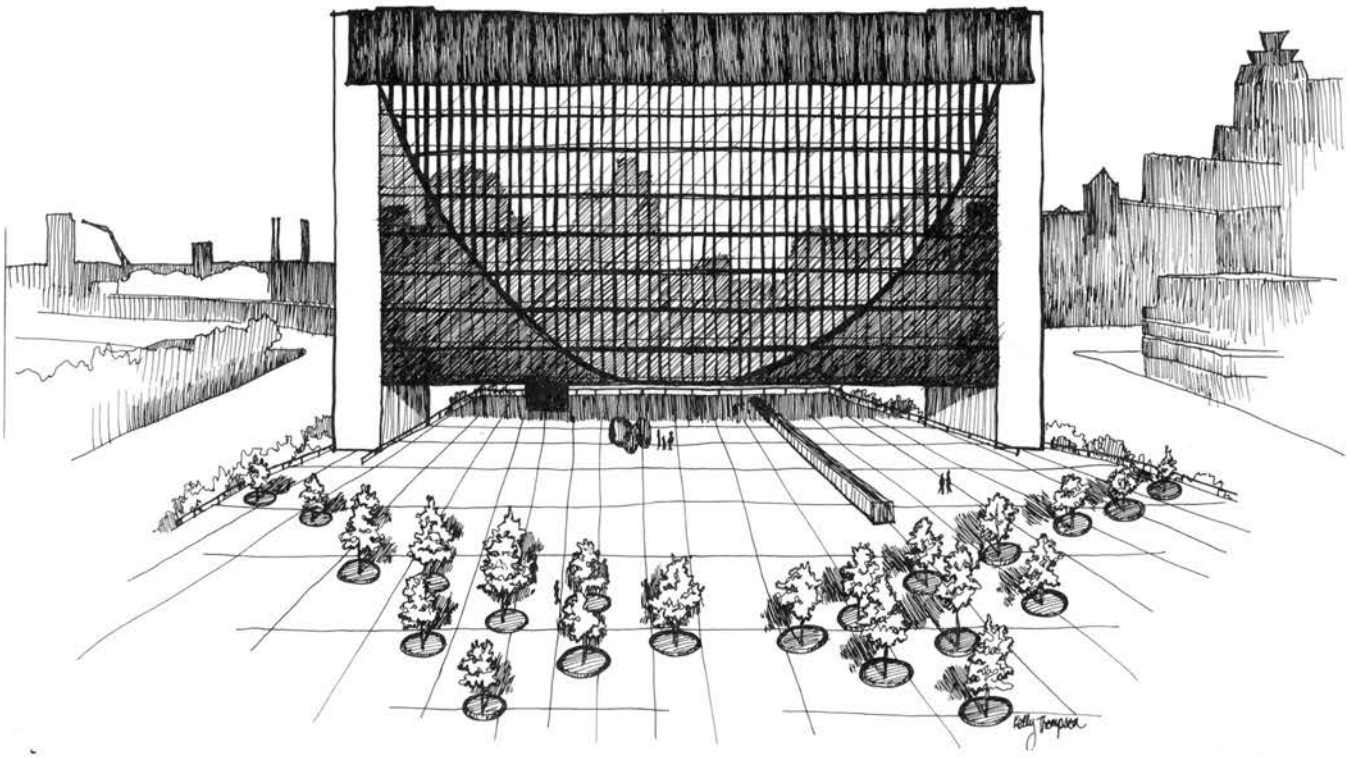


Overlooking Nicollet Mall, the Federal Reserve Bank of Minneapolis was designed by Gunnar Birkherts and completed in 1972 at a cost of $30.9 million. Its brace suspension scheme, featuring catenary arches formed by cables, is a model for future multi-layered urban design. With office space above and vehicular traffic below, the plaza level is reserved for pedestrians. (Drawing by Kelly Thompson)

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption as proposed and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Public Service
Public Service Commission

Adopted Rules Relating to Gas and Electric Utilities Change in Rates, PSC 400-407

Minn. Rules PSC 400-407 were initially proposed at a hearing held on February 12, 1975 and therefore were not previously published in the *State Register*. The following rules were adopted and filed with the Secretary of State on July 14, 1978 and are identical to their proposed form, with the following amendments:

PSC 400 ~~DEFINITIONS FOR CHANGES IN RATES~~ Definitions for changes in rates. For the purposes of

~~R~~rules 400-403 and 405-406, the following definitions shall apply.

~~(a)~~ A. "Average" means a thirteen-month average or a simple average of beginning and end of year data when data is not available to calculate a thirteen-month average.

~~(b)~~ B. "Average ~~P~~prime ~~I~~interest ~~R~~rate" means the ~~daily~~ average of the daily prime lending rates offered to preferred customers at the largest bank in the Ninth Federal Reserve District ~~over~~ during the period ~~for which the rate refund is applicable~~ the utility's proposed rates are suspended. The largest bank is that bank with the greatest total outstanding deposits as of the end of the calendar year preceding the notice of change in rates.

~~(c)~~ C. "Capital ~~S~~structure" means the total capitalization of the public utility as defined in Section 49, Subdivision 2 of the Minnesota Public Utilities Act and including short-term securities.

~~(d)~~ D. "Embedded ~~C~~cost" of long-term debt or preferred stock means the average cost for all outstanding issues of debt or preferred stock at a given date.

~~(e)~~ E. "General ~~R~~rate ~~C~~change" means an overall change in rates for which the determination of the utility's gross revenue requirements is necessary in assessing the appropriateness of the change in rates.

~~(f)~~ F. "Gross ~~R~~revenue ~~C~~conversion ~~F~~factor" means the incremental amount of gross revenue required to generate an additional dollar of operating income.

~~(g)~~ G. "Jurisdictional" means the utility's total Minnesota operations.

~~(h)~~ H. "Miscellaneous ~~R~~rate ~~C~~change" means a change in any compensation, charge, fare, toll, tariff, rental or classification, demanded, observed, charged, or collected for any service and any rules, regulations, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification for which a determination of the utility's gross revenue requirements is not necessary in determining the reasonableness of a proposed change in rates. Miscellaneous rate changes as used herein shall not include changes in amounts charged which the utility has effectuated pursuant to an existing automatic adjustment clause in accordance with the provisions of PSC 390-395.

~~(i)~~ I. "Most ~~R~~recent ~~F~~fiscal ~~Y~~year" is the utility's prior fiscal year unless notice of a change in rates is filed with the ~~Public Service~~ Commission within the last three months of the current fiscal year and at least nine months of historical data is available for presentation of current fiscal year financial information, in which case the most recent fiscal year is deemed to be the current fiscal year.

~~(j)~~ J. "Projected ~~Fiscal Year~~ change" ~~is~~ means the ~~fiscal year immediately following the most recent fiscal year~~ change from the normalized most recent fiscal year reflecting growth and known changed operating conditions from those existing in the most recent year.

K. "Projected fiscal year" is the fiscal year immediately following the most recent fiscal year.

~~(k)~~ L. "Proposed" means utility proposed.

~~(l)~~ M. "Rate" is as defined in Section 2, ~~Subdivision~~ subd. 5, Minnesota Public Utilities Act.

~~(m)~~ N. "Rate ~~B~~base" for the most recent fiscal year and the projected fiscal year shall be an original cost rate base.

~~(n)~~ O. "Short-term debt" means short-term security as defined in PSC 370.

~~(o)~~ P. "Test ~~Y~~year" is the twelve-month period selected by the utility for the purpose of expressing its need for a change in rates.

~~(p)~~ Q. "Total ~~U~~utility~~,~~" when used to describe information requirements, means either:

~~(1)~~ 1. the combined jurisdictional and, if any, nonjurisdictional gas or electric operations of a utility, and excluding nonutility property; or

~~(2)~~ 2. The gas or electric operations of a utility's wholly-owned subsidiary operating within Minnesota and excluding nonutility operations.

~~(q)~~ R. "Utility" is defined as in Section 2, ~~Subdivision~~ subd. 4, of the Minnesota Public Utilities Act and shall include the controlling corporation of any Minnesota public utility.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

PSC 400

~~(r)~~ S. "Weighted ~~C~~cost of ~~C~~capital" is the total cost of capital determined by weighting the cost of each component of the capital structure by the ratio of the capital represented by that component to total capital.

PSC 401 ~~RATE CHANGE PROCEDURES~~ Rate change procedures.

~~(a)~~ A. Notice of change in rates. A utility filing for a change in rates shall serve notice to the ~~C~~commission at least ~~thirty~~ ninety (90) days prior to the proposed effective date of the modified rates. Such notice shall include the items prescribed below for:

~~(1)~~ 1. General rates changes~~:~~.

~~(aa)~~ a. Proposal for change in rates as prescribed in PSC 402.

~~(bb)~~ b. Modified rates as prescribed in PSC 403.

~~(cc)~~ c. Expert opinions and supporting exhibits as prescribed in PSC 404.

~~(dd)~~ d. ~~Supplemental~~ ~~i~~Informational requirements as prescribed in PSC 405.

~~(ee)~~ e. Statement indicating the method of insuring the payment of refunds as prescribed in PSC ~~(b)~~B

~~(2)~~ 2. Miscellaneous rate changes~~:~~.

~~(aa)~~ a. Proposal for change in rates as prescribed by PSC 402.

~~(bb)~~ b. Substantiating documents and exhibits supporting the change requested.

~~(cc)~~ c. Modified rates as prescribed in PSC 403.

~~(dd)~~ d. Statement indicating the method of insuring the payment of refunds as prescribed in PSC 401~~(b)~~B.

~~(b)~~ B. Methods and procedures for refunding.

~~(1)~~ 1. In the event that a hearing is ordered by the ~~C~~commission as a result of the change in rates and proposed rates are suspended, the ~~C~~commission shall allow the utility to place suspended rates into effect~~,~~ as to services to be rendered on or subsequent to the effective date of the change in rates, subject to refund of the increase in rates or part thereof determined to be unreasonable by the ~~C~~commission provided that the payment of refunds is insured under either of the following methods:

~~(aa)~~ a. File with the ~~C~~commission on bond, signed by an authorized official of the utility, in an amount and with sureties approved by the ~~C~~commission; or

~~(bb)~~ b. File with the ~~C~~commission an unqualified agreement, signed by an authorized official of the utility, to refund any portion of the increase in rates determined to be unreasonable together with interest thereon.

~~(2)~~ 2. Any increase in rates or part thereof determined by the ~~C~~commission to be unreasonable shall be refunded to customers or credited to customers' accounts within ninety (90) days from the effective date of the ~~C~~commission order and determined in a manner prescribed by the ~~C~~commission including interest at the average prime interest rate computed from the effective date of the proposed rates through the date of refund or credit.

~~(c)~~ C. Procedures subsequent to notice~~:~~.

~~(1) If a notice or an amended notice of a change in rates is not complete in all material respects as prescribed by PSC 400-405, it shall not constitute a valid notice and a statement as to the deficiencies shall be sent to the utility within ten days of receipt of the notice or amended notice giving the utility an opportunity to serve an amended notice. If such a statement is not sent, the notice or amended notice shall be deemed complete.~~

~~(2)~~ 1. Any amended notice shall be served at least ninety (90) days prior to the proposed effective date of modified rates.

~~(3)~~ 2. If a notice or an amended notice is complete in all material respects as prescribed by PSC 400-405, the ~~C~~commission shall follow the procedures outlined in the Rules of Practice, PSC 500-517.

~~(4)~~ 3. Upon acceptance of the notice and the determination that a hearing shall be conducted, but before the proposed effective date of the modified rate schedules, the ~~C~~commission may, by written directive, explaining the reasons therefor, signed by the authority of the ~~C~~commission, and served upon the utility, suspend the operation of of the utility's modified rate schedules but not for a longer period than ninety (90) days beyond the time when the modified rates would otherwise go into effect unless the ~~C~~commission shall find that a longer time will be required, in which case the ~~C~~commission may further extend the period for not to exceed a total of nine (9) months.

~~(5)~~ 4. Such directive shall include authority for the utility to place suspended rates into effect, subject to refund, provided that the bond and sureties or that the agreement to refund as specified in PSC 401~~(b)(1)~~B.1 is approved by the ~~C~~commission.

~~(6) In the event that evidence is offered by a utility in a hearing which has been ordered by the Commission for the purpose of determining the reasonableness of proposed rates, such evidence which in the opinion of the Commission or presiding officer contradicts or materially alters information included in the notice as defined in PSC 402-404 will be received only upon good cause shown.~~

PSC 402 ~~PROPOSAL FOR CHANGE IN RATES~~ Proposal for change in rates. The utility's proposal for a change in rates shall summarize the notice of change in rates and shall include the following information~~:~~.

~~(a)~~ A. Name, address, and telephone number of the utility without abbreviation and the name and address and telephone number of the attorney for the utility, if there be one.

~~(b)~~ B. Date of filing and date modified rates are effective.

~~(c)~~ C. Description and purpose of the change in rates requested.

~~(d)~~ D. Effect of the change in rates expressed in gross revenue dollars and as a percentage of test year gross revenue ~~if appropriate~~.

~~(e)~~ E. Signature and title of utility officer authorizing the proposal.

PSC 403 ~~MODIFIED RATES~~ Modified rates.

~~(a)~~ A. All proposed changes in rates shall be shown by filing revised or new pages to the rate book previously filed with the ~~C~~commission and by identifying those pages which were not changed.

~~(b)~~ B. Each revised or new page of the rate book shall contain the information required for each page of the rate book and shall be in a format consistent with the currently filed rate book. In addition, each revised page shall contain the revision number and the page number of the revised page.

PSC 404 ~~EXPERT OPINIONS AND SUPPORTING EXHIBITS~~ Expert opinions and supporting exhibits.

~~(a)~~ A. Expert opinions and supporting exhibits shall include written statements, in question and answer format, together with supporting exhibits of utility personnel and other expert witnesses as deemed appropriate by the utility in support of the proposal.

~~(b)~~ B. At a minimum, expert opinions shall include a statement by the chief executive officer or other designated official in support of the proposal.

~~(c)~~ C. Supporting exhibits may be the same as those prescribed by PSC 405 or may make reference where appropriate to the ~~supplemental~~ information requirements prescribed by PSC 405.

PSC 405 ~~SUPPLEMENTAL INFORMATION REQUIREMENTS~~ Information requirements. The following information shall be supplied as a part of the utility's notice of a change in rates. Information requirements ~~(a), (b)(1), (c)(1), (d)(1), (e)(1) and (e)(2)~~ A, B.1, C.1, D.1, E.1 and E.2 as defined herein shall be supplied by all gas and electric utilities and all other ~~supplemental~~ information requirements prescribed by PSC 405 shall be supplied where applicable to the utility. Illustrative forms for filing this information shall be available from the Minnesota Department of Public Service.

~~(a)~~ A. A jurisdictional financial summary schedule shall be filed showing:

~~(1)~~ 1. The proposed rate base, operating income, overall rate of return, and the calculation of income requirements, income deficiency, and revenue requirements for the test year.

~~(2)~~ 2. The actual unadjusted average rate base consisting of the same components as the proposed rate base, unadjusted operating income, overall rate of return, and the calculation of income requirements, income deficiency and revenue requirements for the most recent fiscal year.

~~(3)~~ 3. The projected unadjusted average rate base consisting of the same components as the proposed rate base, unadjusted operating income under present rates, overall rate of return, and the calculation of income requirements, income deficiency, and revenue requirements for the projected fiscal year.

~~(b)~~ B. Rate base schedules~~:~~.

~~(1)~~ 1. A rate base summary schedule by major rate base component (e.g. plant in service, construction work in progress, and plant held for future use) showing the proposed rate base, the unadjusted average rate base for the most recent fiscal year and unadjusted average rate base for the projected fiscal year. The totals for this schedule shall agree with the rate base amounts included in the financial summary.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

PSC 405

~~(2)~~ 2. A comparison of total utility and Minnesota jurisdictional rate base amounts by detailed rate base component showing:

~~(aa)~~ a. Total utility and the proposed jurisdictional rate base amounts for the test year including the adjustments, if any, used in determining the proposed rate base.

~~(bb)~~ b. The unadjusted average total utility and jurisdictional rate base amounts for the most recent fiscal year and the projected fiscal year.

~~(c)~~ 3. Adjustment schedules, if any, showing the title, purpose and description~~,~~ and the summary calculations of each adjustment used in determining the proposed jurisdictional rate base.

~~(4)~~ 4. A summary by rate base component of the assumptions made and the approaches used in determining average unadjusted rate base for the projected fiscal year. ~~REA cooperatives may substitute Form 325, Schedule L for this filing requirement.~~ Such assumptions and approaches shall be identified and quantified into two categories: known changes from the most recent fiscal year and projected changes.

~~(5)~~ 5. For multi-jurisdictional utilities only, a summary by rate base component of the jurisdictional allocation factors used in allocating the total utility rate base amounts to the Minnesota jurisdiction. This summary shall be supported by a schedule showing for each allocation factor the total utility and jurisdictional statistics used in determining the proposed rate base and the Minnesota jurisdictional rate base for the most recent fiscal year and the projected fiscal year.

~~(c)~~ C. Ooperating income schedules~~:~~.

~~(1)~~ 1. A summary schedule of jurisdictional operating income statements which reflect proposed test year operating income, and unadjusted jurisdictional operating income for the most recent fiscal year and the projected fiscal year calculated using present rates.

~~(2)~~ 2. For multi-jurisdictional utilities only a schedule showing the comparison of total ~~company~~ utility and unadjusted jurisdictional operating income statement for the test year, for the most recent fiscal year and the projected fiscal year. In addition, the schedule shall provide the proposed adjustments, if any, to jurisdictional operating income for the test year together with the proposed operating income statement.

~~(3)~~ 3. For investor-owned utilities only, a summary schedule showing the computation of total utility and allocated Minnesota jurisdictional federal and state income tax expense and deferred income taxes for the test year, the most recent fiscal year, and the projected fiscal year. This ~~summary~~ summary schedule shall be supported by a detailed schedule, showing the development of the combined federal and state income tax rates.

~~(4)~~ 4. A summary schedule of adjustments, if any, to jurisdictional test year operating income and detailed schedules for each adjustment providing an adjustment title, purpose and description of the adjustment and summary calculations.

~~(5)~~ 5. A schedule summarizing the assumptions made and the approaches used in projecting each major element of operating income ~~for the projected fiscal year. REA cooperatives may substitute Form 325, Schedule L for this filing requirement.~~ Such assumptions and approaches shall be identified and quantified into two categories: known changes from the most recent fiscal year and projected changes.

~~(6)~~ 6. For multi-jurisdictional utilities only, a schedule providing, by operating income element, the factor or factors used in allocating total utility operating income to Minnesota jurisdiction. This schedule shall be supported by a schedule which sets forth the statistics used in determining each jurisdictional allocation factor for the test year, the most recent fiscal year and the projected fiscal year.

~~(d)~~ D. Rate of return/cost of capital schedules~~:~~.

~~(1)~~ 1. A rate of return/cost of capital summary schedule showing the calculation of the weighted cost of capital using the proposed capital structure and the average capital structures for the most recent fiscal year and the projected fiscal year. This information shall be provided for the unconsolidated parent and subsidiary corporations, or for the consolidated parent corporation.

~~(2)~~ 2. Supporting schedules showing the calculation of the embedded cost of long-term debt, if any, and the embedded cost of preferred stock, if any, at the end of the most recent fiscal year and the projected fiscal year.

3. Schedule showing average short-term securities for the proposed test year, most recent fiscal year and the projected fiscal year.

~~(e)~~ E. Rate structure and design information~~:~~.

~~(1)~~ 1. A summary comparison of test year operating revenue under present and proposed rates by customer class of service showing the difference in revenue and the percentage change.

~~(2)~~ 2. A detailed comparison of test year operating revenue under present and proposed rates by type of charge including minimum, demand, energy by block, gross receipts, automatic adjustments and other charge categories within each rate schedule and within each customer class of service.

~~(3)~~ 3. A cost of service study by customer class of service, by ~~rate block~~ geographic area, or other ~~appropriate~~ categorization as deemed appropriate for the change in rates requested, showing revenues, costs~~,~~ and profitability for ~~each rate category selected~~ class of service, geographic area, or other appropriate category, identifying the procedures and underlying rationale for cost and revenue allocations. Such study is appropriate whenever the utility proposes a change in rates which results in a material change in its rate structure.

~~(f)~~ F. Other supplemental information~~:~~.

~~(1)~~ 1. Annual report to stockholders or members including financial statements and statistical supplements for the most recent fiscal year. If a utility is not audited by an independent public accountant, unaudited financial statements will satisfy this filing requirement.

~~(2)~~ 2. For investor-owned utilities only, a schedule showing the development of the gross revenue conversion factor.

PSC 407

~~(3)~~ 3. For cooperatives only, REA Form 7 — Financial and Statistical Report for the last month of the most recent fiscal year.

~~(4)~~ 4. For cooperatives only, REA Form 7A — Annual Supplement to Financial and Statistical Report.

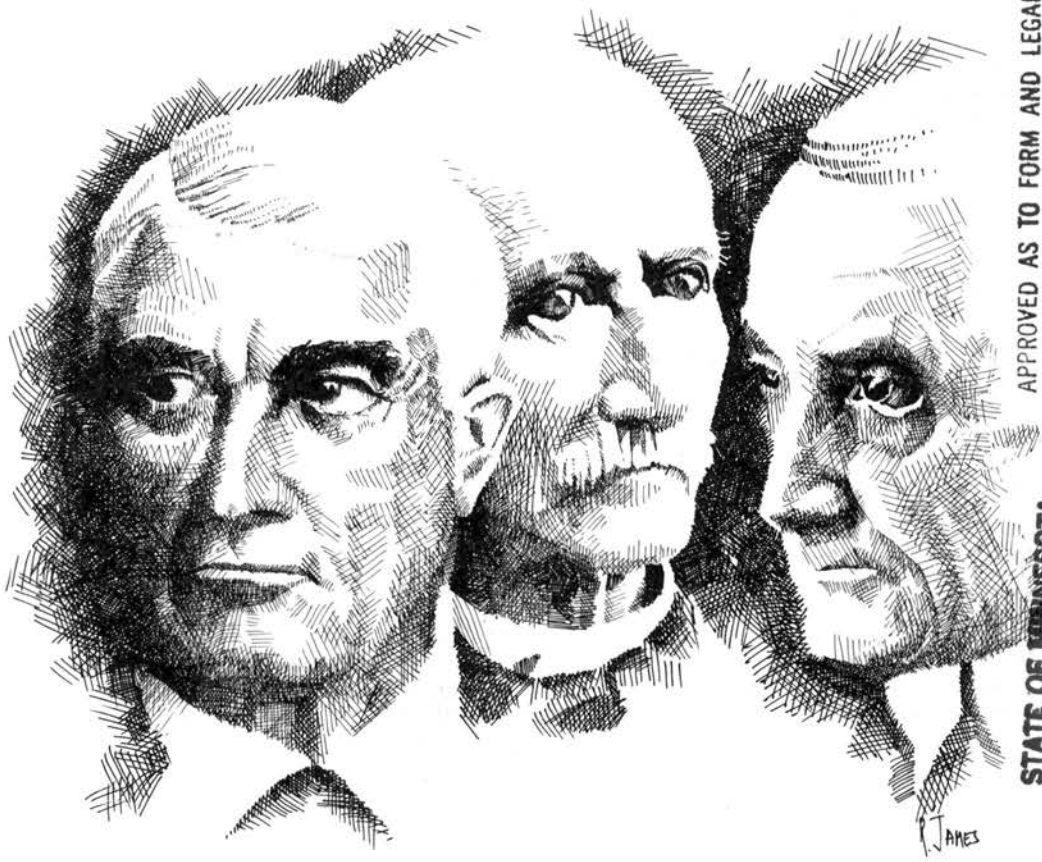
~~(5)~~ 5. For REA cooperatives only, REA Form 325 — Financial Forecast.

PSC 406 ~~ADDITIONAL INFORMATION REQUESTS~~ Additional information requests. Upon review of a utility's notice of a change in rates or subsequent thereto, the ~~C~~commission may request a utility to provide~~, within thirty days of request, or such longer period determined by the Commission to be reasonable for good cause shown, additional information to supplement the information prescribed by PSC~~ 405 additional information to supplement the information prescribed by PSC 405 within a reasonable time as determined by the commission.

PSC 407 Waiver. The commission may waive any requirement contained in these rules, upon written application, for good cause shown.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION —** Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

PLEASE NOTE: THESE RULES WERE ADOPTED AS THEY WERE PROPOSED.



APPROVED AS TO FORM AND LEGALITY
DEC. 8 1978 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY Jer E. Shirley
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC - 8 1978
Secretary of State
9:45AM

Dr. William Worral Mayo came to Minnesota from England in the 1850s and worked as a frontier doctor before helping to establish St. Mary's Hospital and the Mayo Clinic at Rochester, Minnesota. Along with his sons William James and Charles Horace, who received their medical degrees in the 1880s, he created the Mayo Foundation in 1915 in affiliation with the Graduate School of the University of Minnesota. Both centers are world famous for their contributions to medical science, both in practical application of skills and in education and research. (Drawing by Rick James)

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new or amended rule. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Cable Communications Board

Proposed Rules Governing Board Meetings, Franchising Procedures, Franchise Standards, and Cable Service Territories

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the conference room of

the Minnesota Cable Communications Board Offices, 500 Rice Street, St. Paul, Minnesota 55103, on October 17, 1978, commencing at 9:30 a.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. Peter Erickson, State Office of the Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8118, either before the hearing, within 5 working days after the close of the hearing, or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner.

The following is a summary of changes in board rules proposed for adoption:

Board Meetings:

Amend rules by deleting reference to Saturday meetings in even numbered months, so that regular meetings will be scheduled on the second Friday of every month, both even and odd numbered.

Franchising Procedures:

Amend rules by deleting the requirement that an invitation for applications contain a statement that ". . . applications must be made on a form specified by and available from the franchising authority."

Franchise Standards:

Amend rules by deleting the requirement that a franchise contain a provision that ". . . any changes in residential subscriber monthly service charges be approved by the franchising municipality in full public proceeding affording reasonable notice and a reasonable opportunity to be heard. . . ." Add a requirement that a franchise contain ". . . a provision stating the procedure by which residential subscriber service charges may be changed."

Cable Service Territories:

1. Amend definition of the term "cable service territory" by providing for proposed boundaries to include projected service extension areas in which service is not immediately feasible.

2. Amend procedures for establishing a cable service territory by:

a. including specific mention of expansion of existing cable service territories;

b. clarifying the language pertaining to cable communications company eligibility to propose a cable service territory;

c. substituting a requirement of written notice for the present requirement that a copy of the complete proposal be submitted to the appropriate regional development commission;

d. stating what information must be contained in a notice of the proposal of a cable service territory;

e. stating that the submitting of a cable service territory proposal to the board shall occur at substantially the same time as notice is given to interested parties, instead of 30 days after such notice is given as required under the existing rule;

f. clarifying what information shall be included in a cable service territory proposal.

g. stating that copies of the proposal shall be made available upon request to any interested party.

h. reducing from 30 days to 20 the minimum length of time between submitting a proposal and board approval or rejection of the proposal.

i. requiring the board to approve or reject a proposal at its first regularly scheduled meeting after expiration of the required comment period.

j. reducing from 60 days to 30 the time in which the board must issue a written statement of its reasons for rejection of a proposal.

3. Amend the section concerning factors and criteria to be used by the board in determining approval or rejection a cable service territory by:

a. deleting criteria relating to impact on plans or systems of nearby governmental units, to governmental and school district boundaries, and to technical feasibility;

b. adding criteria relating to impact on prospects for development of cable in areas within or contiguous to the proposed territory and relating to the possibility of overly expansive boundaries.

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4 MCAR § 4.026

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Cable Communications Board, 500 Rice Street, St. Paul, Minnesota 55103. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. §§ 238.05, subds. 2, 6 and 7 and 238.06, subd. 1 (1976).

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of the Hearing Examiner at a minimal charge.

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 who spends more than $250 per year, or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

August 8, 1978

Robert J. McDonald
Executive Director

Rules as Proposed

Chapter Two §§ 4.026-4.045 Board Meetings

4 MCAR § 4.026 Regular meetings. Regular meetings shall be held on the second Friday in each ~~odd numbered month and on the second Saturday in each even numbered~~ month. The time and place of each regular meeting shall be designated by the chairman of the board, who shall require the executive director of the board to give written notice of the time and place of each meeting to all members of the board not less than five days prior to any regular meeting. The chairman of the board may direct that any regular meeting be postponed or advanced and require the executive director to give written notice of the time and place of the meeting to all board members not less than five days prior to the regular date if postponed. The executive director shall give notice of the time and place of a regular, advanced or postponed meeting to the public at such time in advance thereof and in such form as under all the attendant circumstances is reasonable, provided that the executive director shall at least notify, three days in advance of any regular, advanced or postponed meeting, those members of the public who have caused their names, addresses and telephone numbers to be placed on file with the executive director of the board for purposes of such notice.

Chapter Seven §§ 4.111-4.120 Franchising and Franchise Renewal Procedures

4 MCAR § 4.111 Initial franchise.

A. The procedure described in 4 MCAR § 4.111 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. § 238.09, subd. 3, 4, 5 and 9 (1976), and rule of this chapter.

B. The proposed boundaries for all cable service territories must be approved by the board in accordance with rules of the board pertaining to cable service territories before a franchising authority shall adopt an invitation for applications for a cable communications franchise as described in 4 MCAR § 4.111 C. of this rule.

C. Except as provided in 4 MCAR § 4.111 A. of this chapter, no cable communications franchise may be awarded, nor may any application for any such franchise be invited, without the research and planning required by this rule. The franchising authority shall appoint a group of persons residing within the boundaries of the franchising authority as an advisory body to make recommendations on cable communications to the franchising authority. Persons commercially involved in cable communications activities or other communications media shall not serve as 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 communications franchise which invitation shall include, but not necessarily be limited to the following items:

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

2. criteria and priorities which the municipality has developed to review franchise applications;

3. information regarding applications for the cable communications franchise including:

~~a. A statement that the applications must be made on a form specified by and available from the franchising authority;~~

~~b.~~ a. the closing date for submission of applications;

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

~~d.~~ c. 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 board and make a copy available for public inspection at the city offices during normal business hours.

The franchising authority shall consult with the 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.

4 MCAR § 4.111

D. Not less than 45 days prior to the holding of the public meeting on the franchise as required by 4 MCAR § 4.111 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 board and on file with the executive director of the 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. 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 board on the date of initial publication together with an affidavit of publication.

E. A franchising authority shall require that all applications for a cable communications franchise be notarized and contain, but not necessarily be limited to, the following information:

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

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

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

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

b. schedule for activating two-way capability;

c. type of automated services to be provided;

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4 MCAR § 4.111

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

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

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

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

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

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

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

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

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

G. The franchise shall be granted by ordinance and within 10 days of the date on which the ordinance takes effect, the franchising authority shall forward a copy of the franchise ordinance to the board for approval in accordance with Minn. Stat. § 238.09, subd. 1 (1976), as amended by Laws of 1977, ch. 396, § 3.

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

I. Nothing contained in any rule of the board shall prohibit a franchising authority from franchising a nonprofit or municipally-operated system provided that pursuant to Minn. Stat. §§ 238.01-238.16 (1976), as amended by Laws of 1977, ch. 414, § 14, ch. 444, § 16, and ch. 396, §§ 3 and 4.

Chapter Eight §§ 4.121-4.130 Franchise Standards

4 MCAR § 4.121 Required contents of franchises. Where a cable communications franchise is awarded or renewed after April 1, 1973, except as provided in Minn. Stat., § 238.09, subds. 3, 4, 5, and 9, (1976), 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:

A. A statement that:

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

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

3. the franchise complies with the board's franchise standards; and

4. the franchise is non-exclusive.

B. A provision:

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

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

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

C. A provision stating that no signals of a Class IV cable communications channel may be transmitted from a sub-

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

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

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

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

G. A provision establishing the minimum system-wide channel capacity that the franchisee shall make available.

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 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 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 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. 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,

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4 MCAR § 4.121

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. A provision establishing the minimum number of public, educational, governmental and leased access channels that the franchisee shall make available.

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 that the franchisee shall, to the extent of the system's available channel capacity, 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 no charges shall be made for channel time or playback of prerecorded programming on at least one of the specially designated noncommercial public access channels required by the subdivision 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. 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 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 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 used by local educational authorities and local government of 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 to commercial or noncommercial users on a first come, nondiscriminatory basis if the demand for such time arises. The franchisee may also use this specially designated access channel for local origination during those hours when the channel is not in use by the general public, local educational authorities, 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.

3. The provision shall require that whenever the specially designated noncommercial public access channel, the specially designated educational access channel, the specially designated local government access channel, or the specially designated leased access channel required in 4 MCAR § 4.121 H.1.a., b., and c. of this rule or the spe-

cially designated access channel required in 4 MCAR § 4.121 H.2.a., of this rule 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 shall then have six months in which to provide a new specially designated access channel 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 the franchisee shall establish rules pertaining to the administration of the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel required in 4 MCAR § 4.121 H.1.a., b., and c. of this rule or in the specially designated access channel required in 4 MCAR § 4.121 H.2.a. of this rule. The rules shall be consistent with the requirements 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 4 MCAR § 4.121 H.1.a., b., and c. of this rule or the specially designated access channel required in 4 MCAR § 4.121 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. A provision establishing the minimum equipment that the franchisee shall make available for public 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 that the franchisee shall make readily available for public use at least the minimal equipment for the production of programming and playback of prerecorded programs for the specially designated noncommercial public access channel required by 4 MCAR § 4.121 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. 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. 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 that the franchisee shall 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. 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.

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

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

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

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4 MCAR § 4.121

~~2. b.~~ 3. For municipalities which are not within a major television market as defined by the Federal Communications Commission in Section 76.51 of its rules and regulations relating to cable television, and as the same may be modified from time to time, and are served by a cable system already constructed pursuant to a pre-existing franchise without the technical capacity for non-voice return communications, the municipality shall determine when and if the technical capacity for non-voice return communications is needed after consultation with the appropriate regional development commission and the Minnesota Cable Communications Board and appropriate public proceedings at the municipal level giving reasonable notice and a reasonable opportunity to be heard.

K. A provision requiring the franchisee to conform to all federal and state laws, rules and regulations regarding cable communications not later than one year after their promulgation.

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

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

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

M. A provision requiring the franchisee to indemnify and hold harmless the municipality at all times during the term of the franchise, and to maintain throughout the term of the franchise, liability insurance in such amount as the municipality may require insuring both the municipality and the franchisee with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the franchise.

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

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

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

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

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

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

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

The municipality shall provide the franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the franchisee a minimum of thirty days subsequent to receipt of the notice in which to correct the violation. The franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the franchise. In the event that the municipality determines to terminate the franchise, the franchisee shall have a period of thirty days, beginning the day next following the date of the conclusion of the public hearing at which the termination of the franchise is considered, within which to file an appeal with the board, pursuant to Minn. Stat. § 238.14 (1976). During such thirty day period and until the board determines the appeal, if an appeal is taken, the franchise shall remain in full force and effect, unless the term thereof sooner expires. If the board approves of the action of the municipality, the franchise shall terminate immediately; if the board disapproves of the action of the municipality, the franchise shall remain in full force and

effect during the term thereof unless sooner terminated in accordance with law or these rules. Any such appeal to the board is a contested case to which the board is not a party.

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

T. A provision that there be full description of the system proposed for construction and a schedule showing:

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

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

b. that energized trunk cable shall be extended substantially throughout the authorized area within five years after commencement of construction; and that persons along the route of the energized cable will have individual "drops" within the same period of time, if the same is desired;

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

2. that for municipalities which will be served by a cable communications system having less than 100 miles of cable:

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

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

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

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

V. Unless otherwise provided for by local law, a provision that the franchisee shall not open or disturb the surface of any street, sidewalk, driveway or public place for any purpose without first having obtained a permit to do so from the proper municipal authority, for which permit the municipality may impose a reasonable fee to be paid by the franchisee. The lines, conduits, cables and other property placed in the streets and public places pursuant to such permit shall be located in the streets or portions of the streets and public places as shall be determined by the proper municipal authority. The franchisee shall, upon completion of any work requiring the opening of any street or public place, restore the same, including the paving and its foundations, to as good a condition as formerly, and in a manner and quality approved by the proper municipal authority, and shall exercise reasonable care to maintain the same thereafter in good condition. Such work shall be performed with due diligence and if the franchisee shall fail to perform the work promptly, to remove all dirt and rubbish and to put the street or public place back in good condition, the municipalities shall have the right to put the street or public place back into good condition at the expense of the franchisee and the franchisee shall upon demand, pay to the

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municipality the cost of such work done or performed by the municipality, together with an additional sum as liquidated damages to be determined by the municipality.

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

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

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

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

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

BB. A provision creating an advisory body to be appointed by the governing body of the municipality to monitor the performance of the franchisee in executing the provisions of the franchise. The advisory body may be a joint undertaking of more than one municipality served by the same system from a single headend as long as at least one representative from each municipality served is on the committee.

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

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

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

DD. A provision incorporating by reference as a minimum the technical standards promulgated by the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations relating to cable communications systems, as the same

now provide and may hereafter be amended or modified from time to time. The results of any tests required by the Federal Communications Commission shall be filed within 10 days of the conduct of such tests with the franchising authority and the board.

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

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

GG. A provision establishing how the franchising authority and the cable communications company shall determine who is to bear the costs of any required special testing.

Chapter Sixteen §§ 4.221-4.236 Cable Service Territories

4 MCAR § 4.221 Policy. These rules shall be liberally construed to effectuate the purposes and provisions of Minn. Stat. § 238.05 (1976).

4 MCAR § 4.222 Definitions.

A. As used in these rules, the following phrase shall have the meaning given it herein unless a different meaning clearly appears in the text.

B. ~~"Cable service territory" means that geographic area, as defined by existing political or metes and bounds description, within which cable communications service(s) is (are), or is (are) scheduled to be, made available from a single cable communications system.~~ "Cable service territory" means the geographic area, as may be defined by political, metes and bounds, or other appropriate description, which encompasses a cable communications system's entire projected service area. The boundaries may include areas in which, in the judgement of the board and the party proposing the cable service territory, extension of service is not immediately feasible but may be in the future.

4 MCAR § 4.223 Approved cable service territories. The board hereby recognizes as an approved cable service territory the area of any municipality or group of contiguous municipalities which have granted franchise(s) to a single cable communications company and for which a special certificate of confirmation has been or may be issued pursuant to Minn. Stat. § 238.09, subds. 3, 4, or 5 (1976), or for which an interim certificate of confirmation has been or may be issued pursuant to Minn. Stat. § 238.09, subd. 9 (1976).

4 MCAR § 4.224 Expansion of approved cable service territories. The board shall approve or disapprove the expansion of an approved cable service territory. Any such expansion shall be subject to the procedures provided for in this chapter.

4 MCAR § 4.225 Board procedures.

A. Pursuant to the requirements of 4 MCAR § 4.111 B., a cable service territory or expansion of a cable service territory may be proposed to the board by a municipality, a group of municipalities in a joint powers agreement, a cable communications ~~operator~~ applicant. company, or any party who has announced an intention to form a cable communications company. ~~At least 30 days prior to submitting a cable service territory proposal to the 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 Board.~~ The party proposing the cable service territory or expansion of a cable service territory shall deliver written notice of its proposal to the governing body of each municipality which is within or contiguous to the proposed cable service territory and to the appropriate regional development commission or the Metropolitan Council. At substantially the same time as written notice is delivered, the party proposing the cable service territory or expansion of a cable service territory shall cause to be published in a newspaper of general circulation in the proposed territory, a notice of its proposal of a cable service territory to the board. The

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4 MCAR § 4.225

written and published notices shall include at least the following information:

1. identity of the party proposing the cable service territory or expansion of a cable service territory;

2. date, time and place of the board meeting at which the proposal is expected to be considered;

3. a statement that interested parties may submit written or oral comments on the proposal to the board;

4. name, address and telephone number of a person representing the party making the proposal who may be contacted for the purpose of obtaining information or making comments about the proposal;

5. a brief description of the boundaries of the proposed cable service territory or expansion of a cable service territory.

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 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 of 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 Board may deem necessary.~~ All proposals shall be submitted to the board at substantially the same time as notice is provided pursuant to Paragraph A and shall be in the form of a written application containing at least the following information:

1. a map (county or township map if available) showing the boundaries of the total proposed cable service territory and boundaries of the area within this territory in which service is to be initially provided;

2. population and number of dwelling units in the total service territory and in the area in which service is expected to be initially provided;

3. population density data or other information to demonstrate to the board that all areas in which service is, or may become feasible are being included in the cable service territory and in the area within the cable service territory that is to be initially served;

4. proof of written notice required by Paragraph A, which proof may be in the form of copies of the written notices, an affidavit, or other such certificate of service;

5. an affidavit of publication of the required notice, which may be submitted separately, but no later than five days prior to the board meeting at which the proposal is to be considered.

C. A copy of the proposal shall be ~~submitted simultaneously to the Metropolitan Council or the appropriate regional developments commission, the Board and the governing body of each adjacent municipality,~~ made available upon request to any interested party. If the proposed cable service territory or expansion of a cable service territory, in whole or part, is within the seven county metropolitan area, a copy of the proposal shall be submitted to the Metropolitan Council and to each included or contiguous municipality at the same time as the proposal is submitted to the board.

D. ~~The appropriate regional development commission shall have 30 days to submit written comment on the proposal to the Board, which period of time may be extended by the 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 Board shall also accept written comment from any other interested persons during these periods.~~ Before considering a proposal, the board shall allow a comment period of at least 20 days from the date of compliance with the notice requirements set forth in Paragraph A of this rule or submission of the proposal to the board, whichever occurs last. The appropriate regional development commission, an affected municipality or cable communications company or any other party having clear interest shall, upon good cause shown, be allowed 30 additional days for comment. If the proposed boundaries, in whole or part, are within the seven county metropolitan area, the Metropolitan Council shall be allowed 90 days from the date a copy of the proposal is submitted to it to review and comment on the proposed boundaries.

E. ~~The Board shall take initial action within sixty days after the thirty day period set forth in D. Before taking final action, the Board shall hold a public meeting upon reasonable notice and accept oral and written comments.~~ The board shall accept written and oral comment and approve or reject a proposed cable service territory at its first regularly scheduled meeting after expiration of the applicable comment period, or additional comment period if allowed. The

board may, upon good cause shown, postpone action on a cable service territory proposal until its next regularly scheduled meeting.

F. If the board determines not to approve a proposal, it shall specify its reasons for rejection in a written statement within ~~sixty~~ thirty days of such rejection~~.~~, or at its first regularly scheduled meeting thereafter.

G. A proposal rejected by the 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.

4 MCAR § 4.226 Factors and criteria to be considered. ~~The Board shall consider the following factors in determining its approval or rejection of a proposal for a cable service territory: the impact of such a territory on the Cable Board's plans or systems of other governmental units which are contiguous to or in close proximity to the proposed boundaries; the impact of the proposed territory on plans and reports adopted by the Metropolitan Council or other appropriate regional development commission; the economic viability of such proposed territories; the relationship of the cable service territory to cooperative arrangements between municipalities; the relationship of the cable service territory to municipal, county and school district boundaries; the technical feasibility of a cable communications system in the proposed cable service territory; and any other factors the Board deems relevant.~~ In determining its approval or rejection of a proposal for establishment or expansion of a cable service territory, the board shall consider the following: impact on prospects for development of cable communications service in areas which are within and contiguous to the proposed cable service territory; whether the proposed boundaries encompass any areas which would be more appropriately included in another cable service territory; impact of the proposed territory on any related policies or plans adopted by the Metropolitan Council or other appropriate regional development commission; the economic viability of the proposed cable service territory or expansion of an existing cable service territory; any other factors the board or applicant deems relevant.

4 MCAR §§ 4.227-4.236 Reserved for future use.

Housing Finance Agency

Proposed Rules Relating to the Home Improvement Loan, Accessibility Improvement Grant, and Warranty Claim Programs

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held at Conference Room D, Veterans Service Building, St. Paul, Minnesota, on September 27, 1978 commencing at 9:30 a.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 or by mail to Steve Mihalchick, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104 either before the hearing or within 5 working days after the close of the hearing, or 20 days if ordered by the hearing examiner.

The proposed rules, if adopted, would establish guidelines for the Home Improvement Loan, Accessibility Improvement Grant, and Warranty Claim Programs, as authorized by Minn. Stat. §§ 462A.05, subd. 14, 462A.05, subd. 15, and 462A.05, subd. 16 respectively.

A copy of the proposed rules is attached hereto and one additional free copy may be obtained by writing to the Minnesota Housing Finance Agency, 333 Sibley, St. Paul, Minnesota, 55101. Additional copies will be available at the door at the date of the hearing.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

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12 MCAR § 3.051

Notice is hereby given that 25 days prior to the hearing a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of the Hearing Examiners at a minimal charge.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) 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 a year or five (5) hours per month for lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone: (612) 296-5615.

July 31, 1978

James Solem
Executive Director

Rules as Proposed

12 MCAR § 3.051 Eligible applications. Applications for Home Improvement Loans shall satisfy the following requirements:

A. Each applicant must be an individual fee owner or contract for deed purchaser of, or the holder of a life estate in, the property to be improved. All persons who, individually or collectively, possess the type of ownership upon which the application is based, or whose income is to be included for the purpose of determining the Adjusted Income, and spouses of all such persons, must join in the application and must execute the loan documents. However, occupancy of the property by the applicant shall not be required.

B. Each applicant must be a Person or Family (including nonrelated individual adults) of Low or Moderate Income.

C. Each applicant must be a reasonable credit risk with the ability to pay the loan obligation, as determined by the Agency or by the lending institution, if any, servicing the loan on behalf of the Agency.

D. The structure to be improved must be at least 15 years old, or in need of repair to correct damage resulting from a natural disaster, or in need of repair to correct defects or deficiencies which are hazardous to health or safety, or to directly improve energy efficiency.

E. The structure to be improved must not be in violation of applicable zoning ordinances or other applicable land use guides.

F. The property must be used primarily for residential purposes and must not contain more than six dwelling units. Mobile homes and trailers shall not be eligible for Home Improvement Loans.

G. Home Improvement Loan proceeds must be used to finance only improvements upon or in connection with existing structures.

H. All improvements must be reasonably capable of being completed (except for causes beyond the applicant's reasonable control, such as fire, strike, and shortages of materials) within nine months of the date of the first disbursement of funds pursuant to the Home Improvement Loan.

I. At the time of application, conventional financing must not be available from private lenders upon equivalent terms and conditions.

J. Each applicant who is an owner of residential housing occupied in whole or in part by renters, shall enter into such agreement as the Agency shall require to ensure that for the term of the loan Persons and Families of Low and Moderate Income will occupy at least one of the units in the case of a two unit residence, two of the units in the case of a three unit residence, three of the units in the case of a four unit residence, and four of the units in the case of a five or six unit residence.

12 MCAR § 3.063 — Amount of grant. The amount of the rehabilitation grant shall not exceed the lesser of

A. $5,000, or in the case of an Accessibility Improvement Grant, $7,500, or

B. the actual cost of the work performed, or

C. that portion of the cost of rehabilitation which the Agency determines cannot otherwise be paid by such person or family without spending an unreasonable portion of the income of such person or family thereon.

If a grant is made both for Accessibility Improvements and for other eligible improvements pursuant to these Rules, then the portion of the grant which is for such eligible improvements shall not exceed $5,000, and the aggregate cost

of such other eligible improvements and the Accessibility Improvements shall not exceed $7,500.

12 MCAR § 3.065 D. Reletter as 12 MCAR § 3.071.

12 MCAR § 3.065 E. Reletter as 12 MCAR § 3.065 D.

12 MCAR § 3.069 Emergency Home Improvement Grant Fund. The Agency may establish a separate fund known as the Emergency Home Improvement Grant Fund. Grants from the Emergency Home Improvement Grant Fund shall be made to eligible applicants ~~provided that the dwelling contains defects or deficiencies which~~

~~A. are the direct result of an occurrence which took place within a reasonably recent period of time prior to the grant application, and~~

~~B. if left uncorrected would render the dwelling immediately uninhabitable.~~

for rehabilitation necessitated by an emergency occurrence whereby the dwelling:

A. was rendered immediately uninhabitable, or

B. suffered severe structural damage, or

C. became imminently hazardous to a Handicapped Person.

An emergency occurrence is an event which took place within a reasonably recent period of time prior to the grant application and which caused a defect or deficiency in the dwelling proposed to be rehabilitated, or which resulted in a resident of that dwelling becoming handicapped.

Before an application to the Emergency Home Improvement Grant Fund is accepted, the Administering Entity in the region in which the dwelling is located must establish that it has no funds available from its regular grant fund and, if applicable, that no funds are available from the Accessibility Improvement Fund, to cover the cost of repairs. Such funds may also be used to correct serious defects or deficiencies in the dwelling other than the specific defect or deficiency which rendered the dwelling immediately uninhabitable. Grants from the Emergency Home Improvement Fund shall be made to eligible applicants pursuant to the procedures set forth in Chapter Seven of these Rules, provided however, that the Emergency Home Improvement Fund shall not be subject to the allocation requirements of 12 MCAR § 3.061 D.

12 MCAR § 3.070 Accessibility Improvement Fund. With funds appropriated by the Legislature from time to time for that purpose, the Agency may establish an Accessibility Improvement Fund from which Home Improvement Grants may be made to eligible applicants for the purpose of making Accessibility Improvements to dwelling units occupied by Handicapped Persons of low or moderate income, as defined in 12 MCAR § 3.002 O.3. Grants from the Accessibility Improvement Fund shall be made pursuant to the procedures set forth in Chapter 7 of these Rules, provided, however, that the Accessibility Improvement Grant Fund shall not be subject to the reservation and allocation requirements of 12 MCAR § 3.061.

12 MCAR § 3.071 Maximum grant.

A. No property shall be eligible for a Home Improvement Grant if it has been improved by such a grant within the five-year period next preceding the date on which application for such grant is made, except ~~in extraordinary circumstances relating to~~ (i) for rehabilitation necessitated by damage to the property as a result of unforeseen events beyond the control of the applicant or the failure of plumbing, heating, or electrical systems, as determined by the Agency in its sole discretion, or (ii) for Accessibility Improvements to aid a Handicapped Person who became handicapped or established residency in the dwelling after the date of approval of the initial Home Improvement Grant.

B. A dwelling which was occupied by a Handicapped Person and improved prior to September 1, 1977, by Home Improvement Grant Funds shall be eligible for an Accessibility Improvement Grant within the five-year period following receipt of the original Home Improvement Grant, provided that the cumulative total of all grants for Accessibility Improvements for a single dwelling permitted under this subsection shall not exceed $7,500 within such five-year period.

12 MCAR § 3.072 Definitions.

A. With respect to Home Improvement Grants pursuant to Chapter Six of these Rules, "Handicapped Person" means a person who has a permanent physical condition which is not correctable and which substantially reduces such person's ability to function in a residential setting. A

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person with a physical condition which does not require the use of a device to increase mobility shall be deemed a Handicapped Person only upon the written certification of a licensed physician that the physical condition substantially limits such person's ability to function in a residential setting.

B. "Accessibility Improvement" means an interior or exterior improvement or modification to a residential dwelling in Minnesota which is necessary to enable a Handicapped Person to function in a residential setting.

Chapter 12 Warranty Claim Program

12 MCAR § 3.140 Defects covered by Warranty Claim Program. The Agency may make payments to correct defects in construction or rehabilitation of residential housing financed by Agency mortgage loans for Limited-Unit Developments or Home Improvement Loans, if the defects:

A. result in actual damage to load-bearing portions of the dwelling (including damage due to subsidence, expansion, or lateral movement of the soil), to the extent that their load-bearing function is affected and the use of the dwelling for residential purposes is vitally affected or is imminently likely to be vitally affected; or

B. create an emergency condition under which the safety or the residential use and livability of the dwelling is so substantially impaired (or is imminently likely to be so substantially impaired) that an average reasonable person would not, economic considerations aside, remain in the dwelling; or

C. create an imminent hazard for a Handicapped Person.

12 MCAR § 3.141 Eligible recipients for Warranty Claim Payments. To qualify for a payment the applicant must satisfy the following requirements:

A. The applicant must be a Person or Family of Low or Moderate Income as defined in 12 MCAR § 3.002 O.1. at the time of the application for the payment.

B. The applicant must either:

1. have received an Agency mortgage loan for a Limited-Unit Development or an Agency Home Improvement Loan for the construction or rehabilitation of the dwelling containing the defect; or

2. have purchased, from a recipient of an Agency mortgage loan for a Limited-Unit Development or an Agency Home Improvement Loan, a residential dwelling constructed or rehabilitated through the proceeds of such loan.

C. The applicant must be an individual fee owner or, in the case of an Agency Home Improvement Loan, a contract for deed purchaser of, or holder of a life estate in, the dwelling containing the defect and must occupy the dwelling as the applicant's principal place of residence.

D. The applicant must have taken all steps necessary to maintain the Agency approved warranties and all other applicable warranties in full force and effect.

E. The applicant must agree to cooperate with the Agency in any action to recover from the person responsible for the defect, execute all documents necessary to secure the Agency's right of subrogation to the applicant's claim, and assist the Agency in the prosecution of any legal action for breach of warranty that the Agency may deem appropriate.

12 MCAR § 3.142 Eligible applications — rehabilitation. An application for Agency payment under this Chapter which is based upon rehabilitation financed by an Agency Home Improvement Loan must demonstrate that the defects:

A. if caused by faulty workmanship or defective materials due to noncompliance with building standards, arose within one year after completion of the rehabilitation work; or

B. if caused by faulty installation of plumbing, electrical, heating, or cooling systems, or if affecting the load-bearing portions of the dwelling, arose within two years after completion of the rehabilitation work.

In no event may an application be made to the Agency more than two years after the issuance of the Home Improvement Loan, or after any applicable statute of limitations has expired.

12 MCAR § 3.143 Eligible applications — Limited-Unit Mortgage Loans. An application for Agency payment under this Chapter which is based upon new construction financed by an Agency mortgage loan for a Limited-Unit Development must show that the defects:

A. if caused by faulty workmanship or defective materials due to noncompliance with building standards, arose within one year after the date of initial occupancy of the dwelling by the loan recipient; or

B. if caused by faulty installation of plumbing, electrical, heating, or cooling systems, arose within two years

after the date of initial occupancy of the dwelling by the loan recipient; or

C. if affecting the load-bearing portions of the dwelling, arose within four years after the date of initial occupancy of the dwelling.

In no event may an application be made to the Agency more than four years after the issuance of the mortgage loan, or after any applicable statute of limitations has expired.

12 MCAR § 3.144 Exclusions. Agency payments under this Chapter will not extend to the following:

A. loss caused by defects in design, installation, or materials which the loan recipient or subsequent purchaser supplied, installed, or had installed under his/her direction;

B. secondary loss including personal injury or property damage, other than damage to the dwelling itself, caused by the defect or omission; incidental loss such as the cost of alternate shelter during repair of the dwelling; and consequential loss such as the diminution in the value of the dwelling caused by the defect or omission;

C. loss from normal wear and tear;

D. loss from normal shrinkage caused by drying of the dwelling within tolerances of building standards;

E. loss from dampness and condensation due to insufficient ventilation after occupancy;

F. loss from negligence, improper maintenance, or alteration of the dwelling by parties other than the contractor;

G. loss from changes in grading of the ground around the dwelling by parties other than the contractor;

H. landscaping or insect loss;

I. loss from failure to maintain the dwelling in good repair;

J. loss which the loan recipient or purchaser has not taken timely action, whenever feasible, to minimize;

K. accidental loss usually described as acts of God, including, but not limited to: fire, explosion, smoke, water escape, windstorm, hail or lightning, falling trees, aircraft, vehicles, flood, and earthquake, except when the loss is caused by defects in construction or rehabilitation financed by Agency loans;

L. loss from soil movement which is compensated by legislation or covered by insurance;

M. loss due to soil conditions where construction is done upon land which is owned by the loan recipient or subsequent purchaser and which was obtained by him/her from a source independent of the contractor.

Livestock Sanitary Board

Proposed Rules Governing Importation of Goats, Control of Goat Brucellosis in Minnesota, and Control of Goat Tuberculosis in Minnesota

Notice of Hearing

Notice is hereby given that a public hearing in the above entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1976), in Room 116A, Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota, commencing at 10:00 a.m., or as soon thereafter as possible, Thursday September 28, 1978, and continuing until all interested or affected persons have had an opportunity to be heard.

Relevant statements or written material may be submitted for the record at the hearing or to Peter C. Erickson, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, phone 612-296-8118, before the hearing, until the record is closed 5 to 20 working days after the close of the hearing, as ordered by the Hearing Examiner.

Statutory authority to promulgate the proposed rules is vested in the Livestock Sanitary Board by Minn. Stat. § 35.03 (1976).

The Livestock Sanitary Board proposes to amend 3 MCAR § 2.003, Importation of Goats, to permit entry of

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goats without tests for brucellosis if from Certified Brucellosis Free Goat Herds, without tests for tuberculosis if from Accredited Tuberculosis Free Goat Herds.

The Livestock Sanitary Board proposes to adopt rule 3 MCAR § 2.022, Control of Goat Brucellosis in Minnesota, to provide for establishment of Certified Brucellosis Free Goat Herds and for quarantine and retesting of infected herds and suspects and to adopt rule 3 MCAR § 2.023, Control of Goat Tuberculosis in Minnesota to provide for the establishment of Accredited Tuberculosis Free Goat Herds and for quarantine and retest of infected herds and suspects.

Free copies of the proposed rules are available and can be obtained from the Minnesota Livestock Sanitary Board, 555 Wabasha, St. Paul, Minnesota 55102. Additional copies will be available at the hearing.

A Statement of Need explaining why the board feels the proposed rules are necessary and a Statement of Evidence outlining the testimony they will introduce will be filed with the Hearing Examiner at least 25 days prior to the hearing and will be available for public inspection.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within 5 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 exemptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone 612-296-5615.

August 24, 1978

J. G. Flint, D.V.M.
Secretary and Executive Officer

Rules as Proposed

3 MCAR § 2.003 Importation of goats. ~~No goats shall be imported into the State of Minnesota unless accompanied by a health certificate issued by an approved or accredited veterinarian. The health certificate shall include a description of each animal included in the shipment by age, sex, color, and markings. It shall also include a statement that the goats are free from symptoms of contagious, infectious, or communicable disease, and a record of a negative test for tuberculosis and Bangs disease, (brucellosis), such test to be made not more than 30 days previous to date of importation. A copy of the health certificate approved by the sanitary officials of the state of origin shall be immediately forwarded to the office of the State Livestock Sanitary Board.~~

A. Goats shall not be imported into Minnesota from herds under quarantine for infectious diseases except that goats may be sent to slaughtering establishments operating under federal inspection from such herds and areas when accompanied by a shipping permit.

B. All goats imported into Minnesota for purposes other than slaughter shall be accompanied by a health certificate showing:

1. Individual identification by eartag number, tattoo or registration number for all goats six months of age and over.

2. Results of tests required in D. 1 and D. 2.

3. Certified brucellosis-free herd number and date of last herd test and accredited tuberculosis-free herd number and date of last herd test, if originating from such herds.

C. A copy of the health certificate approved by the animal health official of the state of origin shall be immediately forwarded to the State Livestock Sanitary Board.

D. All goats six months of age and over imported into Minnesota shall be:

1. Negative to an official brucellosis agglutination test within 30 days prior to importation or originate from a Certified Brucellosis-Free Goat Herd.

2. Negative to an intradermal tuberculin test within 60 days of importation or originate from an Accredited Tuberculosis-Free Goat Herd.

3 MCAR § 2.022 Control of goat brucellosis in Minnesota. (All new material)

A. Definitions.

1. Test and testing mean and refer to the Brucella Buffered Antigen (BBA or Card) test or other tests approved by the board on serums from blood samples collected and submitted by a veterinarian.

2. Negative means a goat showing no reaction on the test.

3. Suspect means a goat showing a reaction to a test that does not qualify as a reactor or negative.

4. Reactor means a goat showing a positive reaction

on the test or proven infected by other diangostic procedures. Diagnosis may be deferred on a goat showing a positive reaction when held under quarantine until subjected to additional tests and investigation to determine its disease status.

5. Other tests means test other than the card test approved by the Board which shall be conducted and interpreted as outlined in 3 MCAR § 2.011, Eradication of Bovine Brucellosis in Minnesota.

6. Negative herd means one in which all goats six months of age and over are tested and negative and which herd is not under an infected herd quartantine.

7. Suspect herd means one in which one or more suspects but no reactors were diagnosed on the last test and which is not under an infected herd quarantine.

8. Infected herd means one in which one or more reactors has been disclosed and which has not regained a negative herd status.

9. Certified Brucellosis-Free Goat Herd means one for which the owner holds an unrevoked and unexpired Certified Herd certificate.

B. General requirements.

1. An agreement to comply with these rules shall be signed by the owner and filed with the Board.

2. Testing.

a. Tests shall be made at owner's expense except tests conducted to release quarantines may be made by veterinarians of the Board or U.S.D.A. if personnel and funds are available.

b. All goats six months of age and over shall be included on a herd test.

c. Goats tested shall be individually identified by ear tag, tattoo or registration number.

3. Quarantines on infected herds.

a. A herd shall be under quarantine when owner receives notice that reactors were disclosed. An official quarantine will be issued to the owner.

b. No goats shall be removed from a quarantined herd unless a permit is issued by the Board for shipment directly to a slaughter plant where the federal government maintains meat inspection.

c. The Board may authorize the movement of goats from a quarantined herd to a public stockyard or to a rendering plant.

d. Quarantines are released after the Board has been furnished evidence that the reactors have been destroyed and that the herd has passed two consecutive negative tests. The first test may be conducted no sooner than 30 days after reactors are destroyed and the second test no sooner than 90 days after first negative test.

4. Quarantines on suspects held in suspect herds.

a. Suspects shall be under quarantine when owner receives notice that suspects were disclosed. An official quarantine will be issued to the owner.

b. No suspects shall be removed from quarantine unless a permit is issued by the Board for shipment directly to a slaughter plant where the federal government maintains meat inspection.

c. The Board may authorize the movement of suspects to a public stockyard or to a rendering plant.

d. Quarantines are released if suspects are negative to a retest or after the Board has been furnished evidence that suspects have been destroyed. If suspects are not available for retest, the herd shall be tested by a veterinarian of the Board or U.S.D.A. if personnel and funds are available.

C. Certified Brucellosis-Free Goat Herds.

1. Initial certification.

a. When two consecutive negative herd tests of all goats six months of age and over are conducted not less than ten months or more than 14 months apart, the herd will be certified for a period of one year and a certified herd certificate issued.

b. The expiration date on the certificate will be one year after date of final test for herd certification.

c. Tests made for release of quarantine shall not be used for herd certification.

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3 MCAR § 2.022

2. Recertification.

a. A negative herd test on all goats six months of age and over within 60 days prior to each anniversary of the certificate date is required for continuous Certified Herd status. If the negative recertification test is conducted within 60 days following the anniversary date, the recertification is for 12 months from the anniversary date.

3. Additions to certified herds and herds in process of certification shall:

a. Originate from certified herds.

b. Originate from negative herds tested within one year; added animals shall also be negative to a test conducted more than 60 days following herd test and within 30 days prior to joining the herd.

c. Goats from all other herds shall be negative to a test made within 30 days prior to being brought to premises and then kept in isolation until negative to a retest made no sooner than 30 days from previous test.

d. Additions to herd shall not receive certified herd status until they have been members of the herd for at least 30 days and are included in a complete herd test.

4. Temporary transfer of males or females for breeding to a certified herd or a herd in the process of certification.

a. The animals shall originate from a herd with the status described in C. 3. a. or 3. b. of this rule.

5. Goats originating directly from a certified herd will be eligible for public exhibitions without the test for brucellosis required by 3 MCAR § 2.040, Public Exhibition of Livestock and Poultry in Minnesota, and it is recommended that such goats be isolated from the certified herd until tested negative 30 to 60 days after their return.

6. Revocation of certified brucellosis-free certificate.

a. Certificate will be cancelled by the Board if:

(1) One or more reactors are disclosed in the herd.

(2) One or more reactors disclosed in animals removed from the herd within 30 days following date such animals were removed.

(3) One or more animals are added to the herd contrary to C. 3. or 4. of this rule.

b. If a certificate is cancelled, the herd may be recertified providing the requirements for initial certification described in C. 1. of this rule are met.

D. Tests other than those made under the agreement described in B. 1. of this rule to establish certified brucellosis-free goat herds.

1. The provisions of B. 2., B. 3., and B. 4. shall apply to all goats tested in Minnesota if such tests disclose suspects or reactors.

3 MCAR § 2.023 Control of goat tuberculosis in Minnesota. (All new material)

A. Definitions.

1. Test and testing mean the intradermic injection of tuberculin in the caudal fold by an accredited veterinarian or a veterinarian of the U.S.D.A. and the injection site observed and palpated 72 hours after injection. On all goats which respond to the caudal fold injection, a comparative cervical test will be made within ten days or after 60 days following date of caudal fold injection by a veterinarian of the Board or U.S.D.A.

2. Negative means no tissue response to the caudal fold injection or a negative diagnosis on comparative cervical test.

3. Suspect means a suspect diagnosis on comparative cervical test.

4. Reactor means a reactor diagnosis on comparative cervical test.

5. Negative herd means no reactors or suspects were diagnosed in the last herd test and the herd is not under an infected herd quarantine.

6. Suspect herd means one or more suspects, but no reactors were diagnosed in the last herd test and the herd is not under an infected herd quarantine.

7. Infected herd means one or more reactors were diagnosed on the last herd test, or the herd is under an infected herd quarantine.

8. Accredited Tuberculosis-Free Goat Herd means one for which the owner holds an unrevoked and unexpired accredited herd certificate.

B. General requirements.

1. An agreement to comply with these rules shall be signed by the owner and filed with the Board.

2. Testing.

a. Tests, except comparative cervical tests, shall be made at owner's expense. Tests conducted to release quarantines may be made by veterinarians of the Board or U.S.D.A. if personnel and funds are available.

b. All goats six months of age and over shall be included on a herd test.

c. Goats tested shall be individually identified by ear tag, tattoo or registration number.

d. Veterinarians shall report to the Board by telephone immediately following observation when goats respond to caudal fold injection. Negative tests shall be reported within 14 days of observation on forms furnished by the Board.

3. Quarantines.

a. Suspects maintained in suspect herds shall be under quarantine until diagnosed negative or reactor by a comparative cervical test which test may be made 60 days after suspect is disclosed. An official quarantine will be issued to the owner.

b. Infected herds shall be under quarantine which will remain in force until reactors are destroyed and the herd passes three consecutive negative tests. The first test to be made no sooner than 60 days following date reactors are destroyed, the second test no sooner than 60 days following the first negative test, and the third test no sooner than six months following the second negative test. An official quarantine will be issued to the owner.

c. No goats shall be removed from a quarantined herd unless a permit is issued by the Board for shipment directly to a slaughter plant where the federal government maintains meat inspection.

d. The Board may authorize the movement of goats from a quarantined herd to public stockyard or to a rendering plant.

C. Accreditation of goat herds tuberculosis-free.

1. Initial accreditation.

a. When two consecutive negative herd tests of all goats six months of age and over are conducted not less than ten months or more than 14 months apart, the herd will be accredited for a period of one year and an accredited herd certificate issued.

b. The expiration date on the certificate will be one year after date of final test for herd accreditation.

2. Reaccreditation.

a. A negative herd test on all goats six months of age and over within 60 days prior to each anniversary of the certificate date is required for continuous accredited herd status. If the negative reaccreditation test is conducted within 60 days following the anniversary date, the reaccreditation is for 12 months from the anniversary date.

3. Additions to accredited herds and herds in process of accreditation shall:

a. Originate from accredited herds.

b. Originate from negative herds tested within one year; added animals shall also be negative to a test conducted more than 60 days following herd test and within 60 days prior to joining herd.

c. Goats from all other herds shall be negative to a test made within 60 days prior to being brought to premises and then kept in isolation until negative to a retest made no sooner than 60 days from previous test.

d. Additions to herd shall not receive accredited herd status until they have been members of the herd for at least 60 days and are included in a complete herd test.

4. Temporary transfer of males or females for breeding to an accredited herd or a herd in the process of accreditation.

a. The animals shall originate from a herd with the status described in C. 3. a. or 3. b. of this rule.

5. Goats originating directly from an accredited herd will be eligible for public exhibitions without the test for tuberculosis required by 3 MCAR § 2.040, Public Exhibition of Livestock and Poultry in Minnesota and it is recommended that such goats be isolated from the accredited herd until tested negative 60 to 120 days after their return.

6. Revocation of accredited tuberculosis-free certificate.

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3 MCAR § 2.023

a. Certificate will be cancelled if:

(1) One or more reactors are disclosed in the herd.

(2) One or more reactors disclosed in animals removed from herd within 30 days following date such animals are removed.

(3) One or more animals are added to the herd contrary to C. 3. or C. 4. of this rule.

b. If a certificate is cancelled, the herd may be reaccredited providing the requirements for initial accreditation described in C. 1. of this rule are met.

D. Tests other than those made under the agreement described in B. 1. of this rule to establish Accredited Tuberculosis-Free Goat Herds.

1. The provisions of B. 2. and B. 3. shall apply to all goats tested in Minnesota if such tests disclose suspects or reactors.

STATE CONTRACTS

Pursuant to the provisions of Laws of 1978, ch. 480, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.



Often sighted in Minnesota marshlands, the yellow-headed blackbird is as easily identified by its unique call, which sounds like a squeaky hinge, as it is by its coloration. (Drawing by Jane Gstalder)

Department of Administration

Bureau of Real Estate and Transportation Management

Notice of Request for Proposals for Realty, Economic and Functional Analyses for Office Space Study

The Department of Administration is requesting proposals for a study of Minnesota State office space needs and physical proximity requirements, a system to update these forecasts, economic strategies for the state, economic impacts of strategies on metropolitan locations, alternative courses of action and recommendations to best meet the state's requirements.

Responders are to estimate the total costs and time needed to complete such a study.

A Request for Proposals is to be obtained by calling or writing:

John Walley
Assistant to the Commissioner
Department of Administration
2nd Floor, Administration Building
50 Sherburne Avenue
Saint Paul, Minnesota 55155
(612) 296-6778

Proposal responses must be submitted no later than 4:30 p.m. on October 2, 1978.

Energy Agency Administration Division

Notice of Request for Proposals for Auditing Services

The Minnesota Energy Agency is seeking the services of a Certified Public Accountant to audit grants made under the Energy Conservation and Production Act and to provide an expression of opinion on related financial reports. The audit is to be performed in accordance with the U.S. Department of Energy's ''Audit Guide for State Energy Conservation Grants.'' For further information contact:

Mary M. Elverum
Manager, Administrative Support
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 296-8276

Final submission date for completed proposals is September 22, 1978.

Department of Health Environmental Health Division

Notice of Request for Proposals for Consultant Services

The Minnesota Department of Health is requesting proposals from consultants to perform the following function:

Visually inspect electrical grounds on conductive objects (e.g., fences and buildings) in the right-of-way of the ± 400 kilovolt direct current transmission line being constructed by Cooperative Power Association and the United Power Association. The transmission line runs from the North Dakota border in Traverse County to the Dickinson Converter Station near Delano, Minnesota.

The contract will be for a period of two months from the date of project authorization. One contract will be made for the sum of $5,000.00. Persons wishing the Request for Proposals package as well as persons submitting proposals should contact: Larry D. Gust, Research Scientist, Section of Health Risk Assessment, Minnesota Department of Health, 717 S. E. Delaware Street, Minneapolis, Minnesota 55440, telephone (612) 296-5508.

Final date for the completed proposals is September 18, 1978, at 4:30 p.m.

Pollution Control Agency Water Quality Division

Notice of Extension of Deadline for Receipt of Proposals

The Pollution Control Agency announced two Notices of Request for Proposals concerning nuclear power plants in the July 31, 1978 *State Register*. Those notices were entitled:

1. Notice of Request for Proposals for Assessment of Radioactive Air Emission Control and Monitoring at Minnesota Nuclear Power Plants.

2. Notice of Request for Proposals for Assessment of Risk Associated with Radioactive Air Emissions from Minnesota Nuclear Power Plants and Efficacy of Environmental Radioactive Monitoring Programs.

The deadline for proposals is extended to September 29, 1978.

Persons desiring further information should contact:

Dr. John W. Ferman
Nuclear Engineer
Division of Water Quality
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113

Department of Public Welfare Mental Health Bureau

Notice of Request for Proposals Concerning Cost Containment Measures within the State Hospital/Nursing Home System

Notice is hereby given that the Department of Public Welfare, Mental Health Bureau, is soliciting professional assistance in implementing a pilot project focusing on more efficient utilization of support staff involved in laundry, dietary, housekeeping and maintenance functions at Ah-Gwah-Ching Nursing Home, Brainerd State Hospital, and Fergus Falls State Hospital. Estimated cost of this project is $200,000.

Responders, interested in obtaining additional information regarding the specific scope of the project, should contact:

Harvey G. Caldwell
Assistant Commissioner
Mental Health Bureau
Department of Public Welfare
4th Floor, Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155
Telephone: (612) 296-2791

All proposals must be received by 3:30 p.m., September 18, 1978.

OFFICIAL NOTICES



Aviator Charles A. Lindbergh, Jr. spent most of his boyhood summers on the family farm south of Little Falls. After his non-stop flight from New York to Paris in 1927, the house was stripped by souvenir hunters. The Lindbergh family donated the house and 110-acre farm to the state in 1931 as a memorial to Charles A. Lindbergh, Sr., who served in Congress from 1907 to 1917 and twice ran for governor of Minnesota. (Drawing by Ron Hunt reprinted, with permission, from *A Living Past: 15 Historic Places in Minnesota*, copyright 1973, 1978 by the Minnesota Historical Society.)

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture Food, Meat and Poultry Division

Notice of Intent to Solicit Outside Opinion on Rules Relating to Nonalcoholic Beverages; Definitions; Standards; Restrictions; Labeling; and Manufacturing Requirements

Notice is hereby given, pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6 (Supp. 1977) that the Minnesota Department of Agriculture is considering amending Agr 4801–4804 relating to the above-captioned matter.

All interested parties desiring to submit data or views relating to said rule amendments should address their comments to the department by writing or calling the person designated below. Evidence submitted for consideration

should be pertinent to the matter at hand. Any materials received by the department will become a part of the hearing record.

All interested parties may submit comments to:

Bernard J. Steffen, Director
Food, Meat and Poultry Division
530 State Office Building
Saint Paul, Minnesota 55155
(612) 296-2627

Any materials submitted shall be reviewed and considered by the Department of Agriculture during the preparation of proposed amendments. Notice of the public hearing on this matter will be published in the *State Register* and given to all interested parties registered with the Secretary of State in accordance with the provisions of the Administrative Procedure Act.

All comments and materials must be received by 4:30 p.m., September 29, 1978.

Under the provisions of Minn. Stat. § 15.0412, subd. 6 (Supp. 1977), any individual representing persons or associations attempting to influence administrative action, such as the adoption of proposed rules, must register with the Ethical Practices Board as a lobbyist within five days of the commencement of such activity. The Ethical Practices Board is located at Room 41, State Office Building, Saint Paul, Minnesota 55155.

Bill Walker
Commissioner

Department of Commerce Board of Architecture, Engineering, Land Surveying and Landscape Architecture

Notice of Intent to Solicit Outside Information Regarding Proposed Adoption of a Rule Governing the Intern Development Program

Notice is hereby given that the Board of Architecture, Engineering, Land Surveying and Landscape Architecture is seeking information or opinion from sources outside the Board in preparing to propose the adoption of a rule governing the participation of potential applicants for admission to the Architectural Registration Examination in the Intern Development Program (IDP). The Intern Development Program is a training program designed to qualify its participants for the entry into practice of architecture. Any interested persons may submit data or views on the subject in writing or orally to:

Lowell E. Torseth
Executive Secretary
Board of AELS & LA
500 Metro Square Building
St. Paul, Minnesota 55101
(612) 296-2388

Any written material received by the Board shall become part of the hearing record in the event the rule governing this subject is promulgated.

Livestock Sanitary Board

Notice of An Addition to the Hearing Notice for Proposed Rules of the Livestock Sanitary Board Governing Importation of Goats (3 MCAR § 2.003), Control of Goat Brucellosis in Minnesota (3 MCAR § 2.022) and Control of Goat Tuberculosis in Minnesota (3 MCAR § 2.023)

The following paragraph is to be added to and incorporated in the Hearing Notice published on these rules in this issue of the *State Register* (3 S.R. 313):

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Department of Transportation Administration Division

Notice of Application and Opportunity for Hearing Regarding Petition to Abandon and Remove ICC Track No. 37 at Austin, Minnesota

Notice is hereby given that Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company with offices at 900 First National Bank Building, Minneapolis, Minnesota 55402 has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. § 219.741 (1977 Supp.) and § 218.041, subd. 3 (10) (1977 Supp.) to abandon and remove ICC track No. 37 at Austin, Minnesota.

The petition recites among other matters that: "Petitioner has operated and maintained ICC Track No. 37 at Austin, Minnesota. . . ." "The property served by this track is now leased to Rayman Lumber Company, who has requested the removal of this track. . . ." *** "This trackage is no longer required by any shippers or receivers of freight by rail, and its removal will therefore not harm or prejudice any shippers."

Any person may file a written objection to the proposed action by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before September 18, 1978. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

Upon receipt of a written objection, the Commissioner will, with respect to the named petitioner, set the matter down for hearing. If no objections are received, the Commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a Party to this matter must submit a timely Petition to Intervene to the Hearing Examiner pursuant to Minn. Reg. HE 210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

August 18, 1978

Jim Harrington
Commissioner of Transportation

Notice of Application and Opportunity for Hearing Regarding Removal of Spur Trackage Known as "Sanatorium Spur" at Walker, Minnesota

Notice is hereby given that the Burlington Northern Inc., with offices at 176 East Fifth Street, St. Paul, Minnesota 55101 has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. § 219.741 (1977 Supp.) and § 218.041, subd. 3 (10) (1977 Supp.) to remove 426.3 track feet of spur trackage known as the "Sanatorium Spur" at Walker, Minnesota. The petition recites among other matters that: "Your applicant has maintained for several years a spur track . . . known as the Sanatorium Spur at Walker, Minnesota." "Said spur track has not been used since the year 1972 and the Department of Public Welfare by letter dated July 12, 1978 . . . indicates no objection to removal of the trackage." "Said trackage served exclusively the Department of Public Welfare and its removal will not inconvenience any member of the shipping public nor does public convenience and necessity require the continued maintenance of said trackage."

Any person may file a written objection to the proposed action by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before September 18, 1978. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

Upon receipt of a written objection, the Commissioner will, with respect to the named petitioner, set the matter down for hearing. If no objections are received, the Commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a Party to this matter must submit a timely Petition to Intervene to the Hearing Examiner pursuant to Minn. Reg. HE 210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any

other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

August 18, 1978

Jim Harrington
Commissioner of Transportation

Metropolitan Health Board

Notice of Meetings

The Metropolitan Health Board of the Twin Cities Area meets regularly on the second and fourth Wednesdays of each month at 4 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101. The subcommittees of the Metropolitan Health Board usually meet at various starting times on these same days prior to the Metropolitan Board meetings. The public is cordially invited to attend any of these meetings. For additional information or questions on any of these meetings with regard to time, locations or agendas, please contact the Metropolitan Health Board, 300 Metro Square Building, St. Paul, Minnesota 55101, telephone 291-6352.

Coral Houle, Chairperson
Metropolitan Health Board

Minnesota Teachers Retirement Association

Notice of Meeting of Board of Trustees

The Board of Trustees, Minnesota Teachers Retirement Association, will hold a meeting on Friday, September 15, 1978, at 9 a.m. in the office of the Association, 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, to consider matters which may properly come before the Board.

STATE OF MINNESOTA
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STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE CABLE COMMUNICATIONS BOARD GOVERNING BOARD MEETINGS, FRANCHISING PROCEDURES, FRANCHISE STANDARDS, AND CABLE SERVICE TERRITORIES

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the conference room of the Minnesota Cable Communications Board Offices, 500 Rice Street, St. Paul, Minnesota 55103, on October 17, 1978, commencing at 9:30 a.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. Peter Erickson, State Office of the Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8118, either before the hearing, within 5 working days after the close of the hearing, or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner.

The following is a summary of changes in Board rules, and are proposed for adoption:

Board Meetings-

Amend rules by deleting reference to Saturday meetings in even numbered months, so that regular meetings will be scheduled on the second Friday of every month, both even and odd numbered.

Franchising Procedures-

Amend rules by deleting the requirement that an invitation for applications contain a statement that " . . . applications must be made on a form specified by and available from the franchising authority."

Franchise Standards-

Amend rules by deleting the requirement that a franchise contain a provision that " . . . any changes in residential subscriber monthly service charges be approved by the franchising municipality in full public proceeding affording reasonable notice and a reasonable opportunity to be heard. . . ." Add a requirement that a franchise contain " . . . a provision stating the procedure by which residential subscriber service charges may be changed."

Cable Service Territories-

1. Amend definition of the term "cable service territory" by providing for proposed boundaries to include projected service extension areas in which service is not immediately feasible.

2. Amend procedures for establishing a cable service territory by:
   a. including specific mention of expansion of existing cable service territories.

   b. clarifying the language pertaining to cable communications company eligibility to propose a cable service territory.

   c. substituting a requirement of written notice for the present requirement that a copy of the complete proposal be submitted to the appropriate regional development commission.

   d. stating what information must be contained in a notice of the proposal of a cable service territory.

   e. stating that the submitting of a cable service territory proposal to the Board shall occur at substantially the same time as notice is given to interested parties, instead of 30 days after such notice is given as required under the existing rule.

   f. clarifying what information shall be included in a cable service territory proposal.

   g. stating that copies of the proposal shall be made available upon request to any interested party.

   h. reducing from 30 days to 20 the minimum length of time between submitting a proposal and Board approval or rejection of the proposal.

   i. requiring the Board to approve or reject a proposal at its first regularly scheduled meeting after expiration of the required comment period.

   j. reducing from 60 days to 30 the time in which the Board must issue a written statement of its reasons for rejection of a proposal.

3. Amend the section concerning factors and criteria to be used by the Board in determining approval or rejection a cable service territory by:

a. deleting criteria relating to impact on plans or systems of nearby governmental units, to governmental and school district boundaries, and to technical feasibility.

b. adding criteria relating to impact on prospects for development of cable in areas within or contiguous to the proposed territory and relating to the possibility of overly expansive boundaries.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Cable Communications Board, 500 Rice Street, St. Paul, Minnesota 55103. Additional copies will be available at the door on the date of the hearing. The Agency's authority to promulgate the proposed rules is contained in Minn. Stat. §§238.05, subds. 2, 6 and 7 and 238.06, subd. 1 (1976).

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of the Hearing Examiner at a minimal charge.

Please be advised that Minnesota Statutes, Chapter 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 that $250 per year for lobbying, or any individual who is engaged for pay or authorized to spend money by another individual or association who spends more that $250 per year, or five hours per month at lobbying. The Statute provides certain exceptions. Questions should be directed to Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

Robert J. McDonald

Robert J. McDonald
Executive Director

Date: August 8, 1978

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NOV 21 1978
OFFICE OF HEARING
EXAMINERS

CERTIFICATE OF BOARD'S

ADOPTION OF RULES RESOLUTION

I Gertrude Ulrich, do hereby certify that I am Chairman of the Cable Communications Board, a Board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Cable Communications Board, duly and properly called and held on the 17th day of November, 1978; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting or is incorporated by reference into said minutes and attached thereto as an addendum, and has not been rescinded or modified.

BE IT RESOLVED, that the proposed adoption of amendments to the rules as proposed in Volume 3, Number 8, State Register (3 S.R. 296-309) relating to Board Meetings, franchising procedures, franchise standards and cable service territories be and hereby are approved and adopted, pursuant to authority vested in us by Minn. Stat. Chapter 238, and that Mrs. Gertrude Ulrich, Chairman of the Minnesota Cable Communications Board, be and hereby is authorized to sign an order adopting these rules and revisions.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 17th day of November, 1978.

Gertrude Ulrich
Chairman

Eugene A. Schroeder
Attest by one other member

SLB:s
11/14/78

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

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EXAMINERS

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES OF THE
CABLE COMMUNICATIONS BOARD
GOVERNING BOARD MEETINGS,
FRANCHISING PROCEDURES,
FRANCHISE STANDARDS, AND
CABLE SERVICE TERRITORIES

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Peter Erickson, Hearing Examiner, on the 17th day of October, 1978, at 9:30 a.m. in the conference room of the Minnesota Cable Communications Board Offices, 500 Rice Street, after proper notice required by M.S. 1976, Section 15.0412, as amended by Laws, 1977, Chapter 443 §2 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

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

NOW, THEREFORE, IT IS ORDERED that these rules identified as the amendments to the rules as proposed in Volume 3, Number 8 of the State Register (3S.R. 296 - 309), relating to Board Meetings, franchising procedures, franchise standards and cable service territories are adopted this 17th day of November, 1978, pursuant to authority vested in the Board by Minn. Stat.238.06, subd. 1, and delegated to me by Resolution Number 30 of the Board adopted by the Board at a regular meeting held on November 17, 1978.

STATE OF MINNESOTA
CABLE COMMUNICATIONS BOARD

BY Gertrude Ulrich
Gertrude Ulrich

STATE OF MINNESOTA

CABLE COMMUNICATIONS BOARD

FINDINGS OF FACTS AND
CONCLUSIONS OF THE
MINNESOTA CABLE
COMMUNICATION BOARD

The above-entitled matter came on for hearing before Peter Erickson, Hearing Examiner, on the 17th day of October, 1978 at 9:30 a.m. in the conference room of the Minnesota Cable Communications Board Offices, 500 Rice Street, after proper notice required by M.S. 1976, Section 15.0412, as amended by Laws, 1977, Chapter 443 § 2 was served upon all persons, associations and other interested groups registered with the Secretary of State of that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having considered all of the evidence adduced and upon the records, files and proceedings herein, and having reviewed the Report of the Hearing Examiner, the Cable Communications Board hereby adopts the Findings of Fact and Conclusions of the Hearing Examiner and the same is hereby incoporated by reference.

STATE OF MINNESOTA
CABLE COMMUNICATIONS BOARD

BY _____
W. D. Donaldson
Executive Director
Minnesota Cable Communications
Board

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE CABLE COMMUNICATIONS BOARD GOVERNING BOARD MEETINGS, FRANCHISING PROCEDURES, FRANCHISING STANDARDS, AND CABLE SERVICE TERRITORIES

AFFIDAVIT OF MAILING

Michael Perry, being first duly sworn, deposes and says:

That on the 1st day of September, 1978, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Michael Perry
Chief
Central Mail Section

Subscribed and sworn to before me this 5th day of September, 1978.

ROBERT [illegible] NARDI
Notary Public
Ramsey County, Minn.
My Commission Expires
May 23, 1983

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE CABLE COMMUNICATIONS BOARD GOVERNING BOARD MEETINGS, FRANCHISING PROCEDURES, FRANCHISING STANDARDS, AND CABLE SERVICE TERRITORIES

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Sherry Blohm Traetow, being duly sworn on oath deposes and says:

1) That she is an employee of the Cable Communications Division, of the State of Minnesota.

2) That on the 31st day of August, 1978, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 31st day of August, 1978, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

FURTHER AFFIANT SAYETH NOT.

Sherry Blohm Traetow
Administrative Assistant
Minnesota Cable Communications Board

Subscribed and sworn to before me this 31st day of August, 1978.

ROBERT R. NARDI
Notary Public
Ramsey County, Minn.
My Commission Expires
May 23, 1982

STATE OF MINNESOTA

CABLE COMMUNICATIONS BOARD

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE CABLE COMMUNICATIONS BOARD GOVERNING BOARD MEETINGS, FRANCHISING PROCEDURES, FRANCHISE STANDARDS, AND CABLE SERVICE TERRITORIES

STATEMENT OF NEED AND REASONABLENESS

The above captioned rules are all amendments to existing rules of the Cable Board (MCCB). The statutory authority of the Cable Communications Board to promulgate the above captioned rules is set forth in Minn. Stat 238.06 subd. 1 (1976).

The need for the adoption of these proposed rules is set forth in detail below. To support the proposed rules, the Board will rely on the information and argument presented in the statement and on rules, laws and cases referred to therein.

MCCB 4.026 Board Meetings

Under MCCB Rule 4.026 as presently written, regular Board meetings are scheduled for the second Friday in each odd numbered month and the second Saturday in each even numbered month. In practice, however, the Board routinely advances even month meetings from Saturday to Friday. The last Saturday meeting was held April 24, 1976. The current practice has proven to be the most convenient arrangement for members of the Board and for other parties who most regularly have reason to participate in Board meetings. Moreover, no member of the public or any other interested party has requested that Saturday meetings be held during the past two years.

The proposed amendment to Rule 4.026 would simply reflect the current practice by deleting reference to Saturday meetings. Amending the rule will save the costs of time, duplicating and postage which are involved in giving notice in the even numbered months that the Board's monthly meeting has been rescheduled from the day indicated by rule. These notices go to approximately 170 persons - people who have caused their names to be placed on file for purposes of receiving such notices.

Franchising Procedures

Introduction

MCCB Rule 4.111 sets forth the procedures which municipalities must follow in awarding initial franchises. Briefly, the procedures call for the establishment of a cable service territory pursuant to MCCB 4.225 and, subsequently, for the municipality to appoint a citizen advisory body, to define the services and design features which are desired in a cable communications system, to publicly invite applicants for the franchise, to consider all applications in a public hearing, and to grant the franchise by ordinance.

MCCB 4.111 C. (3)(a)

As part of the franchising process, a municipality is required to issue an Invitation for Applications. MCCB 4.111 C. outlines the items which must be included in such an invitation. Subsection C. (3)(a) requires, "a statement that the applications must be made on a form specified by and available from the franchising authority." The proposed amendment would delete this requirement.

The proposed amendment is in harmony with a similar amendment to MCCB 4.111 D. which was promulgated in the Board's most recent previous rulemaking. This rule sets forth the minimum requirements for a notice of the availability of an invitation for applications for a franchise. Prior to being amended, the rule required that such notice contain " . . . a statement that the application for a cable communications franchise must be submitted . . . on a standard form to be supplied by the franchising authority." This requirement was deleted. In support of this change, the Board's statement of need said:

> The original intent for requiring applicants to use a standardized form designed by the municipality was to insure that information submitted by competing applicants would be easy to compare. However, staff experience has been that requiring a standardized form has <u>not</u> been an aid to municipalities in their deliberations of applications. It is proposed, therefore, that the requirement for a municipality to receive information on a standardized form from competing applicants be deleted. It is important to note that the requirements that certain types of information be submitted by the applicants to the municipality is retained in MCCB 111 E.

The reasoning for the currently proposed deletion of subsection C.(3)(a) is exactly the same. The amendment should have been made in the previous rulemaking and, but for an oversight, would have been.

Franchise Standards

MCCB 4.121 D.

MCCB Rule 121 D. requires that a franchise contain a provision specifying all subscriber charges and limits the duration of residential subscriber contracts to 12 months. The rule also requires:

> . . . a provision stating that any changes in residential subscriber monthly service charges be approved by the municipality in full public proceeding affording reasonable notice and a reasonable opportunity to be heard. . . .

The requirement quoted above was ruled invalid by a Ramsey County District Court judge in the matter of Medelco Inc. v. Minnesota Cable Communications Commission in a judgment entered March 6, 1978. The Court held that the Board lacks statutory authority to regulate cable television rates, including the process by which rates are determined (attached Exhibit A. - Findings of Fact, Conclusions of Law and Order).

To bring Rule 4.121 D. into conformance with the outcome of the Medelco lawsuit, the Board proposes to delete the invalidated part of the rule. In its place, the Board proposes to add a requirement that a franchise contain a provision stating the procedure by which residential subscriber service charges may be changed. This addition is needed to reflect the explicit mandate of Minn. Stat. 238.12, subd. 2 (1976) that, "Such rates may not be changed except as provided for in the approved franchise."

Experience has demonstrated that municipal officials often are not aware of their rights and obligations with respect to rate setting. Inclusion of the proposed new language serves an educational purpose in this regard. The municipal officials and cable companies who deal with the Board tend to rely heavily on the rules, rather than the statute, for information about state requirements. Therefore, the Board believes it is important for the statutory mandate to be reflected in the rules.

Cable Service Territories (MCCB 4.221-4.236)

Introduction

Minn. Stat. 238.05, subd. 7 states:

> The board shall approve or reject boundaries for specific territories upon receipt of proposals from municipalities or cable communications operator applicants, after consultation with the metropolitan council or the affected regional planning commission. 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.

Chapter sixteen of the Board's rules (MCCB 4.221-236) exists to carry out the statutory mandate cited above. The Board is proposing amendments to Chapter sixteen, affecting the definition of a cable service territory (MCCB 4.222), the procedures for establishing or expanding cable service territories (MCCB 4.225) and the factors and criteria to be considered by the Board in determining its approval or rejection of proposed cable service territories. (MCCB 4.226)

MCCB 4.222 Definitions

The need to amend the definition of a cable service territory arises from the fact that the existing definition can be misconstrued as meaning:

1) that service areas are exclusive; and
2) that a cable communications company is obligated to provide service in all parts of the approved cable service territory, regardless of whether or not it is presently economically feasible to do so.

The impression of exclusivity within service areas is given by the words, " . . . that geographic area . . .within which cable communications service(s) is (are) or is (are) scheduled to be made available from a single cable communications system." [Emphasis added]. It is desirable to change this part of the definition so as to avoid the appearance of conflict with Minn. Stat. 238.05, subd. 2(b), which requires the board to "prescribe minimum standards for inclusion in franchises, including, ". . . a requirement that no such franchise may be exclusive. . . ." The amended definition being proposed, like the existing definition, is designed to assure that the entire area to be served by a cable communications system, irrespective of political or franchise boundaries, will be encompassed by the boundaries of one cable service territory. However, the proposed amendment, unlike the existing wording, avoids giving the impression of precluding a municipality from awarding a franchise to a second cable communications company for the same service area.

As for the question of service extension obligations, the proposed amendment is a clarification of intent. It is desirable for cable service territory boundaries to be drawn to encompass not only the area to be served immediately by the cable communications company ultimately franchised to provide such service, but also areas into which service may be extended in the future. If cable service territories were not drawn with "room for growth," they would have to be revised every time new residential development or changing technology made it feasible to extend service out a little bit further into the outskirts of a franchise area. Such a requirement would be unnecessarily burdensome and might well impede the extension of cable communications service. Despite the reasons for extended cable service territories, experience with the present rules has demonstrated that parties proposing cable service territories (either municipalities or cable communications companies) are sometimes reluctant to include more area than can be served immediately, due to the fact that the wording of the present definition can be read to imply that a cable communications company must have a schedule for extending service to all areas within the approved cable service territory. The proposed amendment to the definition makes it clear that a cable service territory may include areas not presently considered to be feasible.

MCCB 4.225 Board Procedures

The proposed amendments to the procedures for establishing or expanding a cable service territory are intended to shorten, simplify, and clarify the procedures.

Presently, a minimum of 60 days is required to complete the procedures for establishing or expanding a cable service territory. This time factor arises from the fact that, before submitting a cable service territory proposal to the Board, the party making the proposal must give written and published notice, locally, of its intent to submit such a proposal (MCCB 4.225 A.). Once the proposal is submitted, the Board must allow an additional 30 days to elapse before acting on the proposal (MCCB 4.225 D.). If the proposed territory is within the seven county Twin Cities Metropolitan Area, the Board must allow at least 90 days for comment (MCCB 4.225 D.; Minn. Stat. 238.05, subd. 7).

The Board proposed to shorten the time factor, by:

1) allowing cable service territories to be submitted to the Board at the same time as written and published notice is given to interested parties locally; (see proposed changes, MCCB 4.225A) and

2) reducing from 30 days to 20 the amount of time which must elapse before the proposal may be acted upon by the Board. The 90 day comment period allowed by statute for cable service territory proposals within the seven county metro area would be retained in the rules. Even though the 90 day requirement is a duplication of a requirement that is explicitly set forth in the statute, retention of the requirement in the rules serves a useful purpose. It reminds parties of the distinction between requirements in Twin Cities metro area vs non-metro requirements. Also, deletion of language that is currently stated in the rules could easily be misconstrued as an elimination of the requirement. (see proposed changes, MCCB 4.225D)

The time factor in Board procedures would be further shortened by requiring the Board to approve or reject a proposal at the first regularly scheduled Board meeting after expiration of the applicable comment period. The rules would also be amended by requiring the Board to state its reasons for rejecting a proposal within 30 days of the decision, instead of within 60 days as provided in the existing rule (see proposed changes, MCCB 4.225 E and F).

The Board submits that these changes are necessary to allow cable service territories to be established or expanded within a reasonable amount of time. Establishing a cable service territory is only the beginning step in the franchising or extension authorization procedures prescribed by MCCB rules and by statute [[MCCB 4.111 B. - regular franchising procedures); (MCCB 4.113 B (2) - alternative franchising procedures); [Minnesota Laws 1978, Chapter 771 (238.17, subd. 1)] - provision of service to extension areas]]. Yet, the time factor in the cable service territory procedures presently works out to constitute a majority of the total time requirements for issuing a franchise or extension permit to a cable communications company, whichever of the procedures referenced in the previous sentence is applicable.

Other proposed amendments to the cable service territory procedures are needed for the reasons explained below:

1) The words, "or expansion of a cable service territory," or similar phrasing, are proposed to be added throughout the procedures in order to make it clear, through emphasis, that the procedures for expanding an existing cable service territory are the same as those for establishing a new cable service territory. This change is merely a clarification, since MCCB 4.224 currently mentions that the procedures are the same.

2) MCCB 4.225 A. states that a cable service territory may be proposed by a municipality, a group of municipalities acting under a joint powers agreement, or by a "cable communications operator applicant." The Board proposes to amend the rule by replacing the words just quoted with the words, "company, or any party who has announced an intention to form a cable communications company." The Board considers the existing language to be unclear as to who is eligible to propose a cable service territory. The proposed change is an attempt at clarification.

3) Regarding who must be notified that a cable service territory proposal has been or will be submitted to the Board, the proposed amendment to the procedures of MCCB 4.225A. substitutes the word "contiguous" for "adjacent municipality." This change is intended to make it clear that only municipalities which share a common boundary with the cable service territory must be notified. In practice, this has been the understanding of the procedures as presently worded. However, the dictionary definition of the word "contiguous" indicates touching borders, whereas the definition of the word "adjacent" is ambiguous on this point. Again, the Board merely seeks to clarify.

Also, the proposed amendment adds "the appropriate regional development commission or the Metropolitan Council" to the list of those who must receive written notices. In the case of the appropriate regional development commission, the requirement would replace the present requirement that a copy of the complete proposal be automatically sent to the regional development commission (MCCB 4.225 C.). It is felt that the present requirement is unnecessarily burdensome in view of the fact that cable service territories are seldom perceived by the development commissions as having regional significance. This is evidenced by the fact that no regional development commission has ever offered any negative comment addressed specifically to the issue of appropriate-

ness of proposed boundaries. In fact, the regional development commissions frequently inquire as to why they are provided with copies of cable service territory proposals. In view of these circumstances, a written notice of a cable service territory proposal appears to be entirely adequate.

In the case of cable service territories in the Twin Cities Metropolitan Area, retention of the requirement that the actual proposal be provided automatically to the Metropolitan Council seems appropriate. The special allowance of extra time for comment provided for in Minn. Stat. 238.05, subd. 7 is an indication of legislative intent that the Metropolitan Council would be an active participant in establishing cable service territories within the metropolitan area.

4) The proposed amendments to MCCB 4.225A. also state what information must be contained in a notice of a cable service territory proposal. The purpose of this change is partly to assist municipalities and cable companies. When preparing to propose cable service territories, these parties frequently contact the MCCB office to ask what information should be included in the notice. In addition to helping the parties who propose cable service territories, the amendment should also help to ensure that the written and published notices will serve their intended purposes. The amendment calls for notices to contain only very basic identification and description type information. It is not expected that any party will question the reasonableness of this requirement.

5) MCCB 4.225 sets forth the requirements as to what must be contained in the actual cable service territory proposal. The Board proposes certain modifications to this section:

a) The map requirement of proposed subsection B. 1 is fundamentally the same as the present map requirement. The only substantive difference is that the proposed requirement specifies that the map should be a county or township map, if available. Experience has shown that these maps, which are marked off in sections, make it easier for the party proposing the territory to depict the exact boundaries involved.

b) The present requirement that the proposal contain "detailed demographic data" is vague and confuses parties proposing cable service territories. Experience has shown that the "demographic" information which is most use useful to the Board in evaluating proposals is data pertaining to population, number of dwelling units and population density in and around the proposed cable service territory. Therefore, this information is called for in subsections B.2 and 3 of the rule as proposed for amendment.

c) Subsections B. 4 and 5, as proposed, would require the party proposing the cable service territory to submit to the Board an affidavit or other proof of compliance with the notice requirements of MCCB 4.225 A. as proposed for amendment. These requirements would replace existing requirements in MCCB 4.225 B. that the proposal include (1) resolutions from notified municipalities stating approval or disapproval of the proposal and (2) a statement of all contacts made with adjacent municipalities. Experience has shown that these requirements put the party proposing the cable service territory in the sometimes untenable position of depending on other parties for action on a matter in which they may have no interest. The effort required to obtain resolutions from adjacent municipalities has frequently delayed the process of obtaining MCCB approval of proposed cable service territories.

6) MCCB 4.225 C. as proposed for amendment deletes the existing requirement that copies of cable service territory proposals be mailed to the appropriate regional development commission and to the governing body of each adjacent municipality. Under the proposed amendment, the requirement would be retained for Twin Cities Metro Area proposals. Outside the Twin Cities Metropolitan Area, where cities are not as close together and interdependent, the notified parties seldom have an interest in studying the proposals. The proposed amendment would continue to protect their interests, however, by requiring that a copy of the cable service territory proposals be made available to any interested party upon request.

MCCB 4.226 Factors and Criteria to be Considered

MCCB 4.226 sets forth the factors and criteria to be considered by the Board in determining approval or disapproval of cable service territory proposals. It is felt that the proposed amended version of this rule constitutes

a set of factors and criteria which will be more understandable and, therefore, more meaningful and useful for the Board and for parties proposing cable service territory boundaries.

The existing rule includes factors such as the impact of a proposed territory on the Board's plans, on systems of other governmental units, on plans and reports of the Metropolitan Council or other regional development commission; economic and technical feasibility; relationship to cooperative arrangements between municipalities; relationship to school district boundaries etc. The Board does not consider these to be workable guidelines. The Board proposes a new set of factors and criteria that better reflect what the Board, as a practical matter, actually considers when evaluating a cable service territory proposal:

1) impact [of the proposed boundaries] on prospects for development of cable communications service in areas which are within or contiguous to the proposed territory;

2) whether the proposed boundaries encompass any areas which would more appropriately be included in another cable service territory;

3) impact of the proposed territory on any related policies or plans adopted by the Metropolitan Council or other appropriate regional development commission;

4) economic viability of a cable system in the proposed territory;

5) other factors deemed relevant by either the Board or the applicant.

The first factor allows the Board to reject proposals which appear to "creamskim" by including only the most densely populated parts of a given geographic area.

The second factor allows the Board to prevent a cable service territory from being drawn so large that it would include areas which are actually closer to another, nearby community served by cable.

The third criteria allows the Board to take into consideration studies which have been made or which may be performed by the Metropolitan Council or regional development commissions. The Board believes that this is consistent with repeated statutory references to participation by these regional bodies (see Minn. Stat. 238.05, subds. 6 and 7 and 238.10).

The fourth factor allows the Board to consider any relevant economic factors. The proposed amendment deletes direct reference to technical feasibility or nonfeasibility of a cable communications system in a proposed cable service territory, since technical feasibility would be reflected in economics. In other words, if a cable system in a proposed territory is not technically feasible, then it is not economically feasible. A technological breakthrough generally means that a way has been found to extend service more economically than before. Therefore, the reference to technical feasibility is superfluous. Should a situation arise in which there were technical considerations which did not have any bearing on economic feasibility, the proposed fifth factor would allow the Board to take these considerations into account.

The Board submits that the proposed amendments to the factors and criteria are both reasonable and necessary. Because the presently stated factors and criteria are, as a practical matter, not useful in evaluating cable service territory proposals, those parties who propose cable service territories have no formal guidelines to use in developing proposals. It is recognized that the proposed new factors and criteria leave room for Board discretion in evaluating cable service territory proposals; no more so, however, than the existing criteria.

The Board submits that it is neither possible nor desirable to define the criteria any more tightly than as proposed. Changing technology, varying land use patterns, and terrain factors all come into play in establishing an appropriate cable service territory. Narrowly defined criteria could lead to rigid and inappropriate applications of the rules.

Dated: September 21, 1978

W. D. Donaldson, Executive Director
Minnesota Cable Communications Board

Exhibit A attached

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Medelco, Inc., a Minnesota corporation,

Plaintiff,

vs.

State of Minnesota Commission on Cable Communications and City of Fairmont, Minnesota,

Defendants.

Court File No. 419783

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

The above action came on for trial before the Court without a jury on the 17th day of October, and was continued until the 28th day of October, 1977, when testimony was concluded. Craig A. Beck, Esq. of Dorsey, Windhorst, Hannaford, Whitney & Halladay appeared on behalf of Plaintiff and Robert R. Nardi, Esq. and Stephen F. Befort, Esq. appeared on behalf of defendant State of Minnesota Commission on Cable Communications (hereinafter "Commission"). There was no appearance on behalf of defendant City of Fairmont, Minnesota. The Court issued its Findings of Fact, Conclusions of Law and Order for Judgment on December 16, 1977. On February 13, 1978, defendant Commission's Motion for Amended Findings of Fact, Conclusions of Law and Order for Judgment was heard. The Court, having heard the arguments of counsel, having examined all the files, records, exhibits and minutes of the Court, and being fully advised in the premises, makes the following Amended Findings of Fact, Conclusions of Law and Order for Judgment:

FINDINGS OF FACT

1. That, Medelco, Inc. is a Minnesota corporation with offices in Rochester and Fairmont, Minnesota.

2. That, defendant State of Minnesota Commission on Cable Communications is an agency of the State of Minnesota having its principal place of business in St. Paul, Minnesota.

3. That, plaintiff has, for a period of time prior to March 7, 1977, operated a cable television system in Fairmont, Minnesota. On March 7, 1977, plaintiff's franchise for operating said system in the City of Fairmont expired. On March 28, 1977, a new franchise ordinance became effective upon a final reading of same by the City Council of Fairmont.

4. That, Section 238.09 of Minnesota Statutes provides that plaintiff must secure from Commission a renewal certificate confirming the franchise of plaintiff to operate a cable television system in the City of Fairmont.

5. That, by past actions and by letter dated April 20, 1977, Commission has indicated that it will not approve the franchise of plaintiff so long as said franchise contains the following language:

> "In the event it is necessary or desirable to adjust the initial installment charge or basic initial monthly customer rate, the Grantee shall file a schedule of its proposed rates with the City Administrator and such proposed rates shall become effective within forty-five (45) days from the date of filing unless within such period of time the same is disapproved by the City Council. In that event Grantee shall negotiate a new rate schedule to be charged customers by Grantee. Should the Grantee and the City fail to reach an agreement in negotiating a new rate schedule, the new schedule shall be submitted to the Board of Arbitrators, with the City selecting a representative, the Grantee selecting a representative with the two representatives selecting a third arbitrator. The judgment of a majority of said arbitrators shall be binding upon the parties herein.
>
> The rates and charges may be raised or lowered by the City if it finds, upon applications of the Grantee, the request of any party, or its own motion and in compliance with the procedure set forth herein, that a change in rates is necessary to further the public interest and promote quality cable television service and to allow Grantee to realize a fair rate of return on its total investment in said cable television distribution system. Before an application for a change in rates or charges hereunder may be considered and acted upon, it shall be filed with the City Council, which shall publish public notice of the application for two consecutive weeks in a newspaper of general circulation in the City. The notice shall specify a time and place for a public hearing, and any interested person shall have the right to give testimony and present evidence on the change in rates or charges proposed. The City Council shall review the testimony and present evidence on the change in rates or charges proposed. The City Council shall review the testimony and evidence and shall determine whether the rates and charges in question shall be increased, decreased, or remain the same."

It is the position of Commission that such language is in violation of MCCC 121(d).

6. That, defendant City of Fairmont in its Answer on file herein has alleged as follows:

> "That the City of Fairmont is governed by charter which was initially adopted on March 18, 1977 and was last amended on July 2, 1975; that pertinent provisions of said charter provide that this answering defendant shall have the right and power to regulate and control the exercise of any franchise and further that Section 10.05 specifically provides as follows with respect to franchises in the City:
>
> > '. . . the determination of the maximum price or rate to be charged by any company for service rendered to the City or to any person or persons within the City shall be made, if possible, by direct negotiations between the company and the council at public hearings. In case of failure to reach an agreement by this method, the council shall, not less than 30 days before the expiration of any existing rate schedule or agreement, appoint an expert as its representative; the company shall appoint a representative; and these two select a third person, preferably an expert in valuation and rate making, who shall together constitute a Board of Arbitration. This Board shall report its findings as soon as possible and the rate which it shall agree upon by a majority vote shall be the legal rate, subject to revision by any Court of competent jurisdiction.'"

7. That, § 238.01 of Minnesota Statutes provides in part:

> ". . . that while said operations must be subject to state oversight, they must also be protected from undue restraint and regulation so as to assure development of cable systems with optimum technology and maximum penetration in this state as rapidly as economically and technically feasible;. . . .
>
> There is, therefore, a need for a state agency to develop a state cable communications policy; to promote the rapid development of the cable communications industry responsive to community and public interest and consonant with policies, regulations and statutes of the federal government;. . . ."

8. That, § 238.12 of Minnesota Statutes provides as follows:

> "Rates. Subd. 1. Except as otherwise provided in this section, the rates charged by a cable communications company shall be those specified in the franchise, which may establish, or provide for the establishment of reasonable classifications of service and categories of subscribers, or specify different rates for differing services or for subscribers in different categories.
>
> Subd. 2. Such rates may not be changed except as provided for in the approved franchise.
>
> Subd. 3. The board shall provide assistance regarding rates and related economic matters to interested municipalities and their citizens. The board shall study, or cause to be studied, the desirability of regulation of all rates and charges of cable communications system."

9. That the portion of MCCC 121(d) which states:

> . . . and a provision stating that any changes in residential subscriber monthly service charges be approved by the franchising municipality in full public proceeding affording reasonable notice and a reasonable opportunity to be heard. . . .

(hereinafter " the rate change provision of rule 121(d)") prohibits binding arbitration of rate disputes and by its language, seeks to regulate the method by which rates are established.

10. That the rate change provision of rule 121(d) was patterned after 76.31(a)(4) of the rules of the Federal Communications Commission. Said Section 76.31(a)(4) has been deleted by the FCC because a significant and unintended problem created by the section was that it effectively precluded experimentation in other methods of rate regulation such as arbitration.

11. That, Chapter 238 of Minnesota Statutes prohibits defendant commission from involving itself in rate regulation and provides that methods of rate regulation shall be determined by local municipalities as set forth in franchise ordinances passed by local municipalities.

12. That, the rate change provision of rule 121(d), by prohibiting language in franchise ordinances as set forth in paragraph 5 above, involves defendant in rate regulation and, therefore, said portion of rule 121(d) is outside the scope of authority granted to defendant Commission by Chapter 238 of Minnesota Statutes.

13. That the rate change provision of rule 121(d) is contrary to and inconsistent with the provisions of the Fairmont, Minnesota City Charter set forth in paragraph 6 above.

CONCLUSIONS OF LAW

1. The rate change provision of rule 121(d) and its threatened application interfers with and impairs legal rights and privileges of plaintiff.

2. The rate change provision of rule 121(d) exceeds the statutory authority granted by Chapter 238 of Minnesota Statutes and thus said portion of rule 121(d) is invalid.

3. The rate change provision of rule 121(d) is contrary to and inconsistent with the provisions of the Fairmont, Minnesota City Charter and thus said portion of rule 121(d) is invalid as a restraint upon that Charter.

4. Plaintiff is entitled to judgment of this Court declaring that the rate change provision of rule 121(d) is invalid and awarding to plaintiff its costs and disbursements.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT

E THOMAS BRENNAN

E. THOMAS BRENNAN
Judge of the District Court

Dated this 13 day of
February, 1978

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE CABLE COMMUNICATIONS BOARD

In the Matter of the Proposed Adoption of Rules of the Cable Communications Board Governing Board Meetings, Franchising Procedures, Franchising Standards, and Cable Service Territories.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:30 a.m. on October 17, 1978 in the conference room of the Cable Communications Board, 500 Rice Street, St. Paul, Minnesota.

Robert R. Nardi, Special Assistant Attorney General, appeared as counsel on behalf of the Cable Communications Board. W. D. Donaldson and Anne T. Davis of the Cable Communications Board were present. The hearing continued until all interested groups or persons had had an opportunity 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 Cable Communications 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 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 and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On August 8, 1978, 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 August 28, 1978, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 296.

3. On September 1, 1978, 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 September 21, 1978, the Board filed the following documents:

(a) The Order for Hearing
(b) Notice of Hearing as Mailed
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing.
(e) A copy of the Secretary of State's Certificate and List.
(f) The Statement of Need and Reasonableness; and
(g) 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 Tuesday, October 24, 1978, for the receipt of written comments and statements.

6. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. § 238.06, subd. 1 (1976). All of the proposed rules are amendments to current rules.

Board Meetings

7. The proposed amendment to MCCB 4.026 would delete reference to Saturday meetings of the Board in even-numbered months. This amendment is necessary to conform the rule to current practice and to save the costs of time, duplicating and postage now spent by the Board in even-numbered months to notify interested parties that the meeting has been changed to Friday.

Franchising Procedures

8. The proposed amendment to MCCB 4.111C would delete the requirement that an Invitation for Applications issued by a municipality as part of the franchising process must contain a statement that the application must be made on a form specified by and available from the franchising authority.

The Board's experience has been that requiring a standardized form has not been an aid to municipalities in their deliberations of application. A similar amendment to MCCB 4.111D was promulgated in the Board's most recent previous rulemaking. This amendment would bring MCCB 4.111C into harmony with MCCB 4.111D.

Franchise Standards

9. The proposed amendments to MCCB Rule 4.121D would delete the requirement that a franchise contain a provision stating that any changes in monthly service charges to residential subscribers must be approved by the municipality in a full public hearing. This deletion is necessary to bring the rule into conformance with a ruling by the Ramsey County District Court in the matter of Medelco, Inc. v. Minnesota Cable Communications Commission (March 6, 1978). The Court ruled that the requirement is invalid because the Board lacks the statutory authority to regulate cable television rates, including the process by which rates are to be determined.

The proposed amendments to MCCB Rule 4.121D would also add a requirement that a franchise contain a provision stating the procedure by which residential service charges may be changed. Minn. Stat. § 238.12, subd. 2 (1976), provides that residential service charges may not be changed except as provided for in the franchise. Reflecting that statutory mandate in the rules is necessary because municipal officials and cable companies who deal with the Board rely heavily on the rules, rather than the statute, for information about state requirements.

Cable Service Territories

10. The proposed amendment to MCCB Rule 4.222 would change the definition of "cable service territory" clarifying the fact that cable service areas are not exclusive and that a cable service territory may include areas which are not immediately feasible for service but into which service may be expanded in the future.

The proposed amendment is both reasonable and necessary because:

(a) Minn. Stat. § 238.05, subd. 2(b), specifically disallows exclusive franchises. The definition of cable service territory as currently written can be construed as being directly in conflict with the statute.

(b) The Board's experience has been that parties proposing cable service territories are sometimes reluctant to include more area than can be served immediately because the present definition can be read to imply that service must be extended to all areas within the cable service territory. Drawing cable service territories without room for growth would be unnecessarily burdensome and an impediment on the growth of cable communications service because the territory would have to be revised every time service was extended.

11. The proposed amendments to MCCB Rule 4.225 are intended to shorten, simplify and clarify the procedures to be followed by the Board in establishing or expanding a cable service territory.

A. The procedure would be shortened by:

(1) Allowing cable service territories to be submitted to the Board at the same time as written and published notice is given to interested parties locally instead of requiring notice to be given 30 days before the proposal is submitted to the Board;

(2) reducing from 30 days to 20 the amount of time which must elapse before the proposal may be acted upon by the Board, except for cable service territory proposals within the seven-county metropolitan area where the 90-day comment period allowed by statute would be retained;

(3) requiring the Board to approve or reject a proposal at the first regularly scheduled meeting after expiration of the applicable comment period; and

(4) requiring the Board to state its reasons for rejecting a proposal within 30 days of the decision, instead of within 60 days as currently required.

B. The procedures set forth in MCCB Rule 4.225 would be clarified by:

(1) adding the words "or expansion of a cable service territory" or a similar phrasing wherever appropriate throughout the procedures to emphasize that the procedures for expanding an existing cable service territory are the same as those for establishing a new service territory;

(2) replacing the words "operator applicant" in MCCB 4.225A with the words "company, or any party who has announced an intention to form a cable communications company" to make it clear who is eligible to propose a cable service territory;

(3) requiring notice to be sent to "contiguous" municipalities rather than "adjacent" municipalities in MCCB 4.225A to make it clear that only municipalities which share a common boundary must be notified;

(4) stating what information must be contained in the notice of a cable service territory proposal required by 4.225A to assist parties proposing cable service territories and to insure that the written and published notices serve their intended purpose.

C. The proposed amendments to MCCB 4.225B would modify the requirements of what must be contained in the actual cable service territory proposal as follows:

(1) specifying that the required map should be a county or township map, if available, since experience has shown that these maps make it easier for the party proposing the territory to depict the exact boundaries involved;

(2) substituting a requirement for specific data pertaining to population, number of dwelling units and population density in and around the proposed cable service territory for the current requirement of "detailed demographic data" because that term is vague and confusing and because experience has shown that the data most useful to the Board is that proposed to be required;

(3) substituting a requirement that a party proposing a cable service territory submit to the Board an affidavit or other proof of compliance with the notice requirements of MCCB 4.225A for the existing requirement that a proposal include (1) resolutions from notified municipalities stating approval or disapproval of the proposal; and (2) a statement of all contacts made with adjacent municipalities. Experience has shown that the requirement of obtaining resolutions from adjacent municipalities has frequently delayed the process of obtaining Board approval for proposed service territories.

D. The proposed amendment to MCCB 4.225C would delete the existing requirement that copies of cable service territory proposals be mailed to the appropriate regional development and to the governing body of each adjacent municipality for proposed territories outside the Twin Cities' metropolitan area. This requirement is deleted because the notified parties seldom have an interest in studying the proposals and their interests would still be protected by the proposed requirement that a copy of the cable service territory proposal be made available to any interested party upon request.

E. Mr. James Erickson, on behalf of the Minnesota Cable Communications Association, proposed the following amendments to the Board's proposed amendments to MCCB 4.225 (indicated by parentheses):

(1) 4.225E ~~The Board shall take initial action within sixty days after the thirty day period set forth in D. Before taking final action, the Board shall hold a public meeting upon reasonable notice and accept oral and written comments~~. The board shall accept written and oral comment and approve, reject, (or modify) a proposed cable service territory at its first regularly scheduled meeting after expiration of the applicable comment period, or additional comment period if allowed. The board may, upon good cause shown, postpone action on a cable service territory proposal until its next regularly scheduled meeting.

(2) 4.225F If the board determines not to approve a proposal (as originally submitted), it shall specify its reasons

for (approval as modified or) rejection in a written statement within ~~sixty~~ thirty days of such rejection, or at its first regularly scheduled meeting thereafter.

(3) 4.225G. ~~A proposal rejected by the 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~~.

Minn. Stat. § 238.05, subd. 7 (1976), states that the Board has authority to approve or reject boundaries for specific cable service territories upon receipt of proposals from municipalities or cable communications operator applicants. The power to modify is not specifically given.

Prior to 1976, Minn. Stat. § 238.05, subd. 7, did include the word "modify". The word "modify" was deleted in 1976 at the request of the Board. The Board's rationale in deleting "modify" from subdivision 7 was contained in a memorandum from Special Assistant Attorney General Bruce D. Campbell to William G. Strusinski, Assistant to the Commissioner dated October 1, 1974:

> 5. Section 5 - The word "modify" is deleted because the Commission does not wish to modify districting proposals. That is viewed as a local responsibility with the Commission approving or rejecting the proposals. Moreover, the Commission does not have the demographic expertise to perform the research necessary to modify intelligently local districting proposals.

It is the finding of the Hearing Examiner that the Board does not have the statutory authority to modify cable service territories upon its own initiative and that all modifications of cable service territory proposals must be introduced by the applicant involved.

Factors and Criteria to be Considered

12. The proposed amendments to MCCB Rule 4.226 change the set of factors and criteria to be considered by the Board in evaluating a cable service territory proposal. The new set of factors and criteria proposed better reflect what the Board, as a practical matter, actually considers when evaluating proposals. The changes are necessary to provide a more useful and understandable set of guidelines to parties developing proposals for cable service territories.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

C O N C L U S I O N S

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Minnesota Cable Communications Board. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. § 15.052, subd. 3, it is the duty of the Hearing Examiner to: ". . . (4) make a report on each proposed agency action . . . taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Board has documented its statutory authority to promulgate the proposed rules.

4. The Board has demonstrated the need for and reasonableness of the proposed rules with an affirmative presentation of facts.

5. The amendments to MCCB Rule 4.225 proposed by the Minnesota Cable Communications Association exceed the statutory authority of the Board.

Based upon the foregoing Conclusions, the Hearing examiner makes the following:

R E C O M M E N D A T I O N

That the Minnesota Cable Communications Board adopt the proposed rules.

Dated this 9 day of November, 1978.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE CABLE COMMUNICATIONS BOARD

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE CABLE COMMUNICATIONS BOARD GOVERNING BOARD MEETINGS, FRANCHISING PROCEDURES, FRANCHISING STANDARDS, AND CABLE SERVICE TERRITORIES.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on October 17, 1978, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Cable Communications Board on November 9, 1978; and

WHEREAS, the Cable Communications Board has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Cable Communications Board has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Cable Communications Board has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Cable Communications Board has the responsibility of submitting the complete hearing record and the rules as adopted by the Board to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 22nd day of November, 1978.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE CABLE COMMUNICATIONS BOARD GOVERNING BOARD MEETINGS, FRANCHISING PROCEDURES, FRANCHISE STANDARDS, AND CABLE SERVICE TERRITORIES

STATEMENT OF COMPLIANCE WITH MANUAL OF RULEMAKING PROCEDURES

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

Robert R. Nardi

ROBERT R. NARDI
Special Assistant
Attorney General

Dated: 11-28-78

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

IN REGARD TO REVISION OF RULES ON CABLE SERVICE TERRITORIES AND ADOPTION OF INITIAL RULES ON OBLIGATORY LINE EXTENSION

NOTICE OF INTENT TO SOLICIT OUTSIDE OPINIONS AND INFORMATION

NOTICE IS HEREBY GIVEN that the Minnesota Cable Communications Board is seeking information or opinions from outside the agency pertaining to revision of the existing rules governing the establishment and expansion of cable service territory boundaries. (4 MCAR § 4.221 - 4.236). The Board seeks to simplify, shorten and clarify the procedures which are set forth in these rules.

NOTICE IS ALSO HEREBY GIVEN that the Board is continuing to seek outside information or opinions in preparing to propose the adoption of rules governing procedures and criteria to be used in determining when cable communications systems may be obliged to extend service to locations which are within the boundaries of established cable service territories. (See 2 S.R. 339).

The Board will be considering these subjects at its regularly scheduled monthly meetings. Parties wishing to submit information or opinions relating to revision of the cable service territory rules are advised to do so at or prior to, the time of the Board's May meeting, tentatively scheduled to be held on May 12, 1978.

It is expected that the Board will be discussing the subject of obligatory line extension within established cable service territories at least until August 12, 1978, the tentative date of the Board's August meeting. Interested parties are advised to watch agendas of the Board's monthly meetings for indications of specific actions.

Any written material received by the agency shall become part of the hearing record in the event rules governing this subject are promulgated.

Any interested parties may inquire about these matters or submit information and opinions, in writing or orally, by contacting:

Robert J. McDonald, Executive Director
State of Minnesota
Cable Communications Board
500 Rice Street
St. Paul, Minnesota 55103
Telephone (612) 296-2545.

Robert J. McDonald

Robert J. McDonald
Executive Director
Minnesota Cable Communications Board

Dated: March 24, 1978