

Minnesota Attorney General: Administrative Rules Proceedings

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STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

CABLE COMMUNICATIONS BOARD

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE CABLE COMMUNICATIONS BOARD GOVERNING DEFINITIONS, CLASSIFICATION OF SYSTEMS, FRANCHISE STANDARDS, TRANSFER OF OWNERSHIP, INITIAL AND RENEWAL FRANCHISE PROCEDURES, LENGTH OF RENEWAL TERM, AND OTHER NON-SUBSTANTIVE CHANGES INCLUDING THE DELETION OF REDUNDANT RULES, THE ADDITION OF CLARIFYING LANGUAGE AND THE REORDERING AND RENUMBERING OF RULES

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

The existing rules of the Minnesota Cable Communications Board (MCCB) were promulgated in 1973. Throughout the six years the MCCB has been in existence, it has undertaken many rulemakings, the scope of which was confined to specific areas. For instance, the creation of an alternative initial franchising procedure, the modification of the cable service territory rules and the development of public access rules are all specific sections of the MCCB rules that were chosen for adjustment. Since the inception of the rules in 1973, changes in technology and the cable statute, and changes within the agency and the industry as a whole have occurred. With six years of experience in implementing its regulation throughout the State of Minnesota, the MCCB believes that a total redraft of many of the existing rules is needed. To accomplish this redraft, the agency has undertaken a comprehensive rulemaking with the purpose of easing, speeding and clarifying the process. Board and staff have solicited

comments from members of public in The State Register (3 S.R. 1609) and staff has done extensive research.

Minn. Stat. § 238.01 grants the MCCB the authority "to set standards for cable communications systems and franchise practices." The statute also states 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." In promulgating standards to promote the orderly development of cable throughout the state, the Legislature directed the MCCB to take into account the different sizes of cable communications systems, and specifically authorized the Board to prescribe different requirements for different classes of matters or persons. Minn. Stat. § 238.05 (2)(b); § 238.06 (1). With these charges in mind, the MCCB and the staff developed the following criteria to be accomplished in rulemaking:

1. To logically reorder all MCCB rules within the format designated by the Office of the State Register.
2. To purge the rules of intimidating language.
3. To remove vague standards that cannot be measured or enforced.
4. To speed the franchising process by shortening mandatory time limits and publishing time requirements where possible.
5. To rewrite those sections of the rules that have led to confusion among the clientele of the MCCB.
6. To condense verbose sections of the rules so that they clearly and concisely reflect the intent of the MCCB in promulgating the rules.
7. To relegate considerations and decisions which are matters of local concern to the franchisor municipalities in their

franchise negotiations with franchisees, in contrast to the existent requirements which currently do not defer to the local law and discretion of the franchisors.

The proposed changes in the rules are the culmination of several MCCB meetings at which the members of the public and industry representatives were present and offered comments and suggestions. Both the Board and the staff carefully analyzed and considered these various suggestions and comments before making a final decision on modifications to the rules. Many of the suggestions offered at the meetings are incorporated in the proposed changes.

GENERAL

The following phrases have been added in appropriate places within the rules:

"By law, rule or Board order" replaces "provided in these rules."

"Or referred to a hearing examiner pursuant to Chapter four" and like references to the Office of Hearing Examiner have been added.

Minn. Stat. Chapter 15 is the standard reference to the Administrative Procedures Act.

All references to the franchisor have been uniformly changed to franchising authority.

All documents referred to in the text of the Statement of Need and Reasonableness are available for inspection at MCCB offices. Copies will also be available for inspection at the hearing.

CHAPTER ONE

Definitions

§ 4.002 E. The addition of a definition for the term "franchise area" is necesary because the word is used many times in the rules without being defined. The proposed definition is needed so that the rules can be more certainly and effectively implemented.

§ 4.002 ~~E.~~ F. A modification of the term "franchising authority" was needed because the existing definition is unclear. The revised definition clarifies what entities are capable of issuing a franchise.

The following sections have been proposed for deletion. As stated previously, the purpose of this comprehensive rulemaking is to remove redundant, unenforceable and vague language thus making the rules readable and understandable to the people governed by them.

Practices before the Board

§ 4.008 The section is proposed to be deleted because it has proven to be unnecessary as the meetings are usually not conducted in the strict, inflexible manner indicated by this rule. Furthermore, members of the public have expressed to the staff that they find the rule intimidating. Therefore, the change is reasonable and necessary in order to encourage members of the public to appear before the Board to make comments.

Notice to authorized representatives

§ 4.009 This section regarding notice to authorized representatives has been proposed to be deleted because the intent is unclear and the section is unnecessary. Persons wishing to receive communication from the Board through their representative routinely inform the staff of such desires. As previously indicated, the goal of the MCCB in the redraft of its rules is to eliminate all unnecessary and confusing rules and to clarify the substance of the rules.

Censure or suspension of persons appearing before the Board

~~§-4.010~~ It is proposed that the phrase "Is lacking in character or pro-
§ 4.008 A.1. fessional integrity or" be deleted from the provision regarding appearances before the Board. The Board feels that the rule is impossible to implement because of the vagueness of the standard. Therefore, its deletion is reasonable and necessary.

Form of papers filed with the Board

~~§-4.011~~ The Board proposes deletion of the requirement that communications
§ 4.009 A. to the Board follow a precise format. The Board believes that strict adherence to immaterial details would serve no meaningful

purpose and may discourage communications to the Board. In order to encourage communications to the Board, the Board finds the deletion of this formal requirement to be reasonable and necessary.

CHAPTER TWO

Agenda

§ 4.031 The existing deadline for availability of inspection of the agenda at the Board offices is three days. However, in Section 4.034, a time period of five days is specified for mailing of the agenda. Section 4.031 has been changed to 5 days to conform to the time period enumerated in § 4.034. This is a reasonable and necessary change to clarify the rules and make them internally consistent.

CHAPTER ~~FOURTEEN~~ SIX

Reports to the Board

~~§-4.201~~ Operator required to file reports with Board.

§ 4.092 The existing standard is proposed to be deleted because the information partially obtained from FCC Form 326 is more readily available to the MCCB from another form (99SD79 Annual Cable System Data Report forms). The Board feels that this change is needed because of the duplication involved.

Franchise Renewal

~~§-4.112~~ A provision has been added to the renewal procedure allowing fran-

§ 4.143 chising authorities that issued franchises pursuant to the alternative initial franchising procedure to waive the renewal report requirement.

Municipalities issuing franchises pursuant to the alternative initial franchising procedure are not required to compile a needs assessment report in order to issue a franchise under the existing MCCB rules. The small communities allowed to issue a franchise under this abbreviated procedure, and exempted from the initial report requirement, often experienced difficulty in finding persons to complete the report, thus resulting in unnecessary delay. Furthermore, staff analysis indicated that most of the systems operative in the smaller communities provide only retransmission services. Therefore, the MCCB staff concluded in passing the alternative initial procedure in 1977, that the burdens placed on these small municipalities clearly outweighed the benefits to be derived by their completing a comprehensive needs assessment.

Since the renewal report during the renewal process serves basically the same function as the needs assessment at the initial franchising stage, the Board believes it is reasonable to extend the report exemption provided for in the initial procedures to the renewal procedure. Such exemption at the renewal stage also prevents undue delay and saves the franchising authority time and money in preparation of a report, the cost of which for these communities usually outweighs the benefits. Therefore, the proposed change is reasonable and necessary.

The MCCB proposes that the commencement of renegotiation of a franchise begin at least one year prior to the expiration of the franchise, rather than the 30 days specified in the existing rules.

Staff experience indicates that the renegotiation period is often a difficult and time consuming process. Twelve months seems to be the minimum time required to undertake meaningful negotiation on a franchise. In cases where negotiations begin close to the expiration date, negotiations have often extended past that date with the system continuing to operate without a franchise and without certification by the Board. The proposed rule is necessary and reasonable to prevent this result.

The existing rule specifies that the notice of the public hearing shall be given by publishing twice; the first publication shall appear not less than 30 days before the hearing and the second notice not less than fifteen days before the hearing. The proposed rules state that if there is a local law pertaining to public meetings, the procedure specified in local law would prevail. If there is no local law, then the notice shall be published twice, once 15 days before the meeting, and the second at any time between the first publication and the hearing.

This revision is necessary because most municipalities have their own publication requirements, and it is reasonable for municipalities to follow that procedure rather than one promulgated by this agency.

CHAPTER SEVEN

Franchising and franchise renewal procedures

The existing language has been stricken. Proposed in its place is Chapter 12: Franchising, Franchise Renewal and Franchise Amendment procedures. The differences between the two above-mentioned chapters are enumerated below, as is a statement of the need for and reasonableness of the proposed changes.

1. The original rule states that the "franchising authority shall appoint a group of persons residing within the boundaries of the franchise

area to complete the needs assessment report. The revised rule states that "the franchising authority or group of two or more individuals appointed by the franchising authority shall compile a "Needs Assessment Report."

Many communities have experienced difficulty in finding a group of citizens to complete a needs assessment report. This often resulted in delay in the franchising process. Therefore, the revision is reasonable and necessary to facilitate easy and fast compliance with the report rule so that the franchising process can progress expeditiously.

2. The restrictions on the persons preparing the report have been changed. Under the existing rules persons commercially involved in cable communications activities or other communications media were not permitted to serve as a member of the advisory body. MCCB proposes that the individuals compiling the report for purposes of this rule shall not be employed by or shall knowingly have any financial interest in any cable communications company bidding on such franchise, or their subsidiaries, and major equipment or program suppliers.

The revision is necessary because the prohibition against participation by persons "commercially involved in cable communications" is vague and difficult to enforce. A more precise and definite standard is needed in order to assure full compliance with the MCCB rules. The proposed standard is in accordance with the eligibility requirements passed by the state legislature (Minn.Stat. § 238.15) for persons issuing an initial franchise. Since the persons issuing the franchise may also prepare the report, the Board believes it is reasonable that the same eligibility requirements be placed upon both groups.

3. The MCCB proposes that a provision be added allowing municipalities franchising under a joint powers agreement to compile the Needs Assessment Report jointly, provided that at least 2 representatives from each party to the agreement participate in the compilation of the Needs Assessment Report.

The addition of this provision is necessary in order to abate the confusion surrounding delegation of duties and powers under joint powers agreements. Under the existing rules, the franchising authorities are not informed as to what duties can be performed jointly. The rules also leave unanswered questions as to the procedure to be followed when duties are performed jointly. The proposed provision thus clearly states that municipalities may prepare the report jointly, and prescribes the procedure to be followed in completing such a report. The requirement that at least two representatives for each party to the agreement participate in the report provides adequate assurance that the interests of the individual communities will be aired.

The MCCB intends by this rule to facilitate easier use of joint powers agreements. Such agreements often result in providing cable service to areas that otherwise would not be able to receive such services. Joint powers agreements may also reduce the costs of franchising. Therefore, the Board finds the proposed rule to be reasonable in clarifying the rules and necessary to better facilitate use of the existing joint powers arrangements provided for in these rules.

4. The MCCB proposes that the name, address and telephone number of an "individual who may be contacted for further information" be listed in

the franchise, rather than specifying the name of a municipal official who may be contacted. In many cases, the municipal official may not have access to the desired information. This revision merely allows the franchising authority to specify the individual to be contacted for information, regardless of whether he is a municipal official. The Board finds the revision to be reasonable.

5. The MCCB proposes deletion of the requirement that the franchising authority forward a copy of the franchise ordinance to the Board. This provision is unnecessary as a copy of the ordinance also must be sent to the Board by the franchisee in order to be certified. Therefore, the Board finds this revision reasonable and necessary to avoid the duplication efforts required under the existing rule.

6. The proposed rule specifies that municipalities acting in concert with other municipalities in granting franchise(s) may delegate to another entity such duties and responsibilities in the franchising procedure if such delegation is proper according to state and local law. This addition is necessary to dispel the confusion generated by joint powers agreement as to what duties can be performed by an entity created by the municipalities in joint powers agreement. The rule is necessary to fully explain that powers cannot be delegated to a non-elective body if it is contrary to its city charter. The rule is necessary to clarify that agency rules allowing municipalities to issue franchises jointly do not supersede state or local law in this area.

FRANCHISE AMENDMENTS

The franchise amendment revision has been moved from the Existing Chapter Nine: Transfer of Ownership, Renewal or Amendment of a Franchise.

The Board proposes deletion of the requirement that the MCCB approve franchise amendments. The Board believes that the amendment procedure is more appropriately conducted at the local level as the franchising authorities are better able to assess needed changes in the franchise. Such a revision is consistent with the thrust of this rulemaking session, i.e., delegation of power to local authorities over areas in which they have special knowledge or expertise. Therefore, deletion of the provision is reasonable as it removes an unnecessary procedural burden on the municipality.

THE REVISED CHAPTER THIRTEEN

Sale or transfer of a franchise, sale or transfer of stock is a rewrite of the existing Chapter Nine, Transfer of Ownership, Renewal or Amendment of a Franchise. The only section not enumerated below, Franchise Amendment, is discussed in the previous section-by-section analysis.

The procedures for renewal and amendment of a franchise have been moved to Chapter 13. The Board believes that the renewal and amendment procedures should be specified separately. Since the ramifications of renewal, amendment, and transfer of a franchise are different, it is reasonable that a different procedural requirement should attach to each transaction.

The provision requiring the approval of the franchising authority before transfer of a franchise has been retained in this chapter,

but has been substantially modified in the proposal. The proposed provision allows the franchising authority to waive the public hearing requirement in the existing rule if it determines that the transfer will not substantially affect subscriber service. In addition, the proposed rule adds time limitations in which the franchising authority must make a determination as to whether a public hearing is necessary and limitations on when such a hearing will be held if it is deemed necessary. These additions and revisions are reasonable and necessary to expedite and ease the transfer process.

The proposed draft also replaces the concept of transfer of an entire legal ownership interest with transfer or sale of a franchise, including transfer of ownership by fundamental corporate change. A definition of fundamental corporate change is included in the proposed rule. The proposed change is reasonable and necessary as "transfer of an entire legal ownership interest" was found by staff experience to be vague and difficult to implement. The proposed rule provides a clear and certain definition of the triggering event requiring approval of the franchising authority.

The Chapter also adds a requirement that if stock is transferred or sold so as to create a new controlling interest, the transfer must be approved by the franchising authority. The addition of this provision is necessary as the sale or transfer of stock so as to create a new controlling interest may have just as great an impact on subscriber service as sale of the entire franchise. A change in the controlling interest of a franchise often results in new management, which may in turn result in a shift in policy

or a different level of subscriber service. The Board believes that the possible ramifications of a change in controlling interest are so great as to reasonably require that such change be examined by the franchising authority. The proposed standard affords a necessary and reasonable method for assuring that the franchising authority approve such changes. The time limitations imposed upon approval or denial of the sale or transfer, as well as the waiver of the public hearing by the franchising authority are also applicable to transfer or sale of stock.

FRANCHISE STANDARDS

4 MCAR § 4.121 A. 2.

The language of 4 MCAR § 4.121 A. 2. is duplicative of language contained in other franchise standards, therefore, it is reasonable that this standard be deleted.

4 MCAR § 4.121 B. 2.

(§ 4.202 D.)

A special hearing regarding the maximum length of the franchise renewal term was held on October 15, 1978. The attached material, labeled Addendum A, are documents that best convey the justification for increasing the length of the franchise renewal term from 10 to 15 years. The essence of the arguments presented in favor of increasing the renewal term is basically as follows:

1. The current maximum initial franchise term is 15 years. If a cable company has satisfactorily served a community for fifteen years, it is logical that the renewal length of a franchise should be at least as long as the initial franchise term.

2. Loans to cable operators are more easily available if the franchise term is 15 rather than 10 years.

3. The variance procedure prescribed by the Board by which a cable operator could obtain an extension of the renewal term from 10 to 15 years is costly, time consuming, and unpredictable.

For all of the reasons enumerated, it is Board consensus that the maximum franchise renewal term be increased from ten to fifteen years. The cable industry is in full agreement with the increase; all parties feel that there is a need to expand the maximum renewal term length, and feel that such an expansion is reasonable to all parties concerned. Furthermore, franchising authority has discretion to renew franchise for less than 15 year period.

4 MCAR § 4.121 B. 3.

(§ 4.202 E.)

The existing rule allows renegotiation of the franchise to occur at the end of the franchise term. The revised rule stipulates that negotiations begin at least one year before the expiration date of the franchise. Experience has shown that if the renewal negotiation is not begun at least a year before expiration of the franchise, the franchise expires before the negotiations of the new franchise are completed. Thus, the franchisee is operating without a franchise and without required certification. It is for this reason that the MCCB proposes the renegotiation period of at least one year. The revised rule benefits the franchising authority, the franchisee, and the subscriber, and is therefore necessary and reasonable.

4 MCAR § 4.121 C.

(§ 4.202 W. 2.)

Due to advancements in cable technology, the Board determined that a provision allowing the franchisee to telemeter for purposes of verifying system

integrity and also to monitor for purposes of billing without express written permission from the subscriber was needed. Telemetering is a useful technique in providing quality control checks through electronic sweeping of the system; monitoring is a useful method of billing for pay services by use of addressable taps. It is an unreasonable demand upon the cable operator to require that he receive written permission from all of his subscribers, especially when such permission must be re-obtained yearly under MCCB rules. Both the cable industry and the MCCB feel this is a reasonable modification.

In view of the growing awareness and importance in the area of data privacy, it was deemed necessary to add a section stipulating that <u>any</u> information obtained by the cable operator, regardless of whether or not written permission was required to gather such data, may not be released unless the cable operator receives written permission from the subscriber to release the data. This provision is intended to preserve individual privacy and integrity by preventing possible abuse by commercial and non-commercial users of data gained by the cable companies.

4 MCAR § 4.121 D.

(§ 4.202 I.)

The stipulation that subscriber contracts have a maximum term of twelve months is proposed to be deleted. The industry has offered information at Board meetings that the franchisee and potential subscribers would both benefit by extending the maximum length of subscriber contracts in marginally economically viable areas. Presently, cable operators may not provide services in such areas without a longer subscriber contract term because it is not economically feasible. A longer subscriber contract assures the operator he will be able to recover the cost of wiring the area and assures the subscriber service for the duration of the contract. The Board and staff do not want to limit the ability of potential subscribers to receive service but rather want to promote the development of cable in the state to the fullest possible extent. The deletion of the maximum subscriber contract duration is a

reasonable method of achieving the goal of providing subscriber service to everyone who wants cable service.

4 MCAR § 4.121 F.

(§ 4.202 Y.)

The requirement that the cable operator maintain a toll free number to receive subscriber complaints placed an unnecessary economic burden on the operators since a less expensive method of receiving such complaints is available. Therefore, the proposed redraft requires that the cable operator provide either a toll free number or a "collect" telephone number. The MCCB believes that this revision is necessary to lift the needless economic burden placed on operators and simultaneously provides assurance that subscriber complaints will be received at the expense of the operator.

The section of the rule dealing with interruption of service for repairs, adjustments or installation has been deleted. Franchising authorities can adequately address the subject of this rule in its franchise.

A section has been added requiring the subscribers and cable operators to stipulate within the context of the franchise who will bear the cost of making repairs, adjustments and installations. This addition is actually a rewrite that tightens the existing language so that the franchise will explicitly outline who will pay for which repairs. The MCCB, in its total redraft, is seeking to "tie loose ends" in the franchising process and delegate the authority for stipulation of procedures to the franchisee and franchising authority. In this instance, the MCCB believes it is reasonable to require that the parties to the franchise discuss alternatives to problems, and specify the agreed upon method of resolution of those problems in the franchise.

4 MCAR § 4.121 H. 1. a.

(§ 4.203 A. 1.

§ 4.204 A. 1. and 4.)

An exemption provision has been added to the public access requirements. The MCCB realizes that there are basically two types of cable subscribers: the non-commercial and the commercial. The commercial user will utilize cable for transference of data, etc. Such a user would have no use for the access channels that are mandated. Therefore, the MCCB feels it is reasonable for the cable operator to be exempted from providing access channels to such a user.

4 MCAR § 4.121 J.

(§ 4.202 V.)

In the existing rules, the requirement for providing two-way capacity depends upon the location of the franchising authorities being served, i.e. whether it is located within or outside of a "major television market" as defined by the Federal Communications Commission in Section 76.51. In its effort to ease and clarify its rules, the MCCB found it would be simpler not to allude to other set of regulations, but rather to specify clearly in the context of its own rules the necessary requirements. To accomplish this end, the MCCB redrafted the section dealing with non-voice return in the following way:

1. All initially franchised systems must contain two-way capacity.
2. When a franchise is renewed, sold, or transferred and is served by a system that does not have this capacity, the franchising authority shall determine when the capacity is needed. The rest of the requirements remain the same.

This revision is in concert with the statute (Minn. Stat. § 238.05, Subd. b.) which specifies merely that the Board shall ". . . prescribe minimum standards for two-way capability." Furthermore, the application of the revised provision produces the same results as the application of the existing standard.

Under the existing standard, all systems operating in the major market area or all systems initially franchised must contain two-way capacity, and all systems outside a major market area that are renewed may negotiate this for this feature. Since all systems operative in the major markets presently have two-way capacity, a classification based on location in a major market is unnecessary. A classification based on whether the system is initially franchised or is renewed achieves the same results as the existing rule. Therefore, the MCCB believes this is a reasonable and necessary change to clarify and ease application of the rules.

4 MCAR § 4.121 K.

(§ 4.202 B.)

A small correction was necessary in this section. The MCCB is mandated the power to declare that conformance with its rules must occur not more than one year after promulgation of such rule. However, the MCCB does not have preemptive power over Federal Rules. Therefore, a change was necessary to indicate that conformance with Federal Rules and laws must occur as soon as they become effective, unless otherwise stated. The rule was also revised so that both the franchising authority and the franchisee are subject to this provision rather than just the franchisee. The MCCB believes the above are reasonable and necessary changes to clarify the intent of the existing rule.

4 MCAR § 4.121 L.

Deletion of Rule 4.121 L., setting minimum operational standards, is necessary and reasonable as the FCC has preempted the states in the area of operational standards.

4 MCAR § 4.121 N.

(§ 4.202 H.)

The existing rules allow the franchising authority to audit the

financial and accounting records of the franchisee and also to annually audit reports of gross subscriber revenues. In the redraft of this rule, the auditing privilege is given to only those franchisors that collect a franchise fee. The MCCB heard various cable operators testify to the fact that there was no reason for a franchisor to examine the franchisee's books unless a franchising fee was being paid by the franchisor. It is believed that existing standard permitting municipalities to examine records or books regardless of whether or not the operator pays a franchise fee impinges too greatly on the operator's right to privacy. The MCCB feels that an undue hardship is placed upon the franchisee by this requirement and that the change suggested is reasonable to all parties concerned.

4 MCAR § 4.121 P.

(§ 4.202 BB.)

The existing rule specified that upon termination or forfeiture of a franchise the franchisee must remove its wires, cable, etc. The redrafted rule specifies that the removal take place if requested by the franchising authority. In cases where the cable is buried (as opposed to attached to a utility pole), the municipality is not harmed if the cable remains buried. In fact, it saves the subscribers the nuisance of having their boulevards torn up to retrieve the franchisee's cable. However, the revised rule reserves the right of the franchising authority to request removal of the cable if it is in the municipality's interest to do so. The MCCB believes this revision is reasonable and necessary to prevent the possible untoward results of application of this rule.

4 MCAR § 4.121 Q.

(§4.150 and § 4.151)

The franchise standard has been changed to conform to the proposed

Chapter Thirteen titled "Sale or Transfer of a Franchise, Sale or Transfer of Stock."

See pp. 12-13-14 for justification.

4 MCAR § 4.121 Q.

(§ 4.202 CC.)

The MCCB is mandated in Minn. Stat. § 238.05, subd. b. to prescribe minimum provisions for municipal purchase.

The existing rule states that the "municipality shall have the non-exclusive right to purchase the system." The language of this rule tended to be confusing to both the franchisee and franchising authority. Therefore, the language "the franchising authority shall have the right to purchase the system" is proposed as a replacement. The Board finds this revision necessary and reasonable in order to clarify the meaning of the rules.

4 MCAR § 4.121 R.

(§ 4.202 Z.)

The conditions and circumstances under which the franchising authority may terminate a franchise(R. 1 and 2.) have been deleted because the MCCB believes such terms are better negotiated by the parties involved. The parties to a franchise contract are in a better position to assess their individual needs, and determine the conditions which would cause the franchise to be terminated. Delegating power to the franchising authority to make the decision over which they can effectively exercise control is consistent with the thrust of this rulemaking session. In order that the franchise more adequately reflect the needs and interests of the parties involved, the proposed revision is necessary and reasonable.

4 MCAR § 4.121 S.

(§ 4.202 L.)

The existing rule requiring that the franchisee provide a performance bond is specific and unnecessarily burdensome in some circumstances. The bonding required under this provision is often quite expensive to the cable company. The revised rule gives the municipality discretion to approve other methods of the franchisee providing adequate assurance of performance other than through a performance bond. For example, the franchising authority may accept a certificate of deposit as an assurance of performance if it provides adequate compensation for damages resulting from the franchisee's performance. Several comments from municipalities have been directed to the MCCB, indicating the municipalities' dissatisfaction with the present inflexible rule. Since the revised rule retains a method of assuring adequate performance while removing a possible burden from the cable industry, the MCCB believes the proposed change is reasonable and necessary to promote the development of cable.

4 MCAR § 4.121 T.

(§ 4.202 P.)

According to the existing rule, <u>every</u> franchise (initial or renewal) must contain a construction schedule. The intent of the existing rule was that in cases of initial franchises, a construction schedule be specified. Therefore, in the proposed rule the only modification is the addition of the phrase "In cases of initial franchises" a construction schedule be included. This modification is necessary and reasonable to preserve the original intent of the existing rule. Construction schedules are not relevant in the case of renewal franchises.

4 MCAR § 4.121 U., V., W., X., Y., Z.

(§ 4.202 Q., R., S.)

The MCCB proposes that franchise standards regarding permission to begin construction, restoration of areas disturbed by construction, installation and maintenance of the system, and construction by the municipality affecting the cable system be deleted and replaced with provisions which more concisely effectuate the intent of the existing rules. The existing rules are lengthy and redundant. Furthermore, the detailed specifications for construction and maintenance are better determined by the franchising authority and cable company in order to meet the needs of the community involved. The proposed rules provide assurance that the interests protected in the existing rules will be adequately addressed in the franchise in a more meaningful and concise fashion. The Board therefore concludes that this change is reasonable and necessary in clarifying and effectuating the intent of the rules.

4 MCAR § 4.121 BB.

The provision requiring that advisory bodies be appointed to make an annual report and to complete a renewal report is proposed to be deleted. Franchising authorities often experienced difficulty in finding persons willing to perform these duties. Experience has also shown that the yearly reports were often of negligible value as the same interests were discussed in the renewal report. As mentioned above, the renewal report is still required, but the report may be prepared by the franchising authority. The MCCB believes these changes are necessary in order to ease the burdens placed on franchising authorities in functioning under the MCCB Rules. The proposed changes are also reasonable because the interests that were intended to be protected by the existing rules are also protected in a less burdensome manner by the proposed rules.

Justification for the Classification of Systems

The MCCB proposes that a classification of systems be established for the purpose of applying a different set of standards to different systems based on system size and location. Class A systems will be comprised of all those systems serving fewer than 1,000 subscribers, located in a franchise area having a population of fewer than 4,000 persons, and located in the non-metro area. Class B will be comprised of those systems not meeting all of the Class A criteria, serving fewer than 3,500 subscribers, located in a franchise area having a population of fewer than 15,000 persons, and located in a non-metro area. Class C systems will be comprised of all systems serving 3,500 or more subscribers or located in a franchise area having a population of 15,000 or more persons, or located in the metro area. A proposed transition provision requires that franchising authorities amend the franchises if changes in the system size or population result in reclassification of the system under the proposed criteria.

Most of the foundation for the proposed classification has been extracted from the existing rules. The existing rules implicitly create two "classes" of systems based on the same criteria of the proposed Class B and Class C systems. Under the existing rules, those systems serving fewer than 3,500 subscribers, located in a franchise area having a population fewer than 15,000 persons and located in non-metro area are held to one set of standards regarding access channels, equipment for access, and channel capacity, while systems serving more than 3,500 subscribers or located in a franchise area having a population of more than 15,000 persons or located in the metro area are held to another set of standards regarding the above mentioned topics. As evident from the above discussion, the MCCB is simply proposing that another classification of systems be created.

In effect, the proposal "carves out" a classification for those systems operating in "small communities." Systems classified as "A" under the proposal will be held to a different set of standards regarding access and equipment. Class A systems will be required to reserve a channel for use for governmental and educational purposes, and will not be required to provide production and playback equipment for operating this channel. Under the proposed structure, all systems, including Class A, must meet certain minimum requirements that are deemed so fundamental that they should be included in all franchises. The legislature recognized that certain franchise standards were so important that those standards promulgated by the MCCB should be applied to all systems equally. See Minn. Stat. § 238.05 (2) (b) (1978). The Class B and C systems are required to meet the standards of Class A, and additional minimum standards required of larger systems.

The MCCB has followed its legislative mandate in establishing this classification for systems. The MCCB was directed by the legislature to set minimum standards for inclusion in franchises regarding access programmings, equipment, and channel capacity, taking into account the system size. Minn. Stat. § 238.05 (2) (b) (1978). The MCCB was expressly granted authority to prescribe different requirements for different classes of persons or matters. Minn. Stat. § 238.06 (1) (1978). Creation of classes of systems to which different standards will apply is based on the recognition that different size communities have different cable communications needs, and that different size communities are capable of supporting different kinds of systems.

The MCCB determined that it would reduce redundancy in the rules if the classification implicit in the existing standards were to be superimposed on all the franchise standards. It is also believed that the proposed structure will be useful as cable and its uses continue to expand in the state. The disparity

between what systems in metro areas will/can offer and what systems in small outstate communities will/can offer is likely to widen as cable use grows. The Board anticipates that the need for changes in or addition of franchise standards will occur according to the system's size. Creation of the classification will therefore expedite future rulemaking because a framework will be established for creating standards for different size systems.

Class A systems in the proposed classification were determined by Board and staff analysis to share characteristics that would justify creating a different set of standards to accommodate features unique to those systems. Most of the systems in the class are small and operate in small communities having populations of fewer than 4,000 persons. (The 4,000 figure corresponds to a 1,000 subscriber rate based on penetration figures for "small" communities.) The population base in these communities is not large enough to generate sustained interest in providing programming for the public access channel. Also, these small communities do not have the diversity of interests that is usually synonymous with an active public access channel. Staff experience with these small communities substantiates that very few small systems falling within the Class A grouping use public access. Twenty-three percent of what would be Class A systems make use of the public access channel as contrasted with 85% use of these features in the proposed B and C class systems. Of those proposed Class A systems reporting the kind of programming aired on the access channel, a vast majority stated that the air time was devoted to local public affairs/governmental and local educational use. Therefore, in light of the minimal amount of use of the access channel by the public in these size communities, it seems unreasonable to mandate that operator provide a channel for public use and playback and recording equipment that will not be used.

In addition to the low level of use of the access channel by the public in systems with the less than 1,000 subscribers, the FCC also uses the 1,000 subscriber level as a threshold figure employed in its regulatory scheme. By

lifting many of the regulations for systems having fewer than 1,000 subscribers, the FCC recognized that many of these systems were small operations located in communities that could be better regulated at the state or local level. The MCCB's proposed classification utilizing a 1,000 subscriber level as a threshold number conforms to a exemption level used by the FCC, and thus provides consistency and uniformity in application of the rules. The MCCB therefore finds the 1,000 figure to be reasonable both in terms of staff experience with public access programming and the regulatory consistency afforded by using a figure conforming to a FCC threshold mark.

The MCCB emphasizes that it does not cite Docket 20561, in which the 1,000 exemption level was announced, for the proposition that systems serving fewer than 1,000 subscribers should be totally deregulated. The MCCB maintains that the need for minimum standards for all systems exists in order to protect subscribers and franchising authorities, and that those standards are best determined at state and local levels. The FCC included in its report and order of Docket 20561 a statement submitted by the MCCB: "[B]y diminishing the amount of Federal regulation for small systems, the Commission makes it possible for state and local government to implement their own franchise oversight problems in accordance with unique local needs without overburdening the cable system operator." 68 FCC 2d 18, 21 (1978), FCC 78-288 Docket 20561.

Although the population base in these small communities may not generate use of an access channel by the public, it will probably generate use by public affairs groups or educational groups. In fact, the size of these communities speaks to the need for reserving a channel for governmental and educational uses.

Unlike larger cities, small communities served by Class A systems will not have their own local TV channel and may not have their own radio station or local newspaper to keep them apprised of public affairs in their community. Cable in these small communities may also provide valuable education programming. Many of the school systems serving in communities of this size are unable to offer a wide range of subjects due to the budgetary constraints on small school systems. Cable television can provide a method of supplementing the curriculum with classes students would not otherwise be able to receive.

Furthermore, requiring that a channel be provided for at least local educational and governmental use comports with the MCCB's Statewide Plan of service objectives. The Plan states the objectives as 1) providing a full complement of basic commercial and educational service to all areas of the state and 2) cultivating citizen awareness and participation in governmental decision making at all levels. (Emphasis added.)

For the above reasons, the MCCB finds the substantive changes resulting from its proposal to be a reasonable accommodation of the needs of both the communities served by cable and the cable communications companies. The proposal relieves the operator of the burden of investing in access equipment that will be rarely used, while assuring that a much needed channel will be reserved for educational and governmental uses. The structural changes in the proposed classification reduces duplicative language in the existing rules and allow for possible changes in or addition to the present franchise standards. The proposal is thus necessary to effectuate the purpose of this rulemaking. Furthermore, the proposed standards are reasonable in accomplishing that purpose.

CHAPTER FIFTEEN

Certificates of Confirmation

The sections titled "Special" and also "Interim Certificates of Confirmation" is proposed to be deleted. These types of certificates were interim devices initiated at the conception of MCCB rules to be used as a mechanism by which franchisees and franchising authorities would have a period of time in which to come into compliance with MCCB newly promulgated rules. At the expiration of these interim and special certificates, full compliance with MCCB rules would be required.

At the present time, all of the interim and special certificates are up for a renewal of a certificate. Because of the interim nature of these types of certificates, there is an obvious need to delete the sections of the rules that mention them. The MCCB feels that the need for this deletion is obvious and reasonable.

Attachment to (1) Statement of Need

STATE OF MINNESOTA

CABLE COMMUNICATIONS BOARD

IN THE MATTER OF CABLE COMMUNICATIONS SYSTEMS, INC., d/b/a NORTHLAND CABLE TV, INC., PETITION FOR A VARIANCE FROM CABLE BOARD RULES CONCERNING THE DURATION OF AN AMENDED FRANCHISE

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

The above-entitled matter came before the Minnesota Cable Communications Board (hereinafter "Board") on March 10, 1978, at its regularly scheduled monthly board meeting, pursuant to a petition for a variance filed by Cable Communications System, Inc., d/b/a Northland Cable TV, Inc., (hereinafter "Petitioner"). Hubertus Sarrazin, Vice-President and General Manager of Petitioner, appeared on behalf of them. After considering the petition and statements made to the Board during the hearing, the Board makes the following Findings of Fact, Conclusions, and Order.

FINDINGS OF FACT

1. The Petitioner is the owner of a cable communications system which serves the City of Virginia, City of Eveleth and Town of Fayal. Petitioner also holds a franchise to operate in the City of Mountain Iron. There is a separate franchise for each municipality.

2. Petitioner's system serves a total of 4,325 subscribers and according to Mr. Sarrazin, most of the system's subscribers are served under the Virginia franchise.

3. On December 1, 1977, the Board was notified by the City of Virginia that it had approved the transfer of ownership of the stock in Northland Cable TV, Inc. to the Petitioner.

4. Petitioner's system is currently operating in the City of Virginia pursuant to a franchise which expires on April 6, 1986, and it has a special certificate of confirmation which expires on October 17, 1979.

5. After purchasing the system, Petitioner entered into negotiations with the City of Virginia to amend and renew its current franchise, so as to extend the life of the franchise and obtain a renewal of its certification.

6. On January 25, 1978, Petitioner filed an application for a renewal of its certificate, and a request for a variance from the Board's 10 year limit on the duration of renewed franchises so as to allow the City of Virginia to award a 15 year franchise.

7. In its request for a variance, dated January 25, 1978, Petitioner stated that a franchise of more than 10 years duration was required by its lenders. Financing was needed for the purchase of the system, for improvement of the system, and for new construction.

8. Included with Petitioner's request was a copy of a letter from its financial broker, Communications Equity Associates, which states that the prospective lenders will not make a loan for a term which extends beyond the expiration date of a franchise or state certificate. Financing is being sought for a 12 year period.

9. In remarks to the Board, Mr. Sarrazin stated that the lender's requirements would be satisfied by a 15 year franchise confirmed by the Board, even though certificates of confirmation run only 10 years. This was verified by John Walkmeyer, of the Cable Board staff, through a phone conversation on March 9, 1978, with Mr. Jeffrey A. Marcus of Communications Equity Associates.

10. In a letter to the Board dated February 14, 1978, supplementing the original request of January 25th, the petitioner stated that at least a 12 year franchise is needed, in order to:

(a) finance the purchase of the system

(b) upgrade the system to a 20 channel system now, rather than in 1986, when it would be required under Board rules

(c) install an earth station

It was also stated that a 15 year franchise is needed to allow some room for error in case Petitioner would be unable to repay the loan within 12 years.

11. In the renewal report of the Virginia Cable Commission, a copy of which was filed as part of the application for renewal of certificate, it was recommended that a new 15 year franchise be awarded. The Commission also suggested certain improvements in the system, including expansion of system capacity from 12 to 20 channels and installation of a satellite earth receiving station.

12. Allowing the City to issue a 15 year franchise would have the effect of extending the life of the Petitioner's agreement with the City of Virginia seven years beyond the expiration date of the old franchise.

13. In remarks before the Board, Mr. Sarrazin noted that expansion of the system's channel capacity has already been accomplished.

14. Petitioner has complied with all the procedural requirements set forth in the Board's variance rule 4 MCAR § 4.020.

15. No comments were filed in opposition to Petitioner's variance request.

16. The actual rule which Petitioner seeks a variance from is 4 MCAR § 4.134, which provides in part:

> . . .No franchise shall be renewed for a period longer than ten years. . . .

CONCLUSIONS

1. That it is in the interest of the public that Petitioner be allowed to enter into a 15 year franchise with the City of Virginia, so as to allow it to obtain the proper financing with which to upgrade the level of service presently being provided to the community.

2. That without this 15 year franchise, Petitioner would not be able to finance the newly purchased system, thereby hindering the development and utilization of cable communications in the State of Minnesota.

3. The allowance of a 15 year franchise would avoid undue hardship on the part of Petitioner.

ORDER

IT IS THEREFORE ORDERED that Petitioner be granted a variance from that part of rule 4 MCAR § 4.134 which limits the term of a renewed cable television franchise to 10 years, and that Petitioner be allowed to renew its cable television franchise with the City of Virginia for a term of 15 years.

BOARD MEMBERS PARTICIPATING:

Gertrude Ulrich
Eugene Abbott
Jennis Bapst
Eugene Schroeder
John Stone

Date Granted: March 10, 1978

Attachment to (2)
Statement of Need

CSI

COMMUNICATIONS SYSTEMS, INC.

Box 777, Hector, Minnesota 55342
Telephone 612 848-6231

FEB 6 1978

STATE OF [illegible]

January 25, 1978

MN Cable Board
500 Rice Street
St. Paul, MN 55103

Gentlemen:

Enclosed, please find an application for a MN Cable Board Regular Certificate of Confirmation.

You will note that the new franchise is for 15 years. This length is required by our lenders. (a copy of that requirement is enclosed)

Because of economic necessity, we request a waiver of your rules and allow the City of Virginia to award us a 15 year franchise instead of your allowable 10.

I would like to appear on the agenda of your March 10th meeting to discuss this with you in greater detail. Please advise me at which time on the 10th I can appear before the Board.

Sincerely,

H Sarrazin

Hubertus Sarrazin
General Manager
Cable Communications Systems, Inc.

HS:hc
Enclosures

Attachment 5 (3)
Statement of Need

STATE OF MINNESOTA

OFFICE OF HEARING EXAMINERS

FOR THE

MINNESOTA CABLE COMMUNICATIONS BOARD

In the Matter of the Application of Teleprompter Corporation for a Variance from Cable Communications Board Rule 4 MCAR § 4-134

Teleprompter Corporation,

Petitioner,

vs.

Staff of the Minnesota Cable Communications Board,

Intervenor-Respondent.

REPORT OF HEARING EXAMINER

OCT 4 1978
STATE OF MINN.
CABLE COM.

The above entitled matter was heard on September 14, 1978, at the Offices of the Minnesota Cable Communications Board, St. Paul, Minnesota, by Thomas H. Jensen, a contract Hearing Examiner assigned by the Chief Hearing Examiner.

Petitioner was represented by R. V. Ehrick, Esq., O'Brien, Ehrick, Wolf, Deaner & Downing, Rochester, Minnesota. Intervenor-respondent was represented by Sheila S. Fishman, Esq., Special Assistant Attorney General, St. Paul, Minnesota.

Following the hearing, the record in this matter remained open until September 27, 1978, for the receipt of memoranda from counsel for petitioner and intervenor.

Upon all the proceedings, exhibits and records herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The petitioner in this matter is the Rochester, Minnesota, division of the Teleprompter Corporation (hereinafter referred to as "Teleprompter"). Teleprompter is a New York corporation which operates 110 cable communications systems in 32 states, including the cable communications system in Rochester, Minnesota. Teleprompter has approximately 18,500 subscribers in Rochester at the present time and it carries 12 channels via its Rochester cable communications system.

2. The intervenor herein is the staff of the Minnesota Cable Communications Board. The staff's petition to intervene in this contested case proceeding was filed with the Office of Hearing Examiners on or about August 21, 1978, and was unopposed by Teleprompter.

3. Teleprompter has operated a cable communications system in Rochester since 1958. That system was substantially expanded ("rebuilt") in 1968 and, with some additions, it is the 1968 cable communications system which is now in use. Teleprompter estimates that the cable communications system now in place in Rochester (hereinafter the "Rochester system")has a remaining life expectancy of approximately six years and will therefore be operable until 1984 or 1985.

4. Teleprompter, as the operator of a cable communications system

within the City of Rochester (hereinafter "the City"), is required by statute to obtain a franchise from the City permitting the operation of its cable communications system. Teleprompter first obtained a franchise from the City in 1958. This franchise expired in 1978. Following the renewal of a municipal franchise, the franchisee is required to obtain from the Minnesota Cable Communications Board (hereinafter "the Board") a certificate of confirmation of a renewed franchise. The issuance of such a certificate of confirmation is a prerequisite to the exercise of the municipal franchise.

5. On or about April 24, 1978, the Common Council of the City adopted Rochester Ordinance No. 1950 (hereinafter "the Ordinance"), pursuant to which Teleprompter's initial franchise to construct, operate and maintain a cable communications system within the City was renewed subject to the terms of the Ordinance. (Teleprompter Ex. #4). The Ordinance was approved by the Mayor of Rochester on or about April 25, 1978. The Ordinance provides in part that Teleprompter ". . . is . . . granted a non-exclusive franchise for a term of fifteen years, if approved by the Minnesota Cable Communications Board, and, if not so approved, ten years from and after June 7, 1978, to construct, operate and maintain a cable communications system . . ." within the City.

6. Pursuant to Board Rule 4 MCAR § 4-134 municipal franchises are limited to a duration of ten years. The board is empowered to grant variances from its rules if the applicant for a variance meets the conditions specified in Board Rule 4 MCAR § 4-020. That rule provides in pertinent part:

> The Board may grant a variance from any of its rules, regulations or standards, except where inconsistent with or otherwise prohibited by law, to promote the public interest, to avoid undue hardship and to promote the effective and reasonable application of its rules, regulations or standards relating to cable communications.
>
> * * *
>
> A variance shall be granted if, upon good cause shown, there is a finding that the granting of the variance is necessary or proper to avoid undue hardship on the petitioner and to promote the development and utilization of cable communications in the State of Minnesota.

7. Pursuant to Board Rule 4 MCAR § 4-121(G)(1)(b) Teleprompter will be required to expand its Rochester cable communications system to a bandwidth of 120 megahertz (MHG) by June 21, 1986. The 120 MHG capacity is the equivalent of 20 television channels. Teleprompter is required by the Ordinance, but not specifically by Board rule, to expand its Rochester cable communications system to include the technical capacity for non-voice return communication by the same June 21, 1986, date.

8. Teleprompter has made the business decision to begin reconstruction of its Rochester system to incorporate the aforementioned requirements in the summer of 1984. It chose to begin reconstruction on this date because the Rochester system now in place is operating well; because it has a remaining useful life of approximately six years; and because of the possibility

that new cable communication transmission techniques which are now in the experimental stage will have come into general industry use by 1984.

9. The evidence introduced at the hearing was sufficient to support a finding that any of the now experimental developments in the cable communications industry referred to by Teleprompter will in fact be in general use by the time it begins its expansion of the Rochester system to meet with the requirements of Board Rule 4 MCAR § 4-121(G)(1)(b) and the Ordinance. The estimated costs of such expansion presented by Teleprompter largely assume the incorporation of these presently experimental developments; hence, there is insufficient evidence in the record upon which to base finding as to what the extent of such costs will in fact be to Teleprompter.

10. The requirements of Board Rule 4 MCAR § 4-121(G)(1)(b) apply equally to all similarly situated operators of cable communications systems in the State of Minnesota and the fact that Teleprompter's municipal franchise would in the normal course expire in 1988 (approximately two years following the date which the above-described expansion of the Rochester system must be completed) neither constitutes special disadvantage to Teleprompter, nor does it run contrary to the public interest.

CONCLUSIONS

1. The Minnesota Cable Communications Board and the Hearing Examiner have jurisdiction in this matter pursuant to Minn. Stat. §§ 238.06 and 15.052. Proper notice of the hearing in this matter was timely given, and all relevant, substantive and procedural requirements of law or rule have been fulfilled, and therefore, the matter was properly before the Hearing Examiner.

2. The application of the staff of the Minnesota Cable Communications Board to intervene in this proceeding was timely filed, and the staff has standing to intervene.

3. Petitioner has the burden of proof in this matter.

4. Petitioner is not entitled to a variance from the provision of Board Rule 4 MCAR § 4-134 limiting the duration of municipal franchises issued to operators of cable communications systems to a period of ten years.

RECOMMENDATION

That petitioner's application for a variance in this matter be denied.

Dated: October 23, 1978

Thomas H. Jensen

Thomas H. Jensen
Hearing Examiner

NOTICE

This report is a recommendation, not a final decision. The Minnesota Cable Communications Board will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Minn. Stat. §15.0421, the final decision of the Board shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Board. Parties should contact the Minnesota Cable Communications Board, 500 Rice Street, St. Paul, Minnesota, to ascertain the procedure for filing exceptions or presenting argument.

MEMORANDUM

This contested case proceeding came on for hearing pursuant to Teleprompter's request for a variance from the provision of Board Rule 4 MCAR § 4-134. That rule limits the duration of municipal franchises authorizing the construction, operation and maintenance of cable communications systems to a period of ten years. Teleprompter's petition was made pursuant to Board Rule 4 MCAR § 4-020, pursuant to which the Board has rather broad authority in appropriate circumstances to grant variances ". . . from any of its rules, regulations or standards . . ." (see Finding No. 6, above).

Teleprompter's arguments in this matter proceed from the requirements of Board Rule 4 MCAR § 4-121(G)(1)(b). Rule 4 MCAR § 4-121(G) relates to minimum system-wide channel capacities which must be made available by cable communications franchisees. The provisions of Rule 4 MCAR § 4-121(G)(1)(b), which are pertinent to Teleprompter, provide:

> Systems that are already constructed pursuant to a pre-existing franchise requiring fewer than 120 MHG of bandwidth (the equivalent of fewer than 20 television broadcast channels) shall have until June 21, 1986 to increase the system's channel capacity to a minimum of 120 MHG 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 MHG of bandwidth prior to June 21, 1986.

Teleprompter asserts that this requirement gives rise to a number of reasons why the Board should approve the renewal franchise (i.e. the Ordinance) for a period of 15, rather than 10, years.

Teleprompter's primary assertion is that the costs incurred in increasing the capacity of its Rochester system to the required 120 MHG bandwidth will amount to an "undue hardship" within the meaning of Board Rule 4 MCAR § 4-020 unless a 15-year franchise is approved so as to enable Teleprompter to recoup those costs. This argument is unpersuasive for at least several reasons:

First, Teleprompter has made the decision to delay necessary construction until 1984. Undoubtedly, sound business reasons are at the base

of its decision; but the decision that it would be advantageous from a business standpoint to postpone construction to that date -- which is Teleprompter's option -- does not form a basis for a finding that the rule itself creates an undue hardship.

Second, the argument that Teleprompter will not be able to recoup its investment in the period of time from the 1974 construction until the expiration of a ten-year franchise seems to assume that the City will be persuaded not to renew the franchise when it expires. This is far too speculative a ground upon which to argue for a variance.

Third, it simply is not clear from the record as to how extensive the costs to Teleprompter will be when it does increase its capacity to the required bandwidth. Although Teleprompter's estimate of these costs is in the range of $2,000,000 (see Teleprompter Ex. 1), that figure assumes that changes in the art of cable communications will require a nearly complete reconstruction of the Rochester system. (Reynolds' cross-examination). Although new methods of transmission are now being tested on an experimental basis in the cable communications industry, the record is insufficient to support a finding that such methods (primarily fiber optic) will in fact be in general use by 1984 or that Teleprompter would use such methods in its Rochester system. In addition, it appears to the Hearing Examiner that since the Rochester system has a remaining life expectancy of approximately six years, Teleprompter would be required to engage in some reconstruction of its present system by 1984 and, as noted, the extent of the costs necessary to provide the 120 MHG bandwidth over and above the costs which Teleprompter would have to incur in any event was not sufficiently extablished.

Teleprompter has also argued that the public would be better served if a 15-year franchise period were allowed it and that such an extended franchise term would also promote the development of cable communications in Minnesota. Teleprompter contends the public will benefit from the continued use of the present Rochester system for the balance of its useful life (i.e. until 1984 or 1985). This is what Teleprompter has apparently decided to do by making the decision to delay construction of the expanded system until 1984; thus, even assuming a public benefit from the continued use of the present Rochester system until that date it appears that Teleprompter has made such a decision independent of the 10 or 15 year length of the franchise term. Even if Teleprompter were to begin the construction necessary to increase the capacity of the Rochester system prior to 1984, the public would certainly benefit also from the increased services made available to it as a result of the expanded system.

Finally, the argument that Teleprompter may be motivated only to provide the bare minimum required in the way of services to the detriment of both the public and the advancement of cable communications within the state must be rejected. The provisions of 4 MCAR § 4-121(G)(1)(b) establish the concrete standard to be met by the 1986 date. Teleprompter's motivation -- or lack of it -- to go beyond that literally required by the rule or by the Ordinance is speculative at best and irrelevant to the issue at hand.

Attachment to (4)
Statement of Need

MAY 11 1978

STATE OF MINNESOTA
CABLECOM COMMISSION

STATE OF MINNESOTA

CABLE COMMUNICATIONS BOARD

PETITION FOR VARIANCE

Teleprompter Corporation hereby petitions the Minnesota Cable Communications Board for a variance from the requirement of its Rule MCCB 121 B(2) which restricts the renewal term of a cable communications franchise to not more than 10 years. Rule MCCB 121 B(2) reads as follows:

"B. A provision:

* * *

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

For its Petition, Teleprompter Corporation states:

1. That Teleprompter Corporation presently operates a cable T.V. antenna service in the City of Rochester, Minnesota and serves approximately 18,000 subscribers.

2. The franchise under which Teleprompter Corporation presently operates was granted by the Common Council of the City of Rochester effective June 7, 1958 and expires on June 6, 1978.

3. Pursuant to Minnesota Statutes, Minnesota Cable Communications Board rules and regulations, and the Charter of the City of Rochester, a new franchise agreement has been negotiated by the Common Council, its Cable T.V. Advisory Committee and Teleprompter Corporation, and on April 24, 1978 following a public hearing held after due and proper published notice, the Common Council adopted Ordinance Number 1950 which incorporates this Agreement and grants a new franchise to Teleprompter Corporation effective June 7, 1978. A copy of this ordinance is attached to and made a part of this Petition for Variance.

4. Under the terms of the new franchise ordinance, by June 21, 1986, Teleprompter Corporation is required to replace its present 72 MHZ, band width, 12 channel, 1-way system, with a minimum of 120 MHZ band width, 20 channel system with technical capacity for non-voice return communications.

5. Because of the satisfactory condition of its present system and because of rapidly changing and improving technology in the cable T.V. industry, Teleprompter Corporation anticipates that it will delay for several years the rebuilding and replacing of its present system.

6. It would be an unreasonable application of the rules, regulations and standards of the Minnesota Cable Communications Board and an undue hardship on Teleprompter Corporation to require it to completely rebuild and replace its system as of a date approximately 2 years before a ten year franchise would expire.

7. The Common Council of the City of Rochester, recognizing the injustice and undue hardship of requiring Teleprompter Corporation to completely rebuild and replace its system by June 21, 1986, less than 2 years before the expiration of a 10 year term, has incorporated in Section 212.020 of the franchise ordinance a provision for a 15 year term which reads as follows:

> "Therefore, in consideration of the faithful performance and observance of the terms, conditions, rules and requirements hereinafter set forth, the company is hereby granted a non-exclusive franchise for a term of fifteen years, if approved by the Minnesota cable communications board, and, if not so approved, ten years from and after June 7, 1978, to construct, operate and maintain a cable communications system under, over, along and across the streets within the franchise area for the purpose of providing basic CATV service and such aspects of expanded CATV service as the company may from time to time deem advisable, to persons within this city."

8. In order to justify from an economic standpoint the substantial expenditure required to rebuild and replace the entire Rochester cable T.V. system under the circumstance set forth above, it is necessary that a variance be granted from the restraint imposed by Rule MCCB B(2) so as to allow the said renewal franchise to be for a term of fifteen years.

WHEREFORE, Teleprompter Corporation respectfully requests the Minnesota Cable Communications Board to grant a variance from the requirement of Rule MCCB 121 B(2) and authorize a renewal term of fifteen years with respect to franchise granted by Ordinance No. 1950 of the City of Rochester.

Dated: May 8, 1978

TELEPROMPTER CORPORATION

By _____
Manager, Rochester Division

MAY 11 1978

STATE OF M
CABLE

NOTICE

Notice is hereby given that Teleprompter Corporation has filed a Petition for Variance with the Minnesota Cable Communications Board requesting a variance from the requirement of Rule MCCB 121 B(2) which restricts the renewal term of a cable TV communications franchise to not more than ten years. Teleprompter Corporation has petitioned the Minnesota Cable Communications Board to vary this rule to allow the Rochester franchise renewal to be for a term of fifteen years as now provided in Section 212.020 of Ordinance Number 1950 adopted by the Common Council of the City of Rochester on April 24, 1978.

This Petition for Variance will be considered by the Minnesota Cable Communications Board at its regular meeting to be held on June 9, 1978 at its offices at 500 Rice Street, St. Paul, Minnesota 55103.

Any interested person may file with the Minnesota Cable Communications Board a petition in opposition to the granting of the variance. Any such petition shall state with particularity the reasons why the variance should not be granted.

Teleprompter Corporation

Attachment to Statement of Need

(5)

JUL 14 1978

RULE-MAKING PETITION TO

MINNESOTA CABLE COMMUNICATIONS BOARD

Petitioner:

Minnesota Cable Communications Association
P.O. Box 1137
117 East Center Street
Rochester, Minnesota 55901

Re: MCCB Rules §4.121(B)(2) and §4.134

Relief Requested

The Minnesota Cable Communications Association initiates this application for rule-making relief pursuant to MCCB Rule §4.063 to amend the above-stated rules regarding the maximum length of renewal allowed for a cable communications franchise. Under the present regulations, a renewal franchise of only ten years is allowed. The Minnesota Cable Communications Association requests that the Minnesota Cable Communications Board modify this rule so that a fifteen-year renewal franchise may be granted by a municipality.

Applicable Law

MCCB Rule §4.134 reads as follows:

> "Franchise Renewal. When any franchise is renewed, the franchisee shall agree to abide by all rules and regulations of the Board. No franchise shall be renewed for a period longer than ten years."

Similarly, MCCB Rule §4.121(B)(2) states that a regular certificate of confirmation will be issued only if the franchise ordinance contains a provision:

> "Providing that any renewal of the franchise shall be for a term of not more than ten years."

Statement of Facts

On March 10, 1978, Hubertus Sarrazin of Cable Communications Systems, Inc. (CCSI), petitioned the Minnesota Cable Communications Board for a variance from the above-stated Rules so that a renewal franchise of fifteen years' duration could be awarded Northland Cable TV, Inc., in Virginia, Minnesota. Petitioner CCSI needed a franchise of more than ten years' duration in order to obtain financing for the purchase of a new system, for improvement of the system, and for installation of an earth station. The Minnesota Cable Communications Board granted that variance, recognizing that a denial of the

variance would "hinder the development and utilization of cable communications in the State of Minnesota." The Board's Findings of Fact, Conclusions of Law and Order adopted April 7, 1978, also stated that "The allowance of a fifteen year franchise would avoid undue hardship on the part of Petitioner."

On June 9, 1978, Teleprompter Corporation of Rochester, Minnesota, applied for a similar variance requesting a renewal franchise of fifteen years. Teleprompter's petition was premised on the MCCB requirement that all cable companies upgrade by 1986 any twelve-channel, one-way systems to twenty-channel systems with capacity for non-voice return communications. Teleprompter stated that because of the satisfactory condition of its present system, a rebuild would not begin for at least several years. Therefore, Teleprompter anticipated having to make substantial expenditures to replace its existing plant by a date which fell only two years before the end of the ten-year franchise allowed by MCCB rules. A fifteen year franchise, on the other hand, would allow seven years of franchise time after the rebuild deadline.

On June 9, 1978, the Minnesota Cable Communications Board voted with one dissenting vote to deny the requested variance. The Minnesota Cable Communications Association therefore makes application herein for permanent amendments to the existing rules which would allow the granting of a fifteen-year franchise.

LEGAL ARGUMENT

Economic Requirements

Petitioner Minnesota Cable Communications Association submits that renewal franchises longer than ten years in duration are frequently necessitated by the cable communications companies in Minnesota. The March 10, 1978, variance application by CCST, and the June 9, 1978, variance application by Teleprompter Corporation of Rochester, are just two examples during this short span of three months which illustrate the necessity of a permanent rule change.

The very nature of a cable communications company involves large amounts of capital and financing if the system is to be upgraded or new construction commenced. It has already been determined by the Minnesota Cable Communications Board that certain improvements are in the public interest. MCCB Rule §4.121 requires that every cable communications system be upgraded to a twenty-channel system by 1986. It is therefore

reasonable to assume that other improvements, such as installation of an earth station, are also in the public interest. However, all of these large-scale improvements are expensive and considerable financing is necessary.

The existing regulation allowing only a ten-year franchise renewal actually hinders the technological development of cable communications throughout the State of Minnesota. This was clearly recognized by the Board in its April 7, 1978 Order granting a fifteen-year franchise variance to CCSI. CCSI demonstrated that even if a cable operator desires to make an improvement or upgrade his system, he is often held back by his inability to obtain financing when he has a financing period of only ten years. For those cable operators who can obtain the necessary financing, a ten-year renewal franchise still creates a large risk that they will not receive a return on their substantial investment. The possibility is very real that a cable operator may invest substantial expenditures and then not have his franchise renewed in just two or three years. The ever-expanding technology of the cable industry will only be hindered by this inability to move forward.

Furthermore, the ten-year renewal franchise restriction may stagnate the development of the total cable network throughout the State of Minnesota. The purchase of a cable communications system is a costly endeavor, but necessary to save and revitalize certain floundering companies. If a well-established cable communications system wishes to purchase a system and try to rebuild it, the consumers in that area will be unjustly deprived of cable service if the buyer is prohibited from obtaining financing by a short-term renewal lease.

The Minnesota Cable Communications Association therefore submits that MCCB Rule §4.134 is detrimental to one of the main purposes of the Minnesota Cable Communications Board - the promotion of rapid development of a cable communications industry responsive to community and public interest. M.S.A. §238.01. Both geographic development and technological development are hindered by a company's inability to obtain a fifteen-year franchise renewal.

Reputation Established

It is ironic that the initial franchise period allowed by MCCB Rule §4.121(B)(1) is currently five years longer than the ten-year period allowed for franchise renewal. By the time a franchise is renewed, a cable system has operated in the area for fifteen

years. Clearly, the reputation of that company has been long established and renewal of the franchise indicates satisfaction with the service provided. It is inconsistent that a renewal period should be shorter than an initial franchise period after the company has established a solid reputation.

This concept was recognized by the Federal Communications Commission in its promulgation of FCC Rule §76.31. While that rule allows an initial franchise period of fifteen years, the renewal period remains indefinite. The FCC requires only that a renewal period be of "reasonable duration." The MCCB rules are therefore far more restrictive than the FCC rules imposed upon the same cable operator.

The currently existing MCCB rules are not only inconsistent with federal regulations, but have been shown to be inconsistent with the desires of certain municipalities. For example, in the above-stated Teleprompter variance matter, the City Council of Rochester had already approved a fifteen-year renewal franchise when Teleprompter petitioned the Cable Board for variance. Despite the approval of the Rochester governing body, the Board felt it necessary to deny the variance. This denial is inconsistent with the Cable Board's basic purpose to protect the consumer interest in the State of Minnesota. If the consumers' representatives in the City of Rochester determine that the Company will experience undue hardship if not granted a fifteen-year franchise, clearly that determination carries more weight than that of a state agency not privy to the wealth of information available to local officials.

CONCLUSION

The Minnesota Cable Communications Association therefore submits that MCCB Rules §4.121(B)(2) and §4.134 be amended to allow a fifteen-year franchise renewal period. The existing rule is detrimental to the geographic and technological growth of the cable industry in the State of Minnesota and is inconsistent with FCC regulations and the demonstrated intent and desires of local municipalities.

Ember D. Reichgott, for
LARKIN, HOFFMAN, DALY & LINDGREN, Ltd.
Attorneys for Petitioner Minnesota
Cable Communications Association
1500 Northwestern Financial Center
7900 Xerxes Avenue South
Minneapolis, Minnesota 55431
835-3800

VERIFICATION AFFIDAVIT

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

James Daniels, of said County and State, being first duly sworn, upon oath, deposes and says that he is the duly elected president of the Petitioner Association named in the foregoing, within-entitled proceeding, that he has read the hereto attached Petition and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to such matters, he verily believes it to be true.

James Daniels, President
Petitioner Minnesota Cable
Communications Association

Subscribed and sworn to before me this

day of , 1978.

Notary Public



ATTORNEY GENERAL

JOHN R. STONE, Chairman
Minnesota Cable Communications Board

May 19, 1980

Attn: JOANNE E. HINDERAKER

JERRY S. ANDERSON
Special Assistant
Attorney General

296-1288

In the Matter of the Proposed Adoption of Rules of the Minnesota Cable Communications Board Governing Definitions, Classification of Systems, Franchise Standards, Transfer of Ownership, Initial and Renewal Franchise Procedures, Length of Renewal Term, and Other Nonsubstantive Changes Including the Deletion of Redundant Rules, the Addition of Clarifying Language, and the Reordering and Renumbering of Rules.

The rules in the above-captioned matter have not been approved by this office and are being returned to you for the following reasons:

1. Section 4.008 A. The words "practice," "practiced," "practicing," and "practice" apparently were intended to be deleted but were not.

2. Section 4.046 contains duplicate language: "rules of the."

3. Old Chapter Fifteen: secs. 4.211-.220 Board Billings. Because this language is not being amended or repealed at this time, this rule should not appear in these rules as adopted. Therefore, this language should not be published as part of this set of adopted rules.

4. Section 4.134 A. The cross-reference to sec. 4.141 B. is confusing, as that section does not appear to contain requirements. Thus, either explanation of the propriety of the cross-reference or correction is required.

5. Section 4.140 C. 4. "Franchising Authority" should not be capitalized to be consistent with the other references in this section and the rule as published in the State Register.

6. Section 4.140 D. "Invitation for Applications" should be printed as being stricken.

7. Section 4.140 D. 5. C. 4. The word "changes" apparently should be "charges."

8. Section 4.140 E. 2. The reference to Minn. Stat. sec. 238.09 subd. 5 is incorrect; it should be subd. 6.

9. Section 4.141 D. The date at the end of the statutory reference was printed in the State Register as being deleted; thus "(1976)" should be interlineated.

10. Section 4.141 G. The commas should be deleted.

11. Section 4.142 F. is missing from these rules as adopted.

12. Section 4.144 (renumbered 4.143) has been omitted from these rules as adopted.

13. The "Reserved for future use" section (secs. 4.1454-.149) has been omitted.

14. Section 4.150 A. In the first sentence, the "or" in "transfer or a franchise" should be "of." Also, the meaning of the last two sentences might be stated more clearly if the clause that appears at the end of the last sentence ("if it determines that a sale or transfer . . . subscribers.") was relocated at the end of the second to last sentence. While this change is not being required, it could be made without requiring the rule to be returned to the Chief Hearing Examiner, as it goes merely to form and not to substantial change or to legality.

15. Section 4.150 B. The words "deny in writing the sale or" are missing from the last sentence and should be inserted before "transfer request."

16. Section 4.150 E. In the parenthetical phrase, the first "and" should be "any."

17. Section 4.204 C. In the cross-reference to sec. 4.202 D.D., the period between the "D's" should be deleted.

18. Section 4.214. The words "special, interim" have been omitted from the second sentence. As printed in the State Register, the second sentence should read: "If the Board determines not to grant a special, interim, regular or renewal certificate . . . . "

While the above comments must be considered before resubmission of these rules to this office, they should not be taken as exhaustive. In view of the number of omissions that have been discovered, these rules should be proof-read thoroughly before resubmission.

Upon consideration of the comments made herein and remedial action, if any, these rules may be resubmitted to this office for review and approval. Please submit the original and at least two copies of the Order Adopting and the Adopted Rules.

Because none of the above comments go to legality or substantial change, but only to form, it is not necessary to return these rules to the Chief Hearing Examiner before resubmitting them to this office.

JSA/bw
cc: Duane Harves
Susan Robertson

Our File: #594

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JOHN R. STONE, Chairman
Minnesota Cable Communications Board

DATE: May 28, 1980

Attn: JOANNE E. HINDERAKER

FROM : JERRY ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the Matter of the Proposed Adoption of Rules of the Minnesota Cable Communications Board Governing Definitions, Classification of Systems, Franchise Standards, Transfer of Ownership, Initial and Renewal Franchise Procedures, Length of Renewal Term, and Other Nonsubstantive Changes Including the Deletion of Redundant Rules, and Addition of Clarifying Language, & the Recording & Renumbering of Rules.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

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

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

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

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

JA/bw
Enclosure
CC: Duane Harves
Susan Robertson

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA CABLE

COMMUNICATIONS BOARD

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA CABLE COMMUNICATIONS BOARD GOVERNING DEFINITIONS, CLASSIFICATION OF SYSTEMS, FRANCHISE STANDARDS, TRANSFER OF OWNERSHIP, INITIAL AND RENEWAL FRANCHISE PROCEDURES, LENGTH OF RENEWAL TERM, AND OTHER NON-SUBSTANTIVE CHANGES INCLUDING THE DELETION OF REDUNDANT RULES, THE ADDITION OF CLARIFYING LANGUAGE AND THE REORDERING AND RENUMBERING OF RULES

No. CCB-80-001-NG

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for hearing before Natalie L. Gaull, Hearing Examiner, on the 16th day of January, 1980, at 9:00 a.m. in the conference room of the Minnesota Cable Communications Board Offices, 500 Rice Street, Saint Paul, Minnesota 55103. Proper notice was served upon all persons, associations, and other interested groups registered with the Secretary of State and upon those who filed pursuant to Minn. Stat. § 15.0412 with the Cable Communications Board for that purpose. All interested persons were afforded the opportunity to be heard concerning the adoption of the proposed rules captioned above by the submission of either oral or written data, statements or arguments.

After affording all interested persons an opportunity to present written and oral data, statements and arguments, having considered all of the evidence adduced and upon the records and proceedings herein, the Minnesota Cable Communications Board (hereinafter "Board") hereby accepts and adopts the

Findings of Fact and Conclusions of the Hearing Examiner and incorporated them herein by reference with the following amendments thereto:

1. Finding Number 13 shall be amended to add the following paragraphs after the last sentence in that paragraph:

"The definition for Cable Service Territory (4 MCAR § 4.131 B.) shall be amended as follows:

> Cable Service Territory means that geographic area, as may be defined by political, metes and bounds, or other appropriate description which encompasses a cable communications system's or cable communications systems' entire projected service area. The boundaries may include areas in which, in the judgment of the Board and the party proposing the cable service territory, extension of service is not immediately feasible but may be in the future.

The Board finds that the addition of the phrase 'or cable communications systems' is necessary and reasonable to clarify that a Cable Service Territory (hereinafter "CST") may encompass a larger geographic area than a franchise area. Although a CST and franchise area often will be coterminous, a CST may include more territory than a franchise area. Such a situation may arise when an approved CST contains more than one municipality, and each municipality issues its own franchise. The franchise area in this situation will not be coterminous with the CST because the franchise area as defined in 4 MCAR § 4.002 E., is limited to that area served by the franchise pursuant to the terms of the franchise. The addition of the phrase 'or cable communications systems' does not result in a rule that is substantially different than the rule which was proposed. In fact, the addition reflects the manner in which the existent rule (§ 4.222) has been applied by the Board in approving CSTs.

Furthermore, the Board has determined that the definition of Cable Service Territory is better provided in 4 MCAR § 4.131 B. due to the exclusive

and specific application of the term 'Cable Service Territory' to this section."

2. Finding Number 21 shall be amended to add the following after the last sentence of the paragraph:

> "The Board finds that due to the inadvertent failure to present an affirmative presentation in regard to the need and reasonableness of Section 4.140, that Section shall be deleted from the rules as proposed and shall not be adopted. Such deletion does not affect the meaning or application of any other rule to be adopted. The rules subsequent to the proposed but hereafter deleted Section 4.140 shall be renumbered accordingly."

3. Finding Number 36 shall be amended to add the following as the last sentence of the paragraph:

> "The Board has considered the Hearing Examiner's suggestion; however, the Board has determined that the definition is better provided in the text of Section 4.150 due to the exclusive and specific application of the term 'fundamental corporate change' to this section."

4. Finding Number 37 shall be amended by deleting the third and the last sentences of that paragraph. The following shall be added as the last sentence of the paragraph:

> "Inclusion of a provision concerning sale or transfer of stock so as to create a new controlling interest is necessary and reasonable because a new controlling interest may emerge without resulting in a fundamental corporate change as described in Section 4.151 E. Although sale or transfer of stock so as to create a new controlling interest will often be accomplished through the means described in Section 4.150 E., it is possible for an individual to acquire a controlling interest without the occurrence of any of the events described in 4.150 E. Therefore, the Board finds separate sections are reasonable and necessary for complete clarity of these two concepts."

5. Finding Number 45 shall be amended to add the following after the last sentence in the paragraph:

"The reference to 'entities that operate for profit' is currently in existent rule § 4.121 D. It is a reference to commercial subscribers (compared with residential subscribers). It is not a reference to a cable company. Thus Mr. Campbell's comments were based on an erroneous interpretation of proposed Section 4.202 I. However, such a comment indicates that this rule should be redrafted to avoid such an interpretation. Therefore, Section 4.202 I. shall be amended by deleting the last sentence which reads as follows: 'Nothing in this provision shall be construed to limit the length of subscriber contracts with entities that operate for profit.' This amendment is necessary and reasonable to clarify that the rules do not place any limit on the length of subscriber contracts regardless of whether the service provided is for residential or commercial subscribers. This deletion is not a substantial change in the rule since the deleted sentence did not affect or add to the substantive meaning of the rule."

6. A new Finding Number 68 shall be added and shall state as follows:

"The existent rules relating to fees to be paid to the Board by cable companies (Chapter 15, § § 4.211-4.220) have been renumbered as proposed rules Chapter 7, § § 4.094-4.099. The text of these rules has not been amended. These rules were promulgated pursuant to Minn. Stat. § 238.07. On February 15, 1980, the Minnesota Supreme Court held that Minn. Stat. § 238.07 violates the uniformity of taxation requirement, Article X, § 1 of the Minnesota Constitution. (Minnesota Cable Communications Association v. Minnesota Cable Communications Board.) Therefore, any rules relating to such fees are unenforceable. The Board finds that such rules as renumbered in proposed Chapter 7 shall be severed from the rules to be adopted. No other rule is dependent in any respect on the Chapter 7 rules. All rules subsequent to proposed Chapter 7 shall be renumbered accordingly. At a future date the Board will take the appropriate steps to repeal the existent rules promulgated pursuant to Minn. Stat. § 238.07, in compliance with the Minnesota Administrative Procedure Act.

7. Conclusion Number 4 shall be amended to state as follows:

"That the phrase 'as the same now provide and may hereafter be amended or modified' in 4 MCAR § 4.202 T. is not legal because it results in a delegation of rulemaking authority to a federal agency."

8. Conclusion Number 5 shall be amended by changing the phrase "with any exceptions noted in the Report herein at Findings 21 and 37.", to state as follows: "with any exceptions noted in the Report herein at Finding 21."

STATE OF MINNESOTA
MINNESOTA CABLE COMMUNICATIONS BOARD

By: _____
JOHN R. STONE
Chairman

AG copy
Book Office

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA CABLE

COMMUNICATIONS BOARD

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA CABLE COMMUNICATIONS BOARD GOVERNING DEFINITIONS, CLASSIFICATION OF SYSTEMS, FRANCHISE STANDARDS, TRANSFER OF OWNERSHIP, INITIAL AND RENEWAL FRANCHISE PROCEDURES, LENGTH OF RENEWAL TERM, AND OTHER SUB-SUBSTANTIVE CHANGES INCLUDING THE DELETION OF REDUNDANT RULES, THE ADDITION OF CLARIFYING LANGUAGE AND THE REORDERING AND RENUMBERING OF RULES

No. CCB-80-001-NG

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Natalie L. Gaull, Hearing Examiner, on the 16th day of January, 1980, at 9:00 a.m. in the conference room of the Minnesota Cable Communications Board Offices, 500 Rice Street, Saint Paul, Minnesota 55103, after proper notice required by Minn. Stat. 1978, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceeding 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 rules proposed in Volume 4, Number 23 of the State Register (4 S.R. 913-953), and

amended at the hearing on January 16, 1980, relating to Definitions, Classification of Systems, Franchise Standards, Transfer of Ownership, Initial and Renewal Franchise Procedures, Length of Renewal Term, and other Non-substantive changes including the Deletion of Redundant Rules, the Addition of Clarifying Language and the Reordering and Renumbering of Rules are adopted with the following amendments:

1. The word "practice" and its derivations shall be removed from Section 4.008; the word "appear" will replace the word "practice."

2. The renumbered proposed Chapter 7, 4 MCAR § § 4.094-4.099 (previously Chapter 15) shall be severed from the proposed rules, and all subsequent chapters shall be renumbered accordingly.

3. Section 4.131 B. shall be amended as follows: ". . . or appropriate description which encompasses a cable communications system's or cable communications systems' entire projected service area."

4. Section 4.140 shall be deleted; Chapter 12 will be accordingly renumbered.

5. Section 4.141 C. shall be divided into numbered subparts to conform with the format of Section 4.143 B.

6. The title of Section 4.141 E. shall be changed from "Public Hearings" to "Award of Franchise."

7. The last sentence of Section 4.202 I. shall be deleted.

8. The words "as the same now provide and may hereafter be amended or modified" shall be deleted from Section 4.202 T.

These rules are adopted this 11th day of April, 1980 pursuant to authority vested in the Board by Minn. Stat. § 238.06, Subd. 1, and delegated to me by Resolution Number 32 of the Board, adopted by the Board at a regular meeting held on April 11, 1980.

STATE OF MINNESOTA
MINNESOTA CABLE COMMUNICATIONS BOARD

By: _____
JOHN R. STONE
Chairman

Hdr Copy

DEPARTMENT OF ADMINISTRATION

CABLE COMMUNICATIONS BOARD

Chapter One: ** 4.001-4.025 Practice and Procedure General.

* 4.001 Policy. These Rules shall be liberally construed to effectuate the purposes and provisions of Minn. Stat. ** 238.01-238.16.

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

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

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

1. Any system which serves fewer than 50 subscribers;

2. Any master antenna television system;

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

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

C. "Board" shall mean the cable communications board created by the provisions of Minn. Stat. * 238.04.

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

E. "Franchise area" means that geographic area to be served by the franchisee pursuant to the terms of the franchise.

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

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

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

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

J. "Person" means any individual, trustee, partnership, municipality, association, corporation or other legal entity.

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

L. "State" means the State of Minnesota.

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

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

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

* 4.004 Oppositions and replies.

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

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

* 4.005 Subscriber complaints -- procedure.

A. The following is the sequence the Board requires as a condition for the Board's taking action on a subscriber complaint. The complainant must have directed the complaint to the cable communications company concerned. The cable communications company shall then have had the period of time to rectify the matter complained of as provided for in the franchise as required by Chapter Thirteen of these Rules, provided that a response to the complaint shall have been made by the cable communications company within 24 hours of receipt of the complaint by the company. If the complainant was not satisified with the action taken by the company to rectify the complaint within the time period specified, the complainant must then have filed a complaint with the governing body of the municipality concerned.

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

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

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

* 4.006 Proceedings before the Board. The Board may, on its own motion or on petition of any interested party, hold such proceedings as it may deem necessary in connection with any matter which it has power to investigate under the law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations. Procedures to be followed by the Board shall, unless specifically prescribed in these Rules, or Minn. Stat. Chapter 15, be such as in the opinion of the Board will best serve the purposes of such proceedings.

* 4.007 Intervention in Board proceedings. Unless otherwise provided for by law or rule, intervention in Board proceedings may be made as a matter of right or upon permission of the Board, as hereinafter specified.

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

1. The Federal Communications Commission; or

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

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

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

C. Any person who intervenes or who is permitted to intervene in any proceeding in accordance with paragraphs A. and B. of this section shall be deemed a party to said proceeding.

* 4.008 Censure or suspension of persons appearing before the Board.

A. The Board may censure or suspend from ~~practice~~ appearing before the Board any person who has ~~practiced~~ appeared, is ~~practicing~~ appearing or is holding himself out as entitled to ~~practice~~ appear before it, if it finds that such person has displayed toward the Board or any person authorized to act by it, conduct which, if displayed toward any court of the State, would be cause for censure, suspension or disbarment.

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

4.009 Form of papers filed with the Board.

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

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

4.010 Service of papers and proof of service.

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

B. Service shall be made on or before the day on which the paper is filed.

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

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

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

1. To the chairman of the county board or to the county auditor of a county.

2. To the chief executive officer or to the clerk of a city.

3. To the chairman of the town board or to the clerk of a town.

4. To any member of the Board or any governing body of a school district.

5. To any member of the board or any governing body of a public board or a public body.

6. To any officer, agent, or representative designated by a joint powers agreement as the individual to be served in the instance of a board, group, body, or entity created by such agreement; or, in the lack of such designation, to the managing officer of such board, group, or entity; or in the alternative, to all of the proper municipal officers of the member municipalities as such delivery is provided for above in this subdivision.

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

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

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

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

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

* 4.014 Petitions for reconsideration.

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

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

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

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

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

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

G. The Board may, on its own motion, set aside any order within 20 days after release of the order.

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

* 4.016 Computation of time.

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

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

* 4.017 Board officers.

A. The officers of the Board are the chairman and vice-chairman.

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

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

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

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

** 4.019-4.025 Reserved for future use.

Chapter Two: ** 4.026-4.045 Board Meetings.

* 4.026 Regular meetings. Regular meetings shall be held on the second Friday in each 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.

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

* 4.028 Quorum. A majority of the members of the Board shall constitute a quorum, and a quorum must be present for the transaction of business.

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

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

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

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

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

* 4.033 Staff discussion papers. Papers prepared by the Board's staff for purposes of discussion will be distributed as follows:

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

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

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

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

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

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

* 4.037 Advisory committees. The Board may from time to time establish committees advisory to the Board on any subject matter within the scope of the Board's duties. All such committees shall be appointed by the chairman

of the Board subject to the approval of the members of the Board. A member of the Board designated by the chairman of the Board shall preside over the meetings of each such advisory committee, provided, however, that the chairman of the Board may delegate to the executive director of the Board the responsibility to select a member of the Board's staff to preside over the meetings of any such advisory committee.

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

** 4.039-4.045 Reserved for future use.

Chapter Three: ** 4.046-4.060 Rule Making.

* 4.046 Rule making proceedings. The Board shall adopt, amend, suspend, or repeal its rules in accordance with the procedures set forth in Minn. Stat. ch. 15 ~~and Hearing Examiner rules and regulations.~~ and in the rules of the Office of the Hearing Examiners.

Chapter Four: ** 4.061-4.085 Rules for Contested Cases.

* 4.061 Initiating a contested case.

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

1. The name and address of the applicant;

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

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

4. The signature of the applicant or his attorney.

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

1. The name and address of the complainant;

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

3. The relief sought and the grounds therefor; and

4. The signature of the complainant or his attorney.

C. Initiation by Board order. Where authorized by law, the Board may order a contested case commenced to determine the rights, duties and privileges of specific parties.

* 4.062 Commencement of contested case. Within ten days following receipt of a complaint or application or the adoption of an order by the Board initiating a contested case, the Board shall proceed to commence a contested case hearing in accordance with the procedures set forth in the rules of the Office of the Hearing Examiners.

*4.063 The Board decision.

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

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

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

*4.064 Rehearing.

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

B. Obtaining a rehearing:

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

a. The name and address of the petitioner;

b. The Board designation for the case;

c. The reasons for the petition.

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

3. Default judgments. A party against whom a default has been adjudged pursuant to Office of the Hearing Examiners Rule 208 (9MCAR * 2.208) may obtain a rehearing upon a timely showing of good cause for his failure to appear or plead.

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

C. Rehearing procedure. A rehearing in a contested case shall be conducted in the same manner prescribed by the rule of the Office of the Hearing Examiners.

D. Decision after rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing as provided in 4 MCAR * 4.063 ~~(9 MCAR * 2.076)~~. (9 MCAR * 9.218).

* 4.065 Appeal by Board. The Board may appeal pursuant to Minn. Stat. * 15.0424 any adverse decision. The Board shall be deemed a "person" for such purposes.

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

* * 4.067-4.085 Reserved for future use.

Chapter Five: * * 4.086-4.091 Delegations of Authority.

* 4.086 General provisions.

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

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

* 4.087 Authority of person to whom functions are delegated.

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

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

* 4.088 The exercise of delegated authority.

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

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

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

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

A. Actions of routine character;

B. Actions taken by the chairman as chief executive officer for the Board, including actions designating appropriate subordinate persons to act as executive officers for the Board.

* 4.090 Authority delegated to executive director and counsel. The Board's executive director, or the counsel to the Board, is delegated authority, subject to Board review upon application being made by any interested person:

A. To receive emergency action notifications and to authorize emergency action necessitated by natural disasters;

B. To act upon requests for extensions of time in which to comply with Board orders, upon a showing of good cause;

C. To act upon requests for extensions of time within which to file papers;

D. To authorize withdrawal of pleadings in accordance with these Rules;

E. To return applications or pleadings which are not acceptable under Board Rules;

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

* 4.091 Authority delegated to executive director. The Board's executive director is delegated authority upon application being made by any franchising authority to review applications, and determine eligibility for use of the alternative franchising procedures set forth in 4 MCAR * ~~4.142~~ 4.141.

Chapter Six: * * 4.092-4.093 Reports to Board.

* 4.092 Operator required to file reports with Board.
The Board requires an annual report of cable system data from each system operator which is due on the first of May of each year and the Board may require such additional information and supporting documentation to be filed at such time and in such form as the Board may deem appropriate.

* 4.093 Mailing address and telephone number to be furnished by cable communication companies.

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

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

Chapter ~~Eight:~~ Seven * 4.100-4.104 Ownership and Control.

* 4.100 Certain ownership prohibited. None of the following shall directly or indirectly own, operate, control or have a legal or equitable interest in a cable communications system:

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

B. A national television network; or

C. A television translator station licensed to the municipality of such system; or

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

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

F. A radio or television broadcast station, broadcasting from within the Twin Cities metropolitan area as designated in Minn. Stat. * 473.121, subd. 4.

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

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

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

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

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

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

* 4.101 Exceptions. The provisions of 4 MCAR * 4.100 shall not be applicable to any cable communications company or the ownership thereof during the term of a special certificate of confirmation obtained pursuant to Minn. Stat. * 238.09, subds. 3, 4 or 5, or during the term of an interim certificate of confirmation obtained pursuant to Minn. Stat. * 238.09, subd. 9.

* * 4.102-4.104 Reserved for future use.

Chapter ~~Nine~~ Eight: * * 4.105-4.119 Discrimination Prohibited.

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

* 4.106 Discrimination by cable communications company.

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

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

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

* 4.108 Equal employment opportunity program.

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

B. Under the terms of its program a system shall:

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

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

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

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

5. Conduct continuing review of job structure and employment practices and adopt positive recruitment, training, job design and other

measures needed to assure genuine equality of opportunity to participate fully in all organizational units, occupations and levels of responsibility in the system.

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

* 4.109 Additional information to be furnished.

A. Equal employment programs to be filed by operators of systems:

1. The operator of each cable communications system shall file with the Board and with the Department of Human Rights a statement of its equal employment opportunity within one year after the effective date of these rules, indicating specific practices to be followed in order to assure equal employment opportunity without regard to race, color, religion, national origin or sex, in such aspects of employment practices as recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff and termination. Any changes or amendments to existing programs shall be filed with the Board and the Department of Human Rights on or before September 1st of each year thereafter;

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

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

4. Where, pursuant to Rule 4 MCAR * 4.108C., a program is jointly established by two or more systems with an aggregate total of 10 or more full-time employees, a multiple system operator shall file a combined statement. A multiple system operator shall file a separate equal employment opportunity program statement for each headquarters office if that office has five or more full-time employees, and its work is primarily related to the operation of more than one cable communications system under common ownership or control;

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

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

1. To assure nondiscrimination in employment:

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

b. Placing a notice in bold type on the employment application informing prospective employees that discrimination because of sex, race, color, religion or national origin is prohibited and that they may notify the Federal Equal Employment Opportunity Commission, the Federal Communications Commission, or the Minnesota Department of Human Rights if they believe they have been discriminated against;

c. Placing employment advertisements in media that have significant circulation among minority-group people in the recruiting area;

d. Recruiting through schools and colleges with significant minority-group enrollment;

e. Maintaining systematic contacts with minority and human relations organizations, leaders and spokesmen to encourage referral of qualified minority or female applicants;

f. Encouraging present employees to refer minority or female applicants;

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

2. To assure non-discrimination in selection and hiring:

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

b. Where union agreements exist, cooperating with the union or unions in the development of programs to assure qualified minority group persons or females of equal opportunity for employment, and including an effective non-discrimination clause in new or renegotiated union agreements;

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

3. To assure non-discriminatory placement and promotion:

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

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

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

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

a. Examining rates of pay and fringe benefits for present employees with equivalent duties and adjusting any inequities found;

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

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

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

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

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

G. Where, pursuant to subdivisions E. and F. of this Rule, if more than one annual employment report is filed with respect to cable communications systems under common ownership or control, or headquarters offices performing

work related to such systems, a multiple cable system operator shall also file a consolidated report covering all systems and headquarters office employees included in those reports;

H. The date contained in each annual employment report required by subdivision D. of this Rule and subdivisions E. and F. of this Rule shall reflect the figures from any one payroll period in January, February, or March of the year during which the report is filed. The same payroll period shall be used in each year's annual employment report;

I. Annual employment reports required by the Rule shall be filed on or before September 1st of each year;

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

* 4.110 Records available to the public.

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

B. Records to be maintained locally for public inspection by operators:

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

2. The documents specified in subsection B. of this section shall be maintained for a period of five years;

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

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

* * 4.112-4.119 Reserved for future use.

Chapter ~~Ten:~~Nine * * 4.120-4.129 Poles, Ducts and Conduit Agreements.

* 4.120 Policy. These Rules shall be liberally construed to effectuate the purposes and provisions of Minn. Stat. * 238.13.

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

A. "Conduit system" means any reinforced passage or opening in, on, under or through the ground capable of containing communications facilities and includes the following: main conduit; underground dips and short sections of conduit under roadways, driveways, parking lots and similar conduit installations; laterals to poles and into buildings; ducts; and manholes.

B. "Cable communications company's equipment" means aerial wires, cables, amplifiers, associated power supply equipment, and other transmission apparatus necessary for the proper operation of the cable communications system in a franchised area.

C. "Public utility company poles" means poles owned by the public utility and poles owned by others for which the public utility has the right to permit others to attach in the communications space on said pole.

* 4.122 Application. The provisions of this Chapter shall only apply to pole, duct and conduit agreements entered into or renewed between public utilities and cable communications companies on or after January 1, 1976 and shall have no application to such agreements executed prior to January 1, 1976 until such agreements are either renewed or substantially renegotiated. If a public utility company and a cable communications company enter into an agreement regarding only pole attachments, the provisions of this Chapter relating to conduit systems shall not be applicable to such agreement and if a public utility company and a cable communications company enter into an agreement regarding only use of a conduit system, the provisions of this Chapter relating to pole attachments shall not be applicable to such an agreement.

* 4.123 Permits. Every pole, duct and conduit agreement shall contain a provision that before attaching to the public utility company's poles or occupying any part of the public utility's conduit system, the cable communications company shall make application and receive a permit therefor on a form provided by the public utility company. If the cable communications company accepts the permit, it may attach its equipment to the poles covered by said permit or occupy the conduit system of the public utility to the extent authorized by said permit, subject to the provisions of this Chapter and all terms of the agreement between the contracting parties. In granting or denying a permit, the public utility has the right to determine whether a grant of a permit would adversely affect its public services, duties and obligations or have an adverse effect on the economy, safety, and future needs of the public utility.

* 4.124 Legal authority. Every pole, duct and conduit agreement shall contain a provision that the cable communications company shall submit to the public utility company evidence of the cable communications company's lawful authority to place, maintain and operate its facilities within public streets, highways, and other thoroughfares and shall secure any legally necessary permits and consents from federal, state, county and municipal authorities and from the owners of private property to construct, maintain and operate facilities at the locations of poles or conduit systems of the public utility company which it uses. The parties to the agreement shall at all times observe and comply with, and the provisions of a pole, duct and conduit agreement shall be subject to, all laws, ordinances and regulations which in any manner affect the rights and obligations of the parties to any such agreement, so long as such laws, ordinances or regulations remain in effect.

* 4.125 Indemnification. Every pole, duct and conduit agreement shall contain a provision that the cable communications company shall defend, indemnify, protect and save harmless the public utility from and against any and all claims and demands for damages to property and injury or death to persons, including payments made under any workmen's compensation law or under any plan for employees' disability and death benefits, which may arise out of or be caused by the erection, maintenance, presence, use or removal of the cable communications company's cable, equipment and facilties or by the proximity of the cables, equipment and facilities of the parties to the agreement, or by any act of the cable communications company on or in the vicinity of the public utility company's poles and conduit system, in the performance of the agreement. Nothing contained herein shall relieve the public utility company from liability for the negligence of the public utility company or anyone acting under its direction and control. The cable communications company shall also indemnify, protect and save harmless the public utility from any and all claims and demands of whatever kind which arise directly or indirectly from the operation of the cable communications company's facilities including taxes, special charges by others, claims and demands for damages or loss infringement of copyright, for libel and slander, for unauthorized use of television broadcast programs, and for unauthorized use of other program material, and from and against all claims and demands for infringement of patents with respect to the manufacture, use and operation of the cable communications equipment in combination with the public utility company's poles, conduit system or otherwise. Nothing contained herein shall relieve the public utility company from liability for the negligence of the public utility company or anyone acting under its direction and control. The cable communications company shall carry insurance to protect the parties to the agreement from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury, claim or damage. The amount of any such insurance shall be agreed to by the parties to this agreement. The cable communications company shall also carry such insurance as will protect it from all claims under any workmen's compensation laws in effect that may be applicable to it. All insurance required shall remain in effect for the entire term of the agreement.

* 4.126 Additional terms. Nothing contained in these Rules shall in any way prohibit a public utility company from including in its pole, duct and conduit agreements with cable communications companies additional terms which do not conflict with the provisions of this Chapter.

* * 4.127-4.129 Reserved for future use.

Chapter ~~Eleven~~ Ten: * * 4.130-4.139 Cable Service Territories.

* 4.130 Policy. These rules shall be liberally construed to effectuate the purposes and provisions of Minn. Stat. * 238.05.

* 4.131 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 may be defined by political, metes and bounds, or other appropriate description, which encompasses a cable communications system's or cable communications systems' entire projected service area. The boundaries may include areas in which, in the judgment of the Board and the party proposing the cable service territory, extension of service is not immediately feasible but may be in the future.

* 4.132 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, or for which an interim certificate of confirmation has been or may be issued pursuant to Minn. Stat. * 238.09, subd. 9.

* 4.133 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.

* 4.134 Board procedures.

A. Pursuant to the requirements of 4 MCAR * ~~4.141 B.~~, 4.140 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 company, or any party who has announced an intention to form a cable communications company. 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 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 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 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 continguous municipality at the same time as the proposal is submitted to the Board.

D. 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 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 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.

* 4.135 Factors and criteria to be considered. 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.

* * 4.136-4.139 Reserved for future use.

Chapter ~~Twelve~~ Eleven: * 4.140 - 4.149 Franchising, anchise Renewal and Franchise Amendment Procedures.

~~4 MCAR * 4.140 Franchising Eligibility~~

~~Any franchise area provided cable television service by a company meeting the criteria of a "cable communications system" as defined in 4 MCAR * 4.002 B. shall issue a franchise pursuant to 4 MCAR * 4.140 or 4 MCAR * 4.141 provided the eligibility requirements of 4 MCAR * 4.141 are satisfied.~~

4 MCAR * ~~4.141~~ 4.140 Initial Franchise.

A. Procedure

Except as provided in 4 MCAR * ~~4.142~~ 4.141, the procedure described in 4 MCAR * ~~4.141~~ 4.140 of this chapter shall be observed by all franchising authorities before and during the awarding of any cable communications franchise.

B. Cable Service Territory Approval

The proposed boundaries for all cable service territories must be approved by the Board in accordance with 4 MCAR * 4.134 before the Needs Assessment is completed and the ~~Invitation for Applications~~ Request for Proposals is issued.

C. Needs Assessment Report

The franchising authority or a group of two or more individuals appointed by the franchising authority shall compile a "Needs Assessment Report" on cable communications for the proposed area to be served within the Cable Service Territory.

1. The individuals compiling the Report shall not be employed by or shall knowingly have any financial interest in any cable communications company bidding on such franchise, or their subsidiaries, and major equipment or program suppliers.

2. The group making the Needs Assessment Report shall inform itself about cable communications through at least a review of the published information, state and federal statutes, rules and regulations, and the experiences of other municipalities that have studied cable communications.

3. Such report shall include an assessment of the communications needs of the persons residing within the proposed area to be served within the Cable Service Territory, and recommendations on the means to satisfy those needs.

4. The franchising authority shall make such report publicly available. In cases of joint powers agreements, the report may be a joint undertaking of more than one municipality as long as at least two representatives from each municipality which is a party to the agreement participate in making the Needs Assessment Report.

D. ~~Invitation for Applications~~ Request for Proposals

1. After approval of the Cable Service Territory by the Minnesota Cable Communications Board, and consideration of the recommendations of the Needs Assessment Report, 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, the ~~invitation for applications~~ Request for Proposals for a cable communications franchise, which ~~invitation~~ request shall include but not necessarily be limited to, the following items:

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

b. Criteria and priorities which the franchising authority has developed to review franchise applications;

c. Information regarding applications for the cable communications franchise including:

1. The closing date for submission of applications;

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

3. The name, address and telephone number of an individual(s) who may be contacted for further information.

2. The franchising authority shall mail a copy of the ~~invitation~~ request to the Board and make a copy available for public inspection at the city office (or in the case of joint powers, offices) during normal business hours within 10 days after adoption of a ~~invitation for applications~~ Request for Proposals of a cable communications franchise. The franchising authority shall also mail copies of the ~~invitation applications~~ Request for Proposals for a cable communications franchise to any persons it has identified as being potential candidates for the franchise.

3. The franchising authority shall consult with the Board and may consult with the appropriate regional development commission.

4. The franchising authority shall give public notice of the availability of the ~~invitation for applications~~ Request for Proposals for a cable communications franchise at least 45 days before the public hearing awarding the franchise. The notice shall be published at least once in a newspaper of general circulation within the boundaries of the franchising authority. A copy of the notice shall be provided to the Board on the date of initial publication, together with an affidavit of publication. The notice shall also be published 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, at a minimum, the following information:

a. The name(s) of the municipalities within the area requested to be served in the ~~invitation for applications~~ Request for Proposals.

b. The date by which all ~~applications~~ Proposals must be submitted;

c. The name, address and telephone number of the individual(s) from whom the ~~invitaton for applications~~ Request for Proposals for a cable communications franchise must be obtained;

d. The amount of any application fee;

e. A statement that the ~~applications~~ Proposals 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~~ Proposal for a cable communications franchise.

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

a. 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;

b. A statement of the television and radio broadcast signals for which permission to carry will be requested from the Federal Communications Commission;

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

(1) General area for location of antenna(e) and headend(s);

(2) Schedule for activating two-way capacity;

(3) Type of automated services to be provided;

(4) 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.

d. The terms and conditions under which particular service is to be provided to governmental and educational entities.

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

f. A time schedule for construction of the entire system with the time sequence for wiring the various parts of the area requested to be served in the ~~Invitation for Applications~~ Request for Proposals.

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

h. 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;

i. 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;

j. 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;

k. A[illegible]tation and explanation of any d[illegible]sions or other variations with respect to the requirements of the proposal.

E. ~~Public Hearings~~ Award of Franchise

1. A public hearing before the franchising authority affording reasonable notice and a reasonable opportunity to be heard with respect to all ~~applications~~ Proposals 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.

2. If a franchise is granted, it shall be granted by ordinance. No franchise is effective until the Board has confirmed the franchise pursuant to Minn. Stat. * 238.09 Subd. 6. The franchisee shall obtain a Certificate of Confirmation pursuant to 4 MCAR * * 4.210 - 4.216.

3. 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.

4. Nothing contained in any rule of the Board shall prohibit a franchising authority from franchising a non-profit or municipally operated system provided that it is granted pursuant to Minn. Stat. * * 238.09 - 238.16.

F. Joint Powers

In the cases of municipalities acting in concert, such municipalities may delegate to another entity such duties, responsibilities, privileges or activities described in theses rules, if such delegation is proper according to state and local law.

~~4.142~~ 4.141 Alternative initial franchising procedures.

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

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

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

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

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

a. Name[redacted] municipality making the reque[redacted]

b. The closing date for submission of applications;

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

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

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

f. A statement that all applications for the franchise must contain at least the information required by Rule 4 MCAR * ~~4.141 D.~~ 4.140 D;

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

h. The name, address and telephone number of the individual(s) who may be contacted for further information.

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

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

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

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

E. 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.

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

1. At least one municipality within the cable service territory shall meet one of the following requirements:

a. Be adjacent to an already approved cable service territory having a cable communications system from which the extension of cable communications services has been offered or is desired, or;

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

c. Have a population of less than 1200, and;

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

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

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

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

G. The Board may also allow the use of the procedures of this rule in cases which it determines that the requiring of a franchising authority to comply with the procedures of 4 MCAR * ~~4.141~~ 4.140. would not be in the public interest or would bring undue hardship to any of the parties involved.

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

I. Joint Powers

In the cases of municipalities acting in concert, such municipalities may delegate to another entity such duties, responsibilities, privileges or activities described in these rules, if such delegation is proper according to state and local law.

4 MCAR * ~~4.143~~ 4.142 Franchise Renewal.

A. Procedure

For purposes of these rules, a franchise is renewed whenever the franchising authority awards a subsequent franchise to the same cable communications company or its successor in interest which extends the franchise term beyond its previous termination date. Upon renewal of a cable communications franchise, the franchisee shall obtain a renewal of its certificate of confirmation pursuant to 4 MCAR S 4.215.

B. Renewal Report

Three months prior to the expiration of a franchise, the franchising authority shall submit a renewal report to the cable communications system operator and the Board. Franchising authorities that franchised or would be eligible to franchise under the provision of 4 MCAR * ~~4.142~~ 4.141 (alternative initial franchising procedure) shall be exempt from the report requirement of this rule.

1. The franchising authority or a group of two or more individuals appointed by the franchising authority shall compile a "Renewal Report." The individuals compiling the Report shall not be employed by or shall knowingly have any financial interest in any cable communications company bidding on such franchise, or the cable communications company granted the franchise, or their subsidiaries, and major equipment or program suppliers.

2. The Renewal Report shall assess the performance of the franchisee according to the terms of the franchise and make recommendations to the franchising authority regarding the apparent or likely need for upgrading the system to meet the current state of the art. 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 franchise area based upon a reassessment of the communications needs of the persons residing within the franchise area in relation to the services generally offered by the cable industry.

3. In cases of joint powers agreements, the report may be a joint undertaking of more than one municipality as long as at least two representatives from each municipality who is a party to the agreement participate in making the report.

C. Renegotiation Period

The franchising authority shall commence renegotiation of the franchise at least one year prior to the expiration of the franchise pursuant to 4 MCAR * 4.202 E., and may proceed with a renewal of the franchise unless the franchising authority determines not to reissue the franchise to the franchisee or desires to consider additional applicants for a franchise.

D. Public Hearing

The renewal shall be granted only after holding a public hearing thereon with reasonable notice and reasonable opportunity to be heard. Unless otherwise already provided for by local law, notice of any such hearing shall be given by publishing two notices in a newspaper of general circulation within the boundaries of the franchising authority. First publication shall appear not less than 15 days prior to the hearing. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the acton to be considered by the franchising authority.

E. Additional Applicants

If the franchising authority determines that additional applicants are to be sought, the franchising authority shall follow the procedure of 4 MCAR * ~~4.141~~ 4.140 or 4 MCAR * ~~4.142~~ 4.141 (alternative initial), provided the eligibility requirements of 4 MCAR S ~~4.142~~ 4.141 F. are satisfied.

F. Joint Powers

In the cases of municipalities acting in concert, such municipalities may delegate to another entity such duties, responsibilities, privileges or activities described in these rules, if such delegation is proper according to state and local law.

4 MCAR * ~~4.144~~ 4.143 Franchise amendments. The franchising authority shall act pursuant to local law pertaining to ordinance amendment procedures. The franchising authority shall file the franchise amendments with the Board.

4 MCAR ** ~~4.145~~ 4.144-4.149 Reserved for future use.

Chapter ~~Thirteen~~ Twelve * 4.150 - 4.159 Sale or Transfer of a Franchise, Sale or Transfer of Stock.

4.150 A provision specifying the requirements for the sale or transfer of a franchise.

A. Any sale or transfer of a franchise, including a sale or transfer by means of a fundamental corporate change, requires the written approval of the franchising authority. Any sale or transfer of a franchise shall be subject to the provisions of 4 MCAR * 4.100. The parties to the sale or transfer of a franchise shall make a written request to the franchising authority for its approval of a sale or transfer of a franchise. The franchising authority shall reply in writing within 30 days of the request and shall indicate its approval of the request or its determination that a public hearing is necessary if it determines that a sale or transfer of a franchise may adversely affect the company's subscribers. The franchising authority shall conduct a public hearing on the request within 30 days of such determination.

B. Unless otherwise already provided for by local law, notice of any such hearing shall be given 14 days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the area being served by the franchise. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the franchising authority. Within 30 days after the public hearing, the franchising authority shall approve or deny in writing the sale or transfer request.

C. Any sale or transfer of a franchise, including a sale or transfer by means of a fundamental corporate change. requires notification to the Board by the franchising authority. The notification shall be accompanied by the written certification of the transferee that it meets all of the requirements with respect to technical ability and financial stability demanded of the original franchisee. The franchising authority shall cause to be sent to the Board a copy of all public documents related to sale or transfer of the franchise.

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

E. For purposes of this provision, fundamental corporate change means the sale or transfer of all of a majority of a corporation's assets, merger (including any parent and its subsidiary corporation), consolidation, or creation of a subsidiary corporation.

4 MCAR * 4.151 Sale or transfer of stock.

Sale or transfer of stock in a corporation so as to create a new controlling interest in a cable communication system shall be subject to the requirements of 4 MCAR * 4.100 and 4 MCAR * 4.150.

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

4 MCAR ** 4.152-4.159 Reserved for future use.

Chapter ~~Fourteen~~ Thirteen * * 4.200-4.209 Franchise Standards

* 4.200 Definitions. As used in these rules, the following classifications shall have the meaning given herein, unless a different meaning clearly appears in the text.

A. Class A Cable Systems. All systems that are located outside of the Twin City metropolitan area; and are located in a franchise area having a population of 4000 or fewer persons and serving fewer than 1000 subscribers.

B. Class B Cable Systems. All systems except those systems meeting the criteria of the Class A system listed above, that are located outside of the Twin City metropolitan area; and are located in a franchise area having a population of fewer than 15,000 persons and serving fewer than 3500 subscribers.

C. Class C Cable Systems. All systems that are located in the Twin City metropolitan area; or are located in a franchise area having a population of 15,000 or more persons or serving 3500 or more subscribers.

* 4.201 Reclassification of Systems.

A franchise shall be amended by the franchising authority when the number of subscribers served by the cable communications system in the franchise area changes so as to result in reclassification of the system pursuant to 4 MCAR * 4.200. Such amendments shall include provisions consistent with the requirements of that class of cable communications systems.

* 4.202 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, subd. 3, 4, 5, and 9, 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. The following requirements apply to all classes of systems (A, B, and C,) unless hereafter provided otherwise.

A. A provision that the franchise complies with the Minnesota Cable Communications Board's franchise standards.

B. A provision requiring the franchisee and the franchising authority to conform to all state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to all federal laws and regulations regarding cable as they become effective.

C. A provision that the franchise shall cease to be of any force and effect if the franchisee fails to obtain either a regular certificate of confirmation or renewal of a certificate of confirmation from the 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.

D. A provision limiting the initial and renewal franchise term to not more than fifteen years each.

E. A provision specifying renegotiation periods mutually agreed to between the franchising authority and the company, such renegotiation periods to occur not less than one year before the end of any franchise term, unless the franchising authority determines not to reissue the franchise to the franchisee or desires to consider additional applicants for a franchise.

F. A provision specifying that the franchise is non-exclusive.

G. A provision prohibiting sale or transfer of the franchise or sale or transfer of stock so as to create a new controlling interest pursuant to Chapter Twelve, except at the approval of the franchising authority, which approval shall not be unreasonably withheld, and that such sale or transfer is completed pursuant to Chapter Twelve.

H. A provision granting the franchising authority collecting a franchise fee the authority to audit the franchisee's accounting and financial records upon reasonable notice, and requiring that the franchisee file with the franchising authority annually reports of gross subscriber revenues and other information as the franchising authority deems appropriate.

I. A provision specifying all subscriber charges and, if existent, the length and terms of residential subscriber contracts, and a provision stating the procedure by which all subscriber charges may be changed, unless contrary to state or federal law. ~~Nothing in this provision shall be construed to limit the length of subscriber contracts with entities that operate for profit.~~

J. A provision indicating by title the office or officer of the franchising authority that is responsible for the continuing administration of the franchise.

K. A provision requiring the franchisee to indemnify and hold harmless the franchising authority 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 franchising authority may require insuring both the franchising authority 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.

L. 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 franchising authority, the franchisee shall furnish a performance bond, certificate of deposit or any other type of instrument approved by the franchising authority in such amount as the franchising authority deems to be adequate compensation for damages resulting from the franchisee's nonperformance. The franchising authority may, from year to year, in its sole discretion, reduce the amount of the performance bond or instrument.

M. 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.

N. A provision that the franchisee's technical ability, financial condition and legal qualification were considered and approved by the franchising authority in a full public proceeding affording reasonable notice and a reasonable opportunity to be heard.

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

P.1. A provision in initial franchises that there be a full description of the system proposed for construction and a schedule showing:

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 franchising authority only upon occurrence of unforeseen events or acts of God.

2. Provided however, that for franchise areas which will be served by a system proposed to have 100 plant miles of cable or more, a provision:

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 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;

c. 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;

d. That the requirement of this Rule be waived by the franchising authority only upon occurrence of unforeseen events or acts of God.

Q. Unless otherwise already provided for by local law, a provision that the franchisee shall obtain a permit from the proper municipal authority before commencing construction of any cable communications system, including the opening or disturbance of any street, sidewalk, driveway or public place. Such provision shall specify remedies available to the franchising authority in cases where the franchisee fails to meet the conditions of the permit.

R. Unless otherwise already provided for by local law, a provision that all wires, conduits, cable and other property and facilities of the franchisee be located, constructed, installed and maintained in compliance with applicable codes. Such provision shall also specify that the franchisee keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic, or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.

S. Unless otherwise already provided for by local law, a provision that the franchising authority and the franchisee shall establish a procedure in the franchise for the relocation or removal of the franchisee's wires, conduits, cables and other property located in said street, right-of-way or public place whenever the franchising authority undertakes public improvements which affect the cable equipment.

T. 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 Communication's Commission rules and regulations relating to cable communications systems, ~~as the same now provide and may hereafter be amended or modified~~. 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.

U. 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.

V. A provision pertaining to the franchisee's construction and maintenance of a cable communicationssystem 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. In cases where an initial franchise is granted, the franchisee shall provide a cable communications system having the technical capacity for non-voice return communications.

2. When a franchise is renewed, sold, or transferred and is served by a system that does not have the technical capacity for non-voice return communications, the franchising authority 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.

W. A provision prohibiting that no signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewed 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 permission shall be required for each type or classification of Class IV cable communications activity planned for the purpose.

1. No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of such subscribers or any lists that identify the viewing habits of subscribers shall be sold or otherwise made available to any party other that to the company and its employees for internal business use, and also to the subscriber subject of that information, unless the company has received specific written authorization from the subscriber to make such data available.

2. ~~Written permission from the subscriber shall not be required for systems conducting systemwide or individually addressed electronic telemetering for the purpose of verifying system integrity. Confidentiality of such information shall be subject to the provision set forth in 4 MCAR * 4.202 W. 1.~~ Written permission from the subscriber shall not be required for the systems conducting systemwide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in 4 MCAR * 4.202 W. 1.

3. For 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 communications system.

X. 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 other matters.

Y. A provision requiring that at least a toll-free or collect 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 state who will bear the costs included in making such repairs, adjustments, or installations.

Z. A provision granting the franchising authority 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, attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the franchising authority. 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. 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.

AA. 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 franchising authority for damages resulting to it from such abandonment.

BB. 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 franchise area if the franchising authority so requests, 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 franchise area.

CC. A provision that when a franchise or a cable system is offered for sale, the franchising authority shall have the right to purchase the system.

DD. A provision establishing the minimum number of access channels that the franchisee shall make available.

1. 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. Franchisees providing subscribers only alarm services or only data transmission services for computer operated functions shall be exempt from this requirement. The specially designated access channel may be used by local educational authorities and local government on a first come, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the local educational authorities or local government, the franchisee shall lease time to commercial or noncommercial users on a first come, non-discriminatory 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 local educational authorities, local government, or commercial or non-commercial users who have leased time on the specially designated access channel. The VHF spectrum shall be used for the specially designated access channel required in this subdivision.

2. The provision shall also require that the franchisee shall establish rules pertaining to the administration of the specially designated access channel. The operating rules if established by the franchisee governing the specially designated access channel shall be filed with the Minnesota Cable Communication Board within 90 days after any such channels are put into use.

3. 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 MCAR * 4.203 Required franchise provisions for a Class B cable system.

Franchises for Class B cable systems shall contain recitations and provisions consistent with 4 MCAR * 4.202, unless hereafter provided otherwise, and recitations and provisions consistent with the following requirements:

A. A provision establishing the minimum number of access channels that the franchisee shall make available. Franchisees subject to the requirement of this provision shall not be subject to the requirements of 4 MCAR * 4.202 DD.

1. The provision shall require that the franchisee 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. Franchisees providing subscribers only alarm system services or only data transmission services for computer operated functions shall be exempt from this requirement. 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 education authorities and local government on a first come, nondiscriminatory basis during those hours when the channel is not in use by the general public. During those hours that the specially designated access channel is not being used by the general public, local educational authorities, or local government, the franchisee shall lease time to commercial or non-commercial 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.

2. The provision shall also require that the franchisee shall establish rules pertaining to the administration of the specially designated access channel. The operating rules if established by the franchisee governing the specially designated access channel shall be filed with the Minnesota Cable Communications Board within 90 days after any such channels are put into use.

3. The provision shall require that whenever the specially designated access channel required in 4 MCAR * 4.203 A. 1. 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 a 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 coverters. 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.

B. A provision establishing the minimum equipment that the franchisee shall make available for public use. 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.

4 MCAR * 4.204 Required franchise provisions for a Class C cable system.

Franchises for Class C cable systems shall contain recitations and provisions consistent with 4 MCAR * 4.202, unless hereafter provided otherwise, and recitations and provisions consistent with the following requirements:

A. A provision establishing the minimum number of public, educational, governmental and leased access channels that the franchisee shall make available. Franchisees subject to the requirement of this provision shall not be subject to the requirements of 4 MCAR * 202 DD.

1. 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 available 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. Franchisees providing subscribers only alarm system services or only data transmission services for computer operated functions shall be exempt from this requirement. 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 this 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.

2. The provision shall require that whenever the specially designated noncommercial public access channel, the specially designated education access channel, the specially designated local government access channel, or the specially designated leased access channel required in 4 MCAR * 4.204 A. 1. 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 franchisee 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.

3. 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 this Rule. 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 this Rule shall be filed with the Minnesota Cable Communications Board within 90 days after any such channels are put into use.

4. 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 education access channel, and the specially designated local government access channel required in this Rule. Franchisees providing subscribers only alarm system services or only data transmission services for computer operated functions shall be exempt from this requirement.

5. 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 therefore, 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.

B. A provison establishing the minimum equipment that the franchisee shall make available for public use.

1. The provision shall require that the franchisee shall make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the specially designated noncommercial public access channel required by 4 MCAR * 4.204 A. 1. of this Rule. The franchisee shall also make readily available, upon need being shown, the minimum equipment necessary to make it possible to record programs at remote locations with battery operated portableequipment. 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.

C. A provision establishing the minimum system-wide channel capacity that the franchisee shall make available. Franchisees subject to the requirement of this provision shall not be subject to the requirements of 4 MCAR * 4.202 DD.

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

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

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

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

** 4.206 - 4.209 Reserved for future use.

Chapter ~~Fifteen~~: Fourteen * * 4.210-4.219 Certificates of Confirmation.

* 4.210 Introduction. The Board shall issue certificates of confirmation only in accordance with the rules prescribed in this Chapter.

* 4.211 Necessity for a certificate of confirmation. Any cable communications company shall be required to secure a regular certificate of confirmation from the Board before becoming operational. Such certificate may be issued only upon compliance with 4 MCAR * * ~~4.141~~ 4.140 or ~~4.142~~ 4.141 and 4 MCAR *, 4.200-4.204 after full Board proceedings and shall be for a period of ten years from the effective date of the municipal franchise ordinance.

* 4.212 Procedure for making application for a regular certificate of confirmation.

A. Each cable communications company applying for a certificate of confirmation pursuant to 4 MCAR *4.211 shall file, no later than 30 days before the Board is to consider the application, an application in such form and containing such information and supporting documentation as the Board may require.

B. Each cable communications company applying for a certificate of confirmation pursuant to 4 MCAR * 4.211 shall cause to be published, weekly for two successive weeks, at its own expense, in a legal newspaper of general circulation in each municipality for which a certificate of confirmation is sought the following:

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

2. That it is seeking a certificate of confirmation from the Board and designating the municipality or municipalities;

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

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

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

C. The executive director of the Board may cause such additional notices to be given to such persons as in his opinion is reasonable.

* 4.213 Public meeting.

A. No later than 60 days after a completed application for a certificate of confirmation is received, the Board shall hold a public meeting thereon. Any such public meeting may be combined with a regular or special Board meeting. If, at any such meeting, application is substantially contested, the Board may adjourn the public meeting and deem the matter a contested case for disposition in accordance with Chapter Four of these Rules, provided that the decision of any hearing examiner, appointed thereunder, shall not be binding unless adopted by the Board. For purposes of the contested case procedure, the Board shall not be deemed a party to any proceeding in which only the granting of a regular certificate of confirmation is at issue.

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

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

* 4.215 Renewal of a certificate of confirmation. Upon expiration of its certificate of confirmation or the renewal of its cable communications franchise, a cable communications company must obtain renewal of its certificate of confirmation. The renewal of any certificate of confirmation shall be issued only after compliance with 4 MCAR** 4.200-4.204. The renewal of a certificate of confirmation shall be issued only after full Board proceedings and shall be valid for a period of ten years from the expiration date of the previously issued certificate, except when a certificate is renewed before its expiration date, the term of the renewed certificate shall begin on the date of its issue; any remaining term of a previously issued certificate shall then be expired. The procedure for obtaining the renewal of a certificate of confirmation shall be the same as is herein provided for obtaining a regular certificate of confirmation. Nothing in this rule shall prohibit a cable communications company from renewing its certificate of confirmation prior to the expiration of any existing certificate of confirmation.

* 4.216 Transferability of certificate of confirmation. A certificate of confirmation shall be transferable or in any way assignable only upon full compliance with the applicable provisions of Chapter Twelve of these Rules pertaining to the transfer of a franchise. Transfer of the certificate of confirmation shall not extend the duration of the certificate of confirmation. The transferee, as a condition of the transfer of the certificate, shall within 30 days of the transfer complete any application form required of any person for the original grant of a certificate of confirmation.

* * 4.217-4.219 Reserved for future use.

Chapter ~~Sixteen:~~Fifteen * * 4.220-4.229
Interconnection.

* 4.220 Interconnection. These rules shall be liberally construed to effectuate the purposes and provisions of Minn. Stat. * 238.05, subd. 2(c), 2(d), and 12.

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

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

B. "Interconnection entity" is an entity involved in the construction and operation of an interconnection system, either cable or microwave, providing interconnection services to cable communications systems as defined by Minn. Stat. * 238.02, subd. 3.

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

D. "Regional channel" is a segment of the electromagnetic spectrum provided by cable communications systems or an interconnection entity operating within the Twin Cities metropolitan area for programming on the standard VHF Channel 6.

E. "Regional channel entity" is an entity designated by the Board for purposes of scheduling the programming and facilitating the use of the regional channel.

* 4.222 Interim interconnection.

A. In accordance with the provisions of Minn. Stat. * 238.05, subd. 2(c) and * 238.06, subd. 5, the Board upon suitable showing of need, may order the interim interconnection between cable communications systems. Before an interim interconnection occurs, the parties designated herein shall submit to the Board the information specified herein.

1. The cable companies involved shall submit the following information:

a. A full schedule of capital costs anticipated for such interconnection;

b. A projection of expected operating costs;

c. An identification of the economic effect of such proposed interconnection upon existing cable service.

2. The parties seeking to arrange the interim interconnection shall submit the following information:

a. A description of available sources of capital for construction and operating, including programming, of the interconnection system;

b. An identification of the uses, with a description of the attendant benefits, of such interconnection.

B. The Board may hold a meeting to receive testimony from interested persons concerning the proposed interim interconnection. At least 30 days notice shall be provided to all interested persons. Any cable communications system potentially involved in the interconnection shall carry an appropriate notice of the hearing on its system for at least five consecutive days immediately preceding the hearing. The Board may order interim interconnection incorporating the interconnection plan if it is satisfied from all available evidence that such plan is in the public interest, will be fair both to participating systems and the public and will not impair the ability of any system to deliver other services to subscribers and users. In determining whether to order an interim interconnection, the Board may also consider the extent to which the interim interconnection plan is compatible with the applicable operational objectives contained in 4 MCAR * 4.226.

C. In the event that interim interconnection occurs, the Board may assume jurisdiction over the provision of such interim interconnection. The Board shall have the following responsibility and duties:

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

2. Requiring and reviewing reports regarding the operation of such interim interconnection as may be deemed appropriate;

3. Assuring that all tariffs and rules pertinent to the operation of the interim interconnection have been filed with the Board.

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

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

* 4.223 Regional channel. The Board hereby requires that all franchises for cable communications systems franchised in whole or in part within the Twin Cities metropolitan area shall contain a provision designating the standard VHF Channel 6 for uniform regional channel usage; provided, however, that until the regional channel becomes operational, the designated VHF Channel 6 may be utilized by the cable communications company as it deems appropriate. Subject to approval of the municipality concerned, such designated regional channel may be shared with the government access channel as may be required until such time as the municipality requests a separate channel or until combined usage of the channel expands to such point as it is in use during 80 percent of the time between 8:00 a.m. and 10:00 p.m. during any consecutive six-week period. Use of time on the regional channel or channels shall be made available without charge.

* 4.224 Regional channel entity.

A. The board upon the activation of the regional channel as defined in 4 MCAR * 4.221, shall designate a regional channel entity for the Twin Cities metropolitan area.

B. The Board may designate the regional channel entity after the Board has reviewed and approved an applicant's qualifications in accordance with the procedures provided hereinafter:

1. The Board may, upon the activation of the regional channel, entertain requests for consideration of the designation of a regional channel entity. In the event the Board determines to designate a regional channel entity, the Board shall give public notice of that intention.

2. The Board shall require that all requests for designation for the regional channel entity contain a description of the applicant's proposed operation along with such other supporting information as the Board may require.

3. The Board shall, in its designation of an applicant for programming and facilitation of use of the regional channel, consider the following criteria:

a. the plans for programming including identification of sources, users, and revenues;

b. plans for fostering extended regional participation in existing and expanded regional channel uses;

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

d. participatory representation of users in the entity operational structure and the demonstrated indentification of such applicants with the regional public interest.

C. The Board shall consider such applications at a public meeting providing reasonable opportunity for all interested parties to be heard.

D. The Board shall confer designation on such regional channel entity for a period of three years.

E. Renewal of such designation shall be issued only after full Board proceedings and shall be a period specified by the Board. The procedure for obtaining a renewal of such designation shall be the same as is herein provided for obtaining the initial designation.

* 4.225 Interconnect entity.

A. No person shall, without prior notification to the Board, construct, install, maintain or operate within the State of Minnesota any equipment or facilities for an interconnection entity unless such activity complies fully with all standards provided in 4 MCAR * 4.226 and the provisions of this Rule.

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

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

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

B. Before an interconnection entity commences operation, it shall submit to the Board the following information:

1. Plans for channel capacity including both immediate and eventual capacity;

2. Plans for the interconnection system layout design operation and service area;

3. The terms and conditions, including tariffs, under which services are to be provided;

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

5. The entity's qualifications and/or experience in the broadband telecommunications field;

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

7. The plans for financing the proposed system;

8. Descriptions of the equipment used in providing interconnection;

9. Such other information as the Board may deem relevant.

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

* 4.226 Technical standards.

A. Interconnection entity - video signals.

1. Microwave. Whenever an interconnection is completed via a microwave circuit, the following shall be the minimum operational objectives as measured at the microwave receiving location:

a. Composite video and associated sound levels: The composite video level shall be 1 volt peak to peak $\pm$ 0.1 volts across 75 ohms. The associated sound carrier level shall be maintained 20 db below the 1 volt peak to peak video level.

b. Differential gain: The differential gain objective of the microwave system shall be within $\pm$ 1.5 db (50% APL).

c. Differential phase: The differential phase objective of the microwave system shall be within $\pm$ 2.25^{o} (50% APL).

d. Frequency response: 60 Hz square wave tilt shall be within 2%, 10 KHz-4.5 MHz within $\pm$ 1.0 db.

e. Signal to noise: The peak to peak signal to RMS noise ratio shall be weighted per CCIR and determined by the following formula: S/N = 65-10 log N where N equals the number of hops in the interconnection.

f. Design reliability: For microwave interconnections, the total microwave path, whether single or multiple microwave hops, shall have a design reliability of no less than 99.9 percent per operational week. Outages due to causes beyond the control of the interconnection entity, shall not be counted as to the allowable outages accrued.

g. Demodulator requirements: Field proven state of the art demodulators shall be used to process the "off the air" signals prior to insertion onto the carriers' microwave systems. The final composite video as measured with a 75 ohm terminal load shall not exceed the following:

(1) differential phase of $\pm$ $.5^{o}$

(2) differential gain of $\pm$ .25 db

(3) group delay of ± 50 ns

(4) 20 db IF quieting with 100 uv input.

2. Cable. Whenever a cable system acts as a final link in an interconnect path for video signals, its technical operational objectives as measured at the using subscriber location shall as a minimum be in accordance with the technical requirements set forth in Part 76, Subpart K of the Federal Communications Commission's Rules and Regulations for Class I signals or those set forth in its franchise, whichever is more stringent.

a. The signal level as measured across 75 ohms at the video carrier frequency at the using subscribers locations shall be not less than 1000 microvolts.

b. All specifications set forth above shall be met over an outdoor temperature range of -20°F to +100°F over variations in supply voltages from 105 to 130 VAC.

B. Interconnection entity - data grade signals. Whenever an interconnection is completed via either a microwave or coaxial cable circuit for the transmission of data grade signals the technical operational objectives shall be in accordance with the specifications promulgated by the Federal Communications Commission for data grade signals. In the absence of any such specifications, the interconnect entity and its subscriber shall mutually agree on the objectives and file pertinent data with the Board.

C. Coaxial cable facilities. Whenever a coaxial cable facility acts as the initial or interim link in an interconnect path for video signals, its technical operational objectives as measured at the end interface location shall as a minimum be in accordance with the technical requirements set forth in Part 76, Subpart K of the Federal Communications Commission's Rules and Regulations for Class I signals. In addition the following design requirements shall be observed:

1. The video carrier level to RMS noise ratio shall be not less than 43 db across a 4 MHz band as measured across 75 ohms.

2. For interconnection of multiple video channels, spurious beat components shall be not less than 52 db below the video carrier level for the worst channel.

3. For interconnection of multiple video channels cross modulation components shall be not less than 63 db below the video carrier level for the worst channel.

4. Ghost, echoes, hum modulation and other coherent disturbances shall be not less than 40 db below the video carrier level.

5. The ratio of the amplitude of the horizontal synchronization pulse to peak color burst shall not be greater than 2 db.

6. The signal level as measured across 75 ohms at the video carrier frequency at the using subscribers location shall not be less than 1000 microvolts.

7. All specifications set forth above shall be met over an outdoor temperature range of -20°F to +100°F over variations in supply voltages from 105 to 130 VAC.

D. Coaxial cable facilities. Whenever a coaxial facility acts as the initial or interim link in an interconnection path for data grade signals, its technical operational objectives shall be in accordance with the specifications promulgated by the Federal Communications Commission for data grade signals. In the absence of any such specifications, the cable system, the interconnect entity, and the subscriber shall mutually agree on the objectives and file pertinent data with the Board.

E. Report of measurements. At the completion of the installation of any interconnection, the interconnecting entity shall conduct a measurement of all specifications set forth herein and file these with the Board. Also upon written request, remeasurements may be requested at any time by the Board.

F. The Board may require full compliance with the objective standards in this Chapter and the performance of such tests as may be necessary to assure compliance in order to resolve such recurring problems in performance as may be brought to the attention of the Board. In addition, the Board reserves the prerogative to impose more stringent standards as may be necessary to resolve such problems.

* * 4.227-4.229 Reserved for future use.

Chapter ~~Seventeen~~:Sixteen * * 4.230-4.239
Obscenity and Defamation.

* 4.230 Obscenity.

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

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

* 4.231 Defamation

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

B. Except as hereinafter provided, whoever has knowledge of the defamatory character of the matter and communicates the defamatory matter to a third person without the consent of the person defamed violates this Rule; provided that neither the cable communications system whose facilities are used to transmit a program produced by a person other than a cable comminications system, nor the officers, directors or employees of the cable communications system shall be liable for any penalty or damages arising from any defamatory material presented thereon when the cable communications system or its employees does not originate or produce the program. Any entity which schedules the programming of the access channels of a cable communications system shall not be liable for the presentation of any defamatory material presented thereon unless the entity itself originates or produces the program containing the defamatory material. The foregoing provision does not affect the liability of those responsible for the origination or production of any defamatory material presented in a program.

C. The following shall not constitute a violation of 4 MCAR * 4.231.

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

2. The communication is absolutely privileged; or

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

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

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

* * 4.232-4.239 Reserved for future use.

APPROVED AS TO FORM AND LEGALITY

MAY 28 1980 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 28 1980
Joan Anderson Growe
Secretary of State
10:10 AM

CCB-80-001-NG

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 definitions, classification of systems, franchise standards, transfer of ownership, initial and renewal franchise procedures, length of renewal term, and other non-substantive changes including the deletion of redundant rules, the addition of clarifying language and the reordering and renumbering of rules.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Natalie L. Gaull, duly appointed as Hearing Examiner, at 9:00 a.m. on January 16, 1980, in the Conference Room adjacent to the Minnesota Cable Communications Board (hereinafter "the Board") offices at 500 Rice Street, Saint Paul, Minnesota 55103.

This proceeding is a rules hearing to determine whether the proposed rules should be adopted and is held pursuant to Minn. Stat. Ch. 15. Copies of this Report are available for review from the Board and from the Office of Hearing Examiners.

Members of the Agency Panel at this proceeding included: Joanne Hinderacker, Special Assistant Attorney General; W. D. Donaldson, Executive Director of the Board; Sherry L. Blohm, Cable Communications Specialist; and Susan A. Goodnature, Legal Intern.

Eighteen persons signed the hearing register at the hearing. Approximately ten persons presented testimony at the hearing. Approximately ten timely written comments were received by the Examiner subsequent to the issuance of the Order for Hearing and prior to the close of the record on February 5, 1980.

Based upon all of the testimony, exhibits, and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

I. Procedural Requirements

1. On November 7, 1979, the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) A copy of the proposed Order for Hearing.
(c) A copy of the proposed Notice of Hearing.

2. On November 9, 1979, the Board filed a corrected copy of the proposed rules.

3. On December 10, 1979, the Notice of Hearing and a copy of the proposed rules were published at 4 State Register 912.

4. On December 13, 1979, 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.

5. On December 21, 1979, the Board filed the following:

(a) A copy of a petition requesting a rules hearing presented by the Minnesota Cable Communications Association (hereinafter "the Association") to the Board.
(b) A copy of a Notice of Intent to Solicit Outside Opinion.
(c) A copy of 3 State Register 1609 wherein the Notice of Intent to Solicit Outside Opinion was published.
(d) All materials received by the Board following publication of the Notice of Intent to Solicit Outside Opinion.
(e) Order for Hearing.
(f) Notice of Hearing as mailed.
(g) Affidavit of Receipt of the Secretary of State's list.
(h) A copy of the Secretary of State's list.
(i) Affidavit of Mailing the Notice of Hearing to all persons on the Secretary of State's list.
(j) The Statement of Need and Reasonableness.

All documents were available for inspection at the Office of Hearing Examiners from the date of filing until the date of the hearing.

6. On January 16, 1980, the Board filed with the Chief Hearing Examiner a request for incorporation by reference of subpart K of part 76 of the Rules and Regulations of the Federal Communication Commission relating to Cable Communications Systems.

7. On January 18, 1980, pursuant to Minn. Stat. § 15.0412, subd. 4, the Chief Hearing Examiner approved incorporation by reference as requested on January 16, 1980.

8. The record remained open through February 5, 1980, for the receipt of written comments and statements. Any comments received after that date were not considered in this Report, but are forwarded with this file.

II. Introduction

9. The Board indicates that the proposed rules are intended as a comprehensive revision of existing Board regulations for the purpose of easing, speeding, and clarifying the process. The discussion in this Report is divided into substantive changes and non-substantive changes and is further subdivided by the proposed rule chapters. A summary of all proposed amendments was submitted by the Board and is attached as Exhibit 1 and incorporated by reference herein.

10. The Board submitted an errata sheet at the hearing correcting typographical errors in the text of the rules as published in the State Register. That document is attached as Exhibit 2 and incorporated by reference herein. None of the typographical corrections constitute a substantial change.

11. Minn. Stat. § 15.052, subd. 3 and 9 MCAR § 1.106 provide in relevant part that the Hearing Examiner's Report must take notice of the degree to which the Department (a) documented its statutory authority to take the proposed action; (b) fulfilled all relevant substantive and procedural requirements of law or rule; and (c) demonstrated the need for and reasonbleness of its proposed action with an affirmative presentation of facts. It must be emphasized that the Department is not required to propose or adopt the most reasonable rule, it is only required to make an affirmative presentation of facts showing that each rule is reasonable.

Although there is a general concensus as to the meaning of "necessary" as "required" or "needed", the Examiner believes it is appropriate to define the standard of "reasonbleness" applied in this proceeding.

"Reasonableness" is the opposite of arbitrariness and caprice. An arbitrary and capricious standard can be defined as follows:

> That standard [arbitrary and capricious] is a narrow one, to be applied only where administrative action "is not supportable on any rational basis" or where it is "willful and unreasoning action, without consideration and in disregard of the facts or circumstances of the case." Greenhill v. Bailey, 519 F.2d 5, 10 (8th Cir. 1975).

Reasonableness, then, means to have a rational basis for the action.

In setting forth the findings that establish the rational basis for adoption of these rules, the Board's presentation is not limited to only adjudicatory facts. Rulemaking is a legislative function; it is not adjudicatory function like a contested case There is a difference between the kind of facts relied on in a rulemaking hearing and the kind of facts relied on in an adjudication. Professor Kenneth Culp Davis identifies this difference:

> Two main elements in rulemaking are (1) facts, and (2) ideas about policies. The two are generally interwoven in such a degree that in some parts of the whole problem of what to do, they are inseparable. Even so, a main element in rulemaking is necessarily the policy choice that the administrator must make. Adoption of a rule may require some understanding of facts, but it always requires legislating. Courts must leave administrators free to legislate within the limits of rationality. And legislating inevitably involves the addition of something to the facts in the rulemaking record. (K. Davis, Administrative Law of the Seventies, (Cumulative Supp. 1977)) (emphasis in original)

The Minnesota Supreme Court has recognized the difference between legislative facts and adjudicatory facts and has identified the support needed to uphold the two kinds of facts. In St. Paul Area Chamber of Commerce v. Minnesota Public Service Comm'n., 251 N.W.2d 350 (Minn. 1977), the Court said:

> . . .[H]owever, rate allocation is not a judicial or quasi-judicial function. Once revenue requirements have been determined it remains to decide how, and from whom, the additional revenue is to be obtained. It is at this point that many countervailing considerations come into play. The commission may then balance factors such as cost of service, ability to pay, tax consequences, and ability to pass on increases in order to achieve a fair and reasonable allocation of the increase among consumer classes. . . .It is clear that when the commission acts in this area it is operating in a legislative capacity, as the above cases have stated. The careful balancing of public policies and private needs is not a matter for the courts, unless statutory authority has been exceeded or discretion abused. . . .In ascertaining whether or not the statute has been contravened, the district court must give wide latitude to the commission in allowing it to consider many factors which might not ordinarily be considered by a court, as we have explained above. This is so because, while the court is qualified to review agency findings when an agency acts in a quasi-judicial manner in factual matters, it is not so qualified to review legislative judgments when social policies must be weighed in the balance. (Id. at 356-357)

In this rulemaking proceeding, many of the facts are legislative facts - policy decisions and judgments.

Although the federal rulemaking process differs from that of Minnesota, it would be helpful to examine two federal cases. An example of a federal agency acting on legislative facts is Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973), where the U.S. Supreme Court upheld regulations of the Federal Reserve Board governing credit transactions of more than four installments. Professor Davis' discussion of the Mourning case is helpful:

> [T]he Supreme Court had no power to change "four" to three or five, because Congress had delegated that power to the Board and the Board had made its determination. On the question of what the number should be, the Court could do no more than determine whether "four" was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. (K. Davis, Administrative Law of the Seventies, 206 (Cumulative Supp. 1977))

Dry Color Manufacturers' Assn. v. Department of Labor, 486 F.2d 98 (3rd Cir. 1973), involved temporary emergency standards of the Department of Labor intended to prevent exposure to 14 chemicals found to be carcinogens. In striking down the regulations, the Court essentially said the Department did not have sufficient reasons for the regulations. Davis, however, is critical of the Court's decision:

> If carcinogenicity of the chemicals in humans can be neither proved nor disproved by scientific evidence, the problem for rulemakers is not one of fact; it is one of making a legislative choice of policy in light of the absence of evidence. When an agency is assigned the task of making rules that are in the public interest, it seldom can prove with evidence what is in the public interest; it has to use its policy preferences when proof is lacking. (K. Davis, Administrative Law of the Seventies, 674 (1976))

Therefore, in making Findings of Fact and Conclusions, the Examiner has applied the foregoing standards in determining reasonableness and necessity.

III. Statutory Authority

12. The Board cites Minn. Stat. §§ 238.05 and 238.06, subd. 1 (1978), as authority for the proposed rules. Minn. Stat. § 238.05 sets forth a broad spectrum of responsibilities of the Board. Minn. Stat. § 238.06, subd. 1 (1978), authorizes the Board to promulgate such rules as it finds necessary or appropriate to carry out the provisions of Minn. Stat. Chapter 238 which governs cable communications. The proposed amendments are necessary and appropriate to carry out the provisions of Minn. Stat. Chapter 238. The Examiner finds that the Board has the statutory authority to adopt the proposed rules.

IV. Discussion of Proposed Rules Producing Substantive Changes

A. Proposed Chapters 1-11

13. 4 MCAR § 4.002 E. (hereinafter reference to the proposed rules will be "Section 4. . .") is a definition for "franchise area", which was previously undefined. Comparing this definition with Section 4.131 B., a definition for "cable service territory" is confusing. It is unclear whether the two terms denote the same physical space. The latter definition appears to be more inclusive. An illustration of the potential confusion can be seen in the use of "cable service territory" in Section 4.141 D.1. and "franchise area" in Section 4.141 D.4. The Examiner recommends that the language of the two definitions be standardized, if they mean the same geographic area. If not, they should be more clearly distinguished. It is also recommended that all definitions be placed in Section 4.002 except those which are only pertinent to specific chapters. This section should be clarified. However, clarification should be handled in such a manner as to avoid substantial change. The Examiner finds that this section of the rule is necessary and reasonable.

14. Section 4.002 F. is a definition for "franchising authority" that includes clarifying language on joint power agreements. The Examiner finds this section to be necessary and reasonable.

15. Existing Section 4.008, entitled "Practice before the Board" is deleted. The Board indicated that the public found the provision intimidating and overly formal. In actual practice, Board meetings are less formal than indicated by this section. Deletion should encourage greater public participation in Board processes. The Examiner finds the deletion to be necessary and reasonable.

16. Existing Section 4.009 entitled, "Notice to authorized representatives" is deleted. The Board indicated that the meaning of the section had always been unclear and that its objectives have been obtained by alternative, less formal practices. The Examiner finds the deletion to be necessary and reasonable.

17. Section 4.008 concerns the Board's censure or suspension of persons appearing before it. The deletion of "lack of character or professional integrity" removes a vague standard which was previously unenforced. The Examiner suggests that the term "practice" and its derivations should also be deleted and replaced by "appear". This change would be consistent with the objectives discussed in Finding 15 since the term "practice" is most often associated with attorneys. The Examiner finds the proposed deletion to be necessary and reasonable.

See page 9 correction still needed

18. Section 4.009 describes the form of papers filed with the Board. The deletion of requirements relating to the size of filed papers and the manner in which they are typed contained in existing subsection 4.009 A. is necessary and reasonable.

19. Section 4.031 governs preparation and advance public availability of agendas for Board meetings. The proposed amendment extends the existing three-day requirement for availability of agendas to the public to a five-day requirement. The five-day advance availability requirement is consistent with the time period in Section 4.034. This change is necessary and reasonable.

20. Section 4.092 governs reports which operators must file with the Board. The amendment deletes the submission of FCC Form 326 by operators as a requirement because the information is available by other, more efficient, means. The Examiner finds the deletion to be necessary and reasonable.

B. Proposed Chapter 12 - Franchising, Renewal, Amendment

See p. 33 now Ch. 11

21. Section 4.140 entitled "Franchising Eligibility" requires "any franchise area" served by a cable communications system to issue a franchise pursuant to Section 4.141 or Section 4.142. There was no affirmative presentation of facts in the Statement of Need and Reasonableness by testimony at the hearing, or by written comments to document the need for and reasonableness of this section. It is noted that this section has no counterpart in the existing rules. Furthermore, this section is vague and confusing. The definition of "franchise area", Section 4.4002 E., seems inconsistent with the use of that term in this section. If the "franchise area" was comprised of several municipalities, then this section appears to order them into a joint powers agreement. The phrase "provided the eligibility requirements of section 4.142 are satisfied" could be read as a condition on the operation of the entire section rather than as merely a modifier. If the Board can demonstrate that an affirmative presentation of fact was made, this section should be redrafted to clarify its meaning. The Examiner finds that the Board has not demonstrated the need for and reaonableness of this section.

Section eliminated See p. 33

22. Section 4.141 specifies procedures to be used by franchising authorities before and during the awarding of a cable communication franchise. The rule mandates a series of sequential steps including cable service territory approval, preparation of a Needs Assessment Report, issuance of a Request For Proposal, and public hearings. This section replaces the existing Section 4.111, but much of the previous language is retained. Section 4.141 A. states that the procedures are mandatory except as provided in Section 4.142.

Testimony at the hearing and written comments were critical of the mandatory nature of the section and indicated that the specified procedures were unduly burdensome and unnecessary. The Minnesota Cable Communications Association (hereinafter "Association") and individual cable systems operators expressed these views within the context of a general argument that systems with less than one thousand subscribers should be exempt from state regulation; or exempt to the extent provided by Section 4.142, or exempt from various specific provisions of the proposed rules. This view is discussed more fully in Finding 38, wherein the need and reasonableness of Section 4.200 and its classification of cable systems by size is presented. Objections to specific provisions will be noted.

The Board indicated that mandatory franchising procedures assure the use of a competitive bidding system and deter corruption and bribery. The Board noted that it has requested documentation of the economic burden caused by Board regulation, but that the Association had never responded. The Board also stated that the Association's views had been presented and considered on various occasions during the drafting of the proposed rules.

The Association's exemption arguments generally concern standards to be included in franchises and are primarily based on its construction of the term "minimum" and "taking into account the size" as found in Minn. Stat. § 238.05, subd. 2(b), and discussed in Finding 38. The Examiner believes that the major statutory authority for Section 4.141 A. is not Minn. Stat. § 238.05, subd. 2(b), but instead is Minn. Stat. § 238.05, subd. 2(a). That statutory provision unequivocally directs the Board to "prescribe procedures and practices which municipalities shall follow in granting franchises. . . ." The Board has selected a mandatory procedure for granting franchises with a limited exception provided in Section 4.142. The Examiner finds that Section 4.141 which requires mandatory compliance with each of the procedures listed in Section 4.141 is necessary and reasonable.

23. Section 4.141 B. requires Board approval of a proposed "cable service territory" before the Needs Assessment Report is completed. The approval is also a condition precedent to the franchise authority's ability to issue a Request for Proposal. The procedure for approval of a proposed cable service territory is found at Section 4.134. This requirement enables the Board to comply with its duty to oversee development and growth of the cable industry. It also facilitates regional and statewide planning for cable communications. The Examiner finds this section to be necessary and reasonable.

24. Sections 4.141 C. and 4.143 B. concern the preparation of Needs Assessment Reports and Renewal Reports, respectively. Each section specifies who may prepare the reports, availability to the public, content, and joint preparation pursuant to joint powers agreements. The Board indicated that the

same considerations justify each of these reports which help communities determine and articulate the particular features desired in their cable communication's franchises. The Board also noted that many communities lack the initial knowledge and expertise necessary to make a reasoned decision on what to include in the franchise.

Testimony at the hearing and written comments in the record specifically mention these mandatory reports as burdensome and unnecessary. The Association and individual operators maintained that systems of less than one thousand subscribers typically limit services to retransmission and that other cable services are not offered. The Board disputes this assertion and indicates that other services are provided. Therefore, the Board believes the reports do serve a function. The Association also asserted that the franchising authority in these situations is aware of the communication needs of the area without resorting to a formal study. The Association also contended that inexperience with government regulation and a lack of expertise with regard to cable communications results in delay in preparing these reports. Comment from cable operators also indicated that these smaller systems are located in communities that do not have diverse cable communications needs. This contention was opposed, at the hearing and by written comment, by the Minnesota Board on Aging. Its testimony was that rural elderly persons may have greater needs for cable than those in the metropolitan area due to greater isolation. The representative from the Board on Aging also said that cable was too new to determine if people's needs were being properly served. Howard Bergstrom of the Minnesota Community College System, by written comment, indicated that cable communication's programming and distribution is rapidly changing and, therefore, it is difficult to predict future services and needs.

The Examiner initially notes that franchising authorities are not bound by the results of the Needs Assessment Report/Renewal Report. The Reports enable the Board to exercise its planning function and enable municipalities to make reasoned choices concerning cable communications. Furthermore, knowledge of the communications needs of the individual subscribers could encourage faster implementation of new cable developments in programming and distribution. Minn. Stat. § 238.05, subd. 2(a), directs the Board to "prescribe procedures and practices . . . including those providing for issuance of a public invitation to compete for the franchise . . . containing . . . criteria and priorities the municipality has developed to review franchise applications." The Board chose to make preparation of the reports mandatory and has articulated valid reasons for that choice.

Sections 4.141 C. and 4.143 B.1. also concern who may prepare Needs Assessment Reports or Renewal Reports. Mandatory citizens advisory bodies have been eliminated in favor of allowing either the franchising authority or appointed individuals to prepare the reports. Testimony at the hearing and comments in the record favored this change and affirmed the Board's assertion that it had been difficult to find citizens willing to serve on the advisory boards.

Sections 4.141 C. and 4.143 B.1. also change the standards restricting those persons who may prepare the Needs Assessment Report/Renewal Report. Deletion of the phrase "persons commercially involved in cable communications

activities or other communications media" removes vague language. The substituted language is consistent with language in Minn. Stat. § 238.15, wherein the eligibility requirements for persons issuing franchises are stated.

Sections 1.141 C. and 4.143 B.1. also expressly authorize joint preparation of Needs Assessment Reports/Renewal Reports where there is a joint powers agreement. This eliminates confusion about which duties can be delegated pursuant to joint powers agreements. The Board intends to promote the use of joint powers agreements by this clarification which should speed introduction of cable systems into small rural communities.

Section 4.141 C. is written as a single paragraph whereas Section 4.143 B. is divided into numbered subparts. The Board has indicated that the Needs Assessment Report and Renewal Report serve similar functions. As a matter of style, and without comment on the substance, the Examiner recommends that the organization of the two sections should be similar. The format of Section 4.143 B. provides a clearer presentation. complied with see p. 33

The Examiner finds that Sections 4.143 B. and 4.141 C. are necessary and reasonable.

25. Section 4.141 D. governs the procedure for invitation for applications and contains provisions substantially identical to existing rule 4 MCAR § 4.111 C. - E. The only substantive change is in Section 4.141 D.1.c.(3) which permits the franchising authority to designate "any individual" to be contacted for further information rather than a municipal official. The Examiner finds that Section 4.141 D. as proposed is necessary and reasonable.

26. Section 4.141 E. is entitled "Public Hearings" and concerns procedures to be employed and related matters involving adoption of a franchise ordinance. This subpart's title is misleading because the section concerns far more than "Public Hearings". The title could be changed without constituting substantial change. The only change from the existing rule is elimination of the requirement that the municipality forward a copy of the franchise ordinance to the Board. Since the franchisee will also be required to submit this information to the Board, it is unnecessary for the municipality to do so. The Examiner finds that this section is necessary and reasonable.

27. Sections 4.141 F., 4.142 I. and 4.143 F. are identical passages. Within their respective sections, each expressly declares that the permissibility of delegating duties under a joint powers agreement is subject to local and state law. This is a clarification of existing law and is necessary and reasonable.

28. Section 4.143 replaces existing Section 4.134. Section 4.143 A. defines franchise renewal and requires renewal of the certificate of confirmation pursuant to Section 4.215 upon renewal of the franchise. The definition of "renewal" is identical to that found in existing Section 4.112 A. The section on renewal of the certificate of confirmation restates requirements found in a different rule. The Examiner finds that this section is necessary and reasonable.

29. Section 4.143 B. eliminates the Renewal Report requirement for "franchising authorities that franchised or would be eligible to franchise under . . . section 4.142". This is consistent with the approach in Section 4.141 regarding preparation of Needs Assessment Reports. Testimony at the hearing

and written comments in the record criticized the availability of only a limited exception to the Renewal Report requirement. The rationale is the same as stated with regard to Needs Assessment Reports and which was discussed in Finding 24. The Examiner finds the creation of a limited exception to the Renewal Report requirement in this section to be necessary and reasonable.

30. Proposed Section 4.143 C. requires the franchising authority to commence renegotiation of the franchise at least one year prior to expiration of the franchise rather than 30 days prior to expiration as contained in the existing rule. The Board noted that under the existing thirty-day rule, franchises were expiring before renegotiation. Therefore, cable systems were in operation but without a franchise and certificate of confirmation as required as a condition of operation by Minn. Stat. §§ 238.08, subd. 1, and 238.09, subd. 1. The Examiner finds that this section is both necessary and reasonable.

31. Section 4.143 D. provides for notice and a public hearing for franchise renewals. The period for advance publication of notice was changed to first publication not less than fifteen days before the hearing although no reason was given. The previous provision also provided for two publications of notice, the first not less than thirty days before the hearing. The Examiner finds that the Board's criteria No. 4 of the Statement of Need and Reasonableness, page 2, supports this section. The Examiner finds that this section is reasonable and necessary.

32. Section 4.144 concerns franchise amendments and substitutes for deleted existing Sections 4.136 and 4.137. The rule deletes the requirement that the Board approve franchise amendments. The amendment process is now left to local governments pursuant to the Board's desire to allow local decisions on matters that are peculiarly local in scope. This change also eliminates an unnecessary procedural burden. The Examiner finds this section necessary and reasonable.

33. The Board proposed deletion of existing Section 4.135 wherein a franchise operator was able to appeal termination of the franchise by the franchising authority to the Board. The same right of appeal was also granted with regard to material modification of the franchise. This change conforms to the Board's position that actual selection of a cable system company should be left wholly to the franchising authority. The Examiner finds that the amend ment is necessary and reasonable.

C. Proposed Chapter 13 - Sale or Transfer of Ownership, Sale or Transfer of Stock

34. Chapter 13 contains separate regulatory treatment for the transfer of a franchise. The proposed chapter replaces existing Sections 4.131 - 4.140 which are deleted. The Board separated this chapter from Amendment and Renewal procedures because different considerations and ramifications apply to transfer than apply to amendment and renewal. The Examiner finds the separate treatment of the sale and transfer of a franchise to be necessary and reasonable.

35. Section 4.150 A. still requires the approval of the franchising authority on the sale or transfer of a franchise, but now allows the franchising authority to waive a public hearing if it determines that the subscribers will

not be adversely affected. The Examiner notes that the Statement of Need and Reasonableness, page 13, uses "substantially affected" rather than "adversely affected". The section also requires the determination of adverse affect to be made within 30 days of receipt of the required written notice of transfer. This will expedite the transfer process. The Examiner finds this section to be necessary and reasonable.

36. Section 4.150 A. uses the phrase "fundamental corporate change" as defined in Section 4.150 E. to replace "transfer of an entire legal interest in a cable communications system". The Board indicates that the change clarifies the section's meaning. The Examiner suggests, as a matter of style only, that the definition be provided at the beginning of the section, as is done in Sections 4.002, 4.121, 4.131, and 4.200. The Examiner finds that the term "fundamental corporate change" in Section 4.150 E. is necessary and reasonable.

definition remains at end of section see p. 40

37. Section 4.151 provides that a sale or transfer of stock which creates a new controlling interest in a cable system triggers the application of Section 4.150. The Board indicates that such sale or transfer may have as great an effect as sale of the franchise. The Examiner agrees with the rationale but finds that such sale or transfer is a fundamental corporate change which is or should be included in Section 4.150 E. The Examiner finds that this section is reasonable but not necessary.

remains as separate section - see p. 40

D. Proposed Chapter 14 - Franchise Standards

38. Section 4.200 defines Class A, Class B, and Class C cable communications systems. The criteria upon which these classifications are made include population of the franchise area, number of system subscribers, and whether the franchise area is within the Twin City Metropolitan area. The classifications determine which franchise standards must be included in cable franchises negotiated by municipalities and cable companies. Sections 4.202, 4.203, and 4.204 set forth the mandatory franchise standards for Class A, Class B, and Class C systems, respectively. There was considerable testimony at the hearing and in the written comments on the need for and reasonableness of the classifications as defined and mandatory standards. The primary focus was on Class A systems and the mandatory standards of Section 4.202. Class A systems are defined as follows:

> "All systems located outside of the Twin City metropolitan area; and are located in a franchise area having a population of four thousand or fewer persons and serving fewer than one thousand subscribers."

The Board supported the need for and reasonableness of its definition for Class A systems as follows: The existing rules implicitly distinguish Class C type systems from all others. Creation of the Class A system merely continues and defines this distinction. The systems to be included in Class A show characteristics that sufficiently distinguish them from other, non-Class C type systems. They are small systems serving small communities wherein the cable needs are not as diverse as in larger franchise areas. The services offered on such systems are also not as diverse as with larger systems nor could the communities support the various kinds of cable services potentially available. The Board maintained that the legislature recognized these considerations by

authorizing the Board to classify persons or matters within the jurisdiction of the Board and to prescribe different requirements in different classes of persons or matters, Minn. Stat. § 238.06, subd. 1, and by authorizing the Board to consider size in promulgating franchise standards in Minn. Stat. § 238.05, subd. 2(b). The Examiner finds that the definitions contained in Section 4.200 are necessary and reasonable

39. Section 4.201 provides for reclassification of systems where the number of subscribers changes so as to result in a different classification under Section 4.200. The Board presented no specific affirmative facts supporting the need for and reasonableness of this section. However, it is logical that systems shoud be reclassified when they no longer meet the criteria of the classification under which they were operating. The Examiner finds that this section is necessary and reasonable.

40. Section 4.202 establishes the required contents of franchises. The Board supported the need for and reasonableness of the mandatory standards for Class A systems in section 4.202 as follows: Although authorized to classify and consider system size, the Legislature intended the Board to continue overseeing cable systems for the public interest. The Board noted that the legislature had recognized in Minn. Stat. § 238.01 that smaller communities lack the expertise and resources to plan for and secure the benefits of cable communications while also protecting subscriber and public interests. As a policy decision, the Board imposed mandatory standards in Section 4.202 to ensure protection for small communities from the disproportionate bargaining strengths that might otherwise exist between the franchising authority and the cable company. This rationale also justified imposition of mandatory standards for all of the areas specified in Minn. Stat. § 238.05, subd. 2(b) rather than for a few of these areas. The Board noted that its comprehensive, mandatory franchise standards also serve a notice function in making the franchising authority aware of potential problem areas. The Board asserted that the franchising authority is still free to select the cable system it wants and can negotiate on all matters not specified in the standards.

Testimony and written comments criticizing the definition of Class A systems and the imposition of comprehensive, mandatory franchise standards were received from the Association and individual cable system operators. The Association's position is that systems with less than one thousand subscribers should be wholly exempt from state regulation, or, in the alternative, that the Board should limit mandatory franchise standards to those specified in the first sentence of Minn. Stat. § 238.05, subd. 2(b). The Association admitted that exemption from regulation appears to be precluded by Minn. Stat. Ch. 238. However, they argued that the latter position is feasible if the Board were to construe "taking into account the size" in the second sentence of Minn. Stat. § 238.05, subd. 2(b) as authority for imposing "no" standards for those areas specified thereafter; e.g., performance bond, channel capacity, two-way capability, access, construction and operation. At the hearing, the Association submitted "Second Report and Order, F.C.C. 78-288, Docket #20561" as Association Exhibit 1 in support of its position. Therein, the FCC exempted cable systems with less than one thousand subscribers from specified FCC rules. The Association also used the "Ma and Pa" characterization of such systems made in

the report to set out the hypothetical financial structure of these systems. It was asserted that mandatory, comprehensive franchise standards create undue economic burdens. The Association also maintained that the mandatory, comprehensive standards produce delays in franchising, deter investment, and interfere with matters that should be left to local decision-making. It was pointed out that franchising authorities were free to impose standards in the franchise negotiation, even in the absence of comprehensive, mandatory standards. The Association also noted that retrenchment of the standards to only those required in the first sentence of Minn. Stat. § 238.05, subd. 2(b) would affect 67 of the 128 cable systems in Minnesota, but only 22% of the subscribers would be affected.

In post-hearing comments, the Board responded to some of the Association's contentions. The Board noted that the Association had presented these views in many discussions with the Board prior to the hearing. It also noted that the standards imposed had been previously required. The Board referred to the FCC order (Association Ex. 1) for the proposition that the federal agency had decided that such systems should be left to state and local control; not that total deregulation should occur. The Board also noted that the FCC's jurisdiction over cable systems is limited by a "reasonably ancillary" standard and is not expressly authorized in contrast to the specific coverage of Minn. Stat. Ch. 238. The Board also cited New York cases in which the authority of the cable administrative agency was deemed to be broad and comprehensive. The Board noted that Minn. Stat. Ch. 238 is based on that New York statutory scheme. The Board also criticized the "Ma and Pa" characterization attributed to systems with less than one thousand subscribers. The Board noted that these systems are often used as tax shelters, are often part of larger chains, and are often corporate entities. This means that the final profit does not reflect the corporate salaries already paid to the operators. The Board also cited a financial report by Warburg, Parikas, and Becker, Inc., that indicated the willingness of lenders to commit funds to these small systems. The Board also noted that variance procedures are available for hardship situations. The Board maintained that it has repeatedly requested documentation from the Association on the economic cost of regulation but that there has been no response. The Examiner notes that the Board is vested with broad statutory authority to accomplish diverse and wide ranging objectives, including the development and implementation of a comprehensive state policy on cable communications for the public interest. The Examiner in Finding 11 also described the review applied to matters involving a mix of policy and facts. The classifications made by the Board in Section 4.200 and the mandatory, comprehensive standards proposed in Sections 4.202, 4.203 and 4.204 represents just such a mix of policy and facts. The Board has presented substantial reasons for its actions in this matter. The Association has not demonstrated manifest injustice or facts showing arbitrariness or capriciousness. This is not to say its position is not reasonable. Instead, it must be recognized that the Board was given the power to make policy decisions and the Examiner finds that the concept of mandatory, comprehensive standards contained in Section 4.202 based on the definitions in Section 4.200 to be both necessary and reasonable.

41. Section 4.202 D. is amended to permit renewal of a franchise for not more than a 15-year period instead of ten years. The Board held a special meeting on October 15, 1978, to consider this matter and the relevant issues were set forth in Addendum A to the Statement of Need and Reasonableness. The 15-year renewal term conforms with the maximum allowable initial franchise term, makes it easier for cable operators to secure financing, and should end reliance upon a burdensome variance procedure for extensions. The franchising authority retains discretion to impose a lesser renewal term. The Examiner finds that Section 4.202 D., as proposed, is necessary and reasonable.

42. Section 4.202 E. specifies that terms of the franchise must specify renegotiation of the franchise at least one year prior to the expiration of the franchise. This conforms with Section 4.143 C., the rationale for which is discussed in Finding 30. This section is necessary and reasonable.

43. Section 4.202 G. requires certain provisions concerning the sale or transfer of a franchise or stock. Its language is consistent with that of Sections 4.150 and 4.151. This section is necessary and reasonable.

44. Section 4.202 H. permits a franchising authority to audit the cable company only if a franchise fee is being collected. This eliminates the wholesale audit power formerly given, which was criticized as an unwarranted invasion of privacy. This section is necessary and reasonable.

45. Section 4.202 I. specifies that the franchise must set out subscriber charges and the length and terms of residential subscriber contracts. At the hearing, Mr. Ralph Campbell, Assistant Manager for the City of Edina, asked whether the phrase, "nothing in this provision shall be construed to limit the length of subscriber contracts with entities that operate for profit" barred such contracts by non-profit cable companies. Ms. Blohm indicated, in response, that the option was also open to non-profit companies. The Examiner recommends that this section be amended to more clearly reflect this. The Examiner finds that this section is necessary and reasonable.

complied with by elimination of phrase. see p. 42

46. Section 4.202 L. requires a franchisee to furnish a performance bond, certificate of deposit, or other instrument approved by the franchising authority. The Board provided alternative means to a bond because it had proved too expensive in some circumstances. The Board also provided this flexible approach in response to criticism from municipalities about inflexibility. At the hearing and in written comments, the Association criticized this requirement and argued that it should not be required of Class A systems under its position as discussed in Findings 38 and 40. The Association contends that this requirement merely makes initial franchising and construction more expensive and slows the development of cable. The Examiner notes that this section allows the franchising authority to set the amount of security required. The Examiner finds this section to be necessary and reasonable.

47. Section 4.202 P. requires a description of the proposed system and a construction schedule for all initial franchises. This clarifies confusion caused by the existing rule which required construction schedules for all franchises, including renewal franchises. This section as proposed is necessary and reasonable.

48. Sections 4.202 Q., 4.202 R. and 4.202 S. replace lengthy and redundant rules concerning permission to begin construction; restoration, installation and maintenance of the system; and construction by the municipality affecting the cable system. The Board indicated that it is preferable to leave more of these peculiarly local concerns to the agreement of the parties and local government. The Examiner finds this section to be necessary and reasonable.

49. Section 4.202 T. provides for the incorporation by reference of subpart K of part 76 of the Federal Communication Commission's rules and regulations. The Chief Hearing Examiner authorized such incorporation by reference on January 18, 1980. The Examiner notes that the phrase "as the same now provide and may hereafter be amended or modified" constitutes an impermissible delegation. Only the FCC rules as of the date of the adoption of these rules can be incorporated. A state law, or a validly promulgated rule having the force and effect of law, may not delegate legislative powers to any outside agency including the federal government. Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588 (1971). The Examiner notes that this phrase must be deleted in order for the rule to be legal. The Examiner finds the section to be necessary and reasonable.

complied with

50. Section 4.202 V. provides that all initial franchises must provide a system having two-way capability. When a franchise is renewed, sold or transferred and is served by a system that does not have this capacity, the franchising authority determines when the capacity is needed. The Board indicated that eliminating the present language with its reference to FCC definitions clarifies the rule. The Board also indicated that the simplified language achieves the same substantive results. The Examiner finds this section to be necessary and reasonable.

51. Section 4.202 W. deals with monitoring subscriber terminals. It provides that individual written permission is needed for monitoring of individual viewing patterns or preferences. Written permission is not required for systems conducting electronic telemetering for the purpose of verifying system integrity. The Board felt it was unreasonable to require the operator to obtain permission in these circumstances. The Board ensured privacy by providing in Section 4.202 W.1. that the above cited information, as well as any other information obtained with permission, could be released only upon the separate written permission of the subscriber. At the hearing, the Board also requested that "sweeps" be substituted for "telemetry" in Section 4.202 W.2. because the term is used in the industry. The Board also requested, at that time, that the phrase "monitoring for the purpose of billing" be added at the end of the first sentence in Section 4.202 W.2. The Board indicated that this activity had been contemplated in the Statement of Need and Reasonableness, page 16, but had not been included in the proposed rule. The amendments do not constitute substantial change. The Examiner finds this section to be necessary and reasonable.

OK

52. Section 4.202 Y. allows the franchisee to provide for the receipt of collect complaint calls as an alternative to providing a toll-free number. This lessens the expense to operators while still accomplishing the purpose of the rule. The Examiner finds this section to be necessary and reasonable.

53. Section 4.202 Z. deletes the list of conditions and circumstances under which the franchising authority may terminate a franchise. The Board felt these matters should be left to local discretion. The Examiner finds this section to be necessary and reasonable.

54. Section 4.202 BB. lessens the severity of the existing rule by specifying that in cases of franchise termination or forfeiture, the franchisee must remove its cables, wires, and appliances only if requested to do so by the franchising authority in the exercise of its discretion. The Examiner finds this section to be necessary and reasonable.

55. Section 4.202 CC. gives the franchising authority the right to purchase a cable system which is offered for sale. The existing phrase "non-exclusive right to purchase" is eliminated to promote clarity. The Examiner finds this section to be necessary and reasonable.

56. Section 4.202 DD. requires a provision establishing the minimum number of access channels to be provided and describes the nature of access channels required in Class A franchises. At least one channel must be reserved for governmental and educational uses. The franchisee is permitted to use this channel for other purposes when it is not in use for educational or governmental purposes. Section 4.202 DD eliminates "public access" from the list of purposes for which at least one channel must be reserved. This section also deletes the existing requirement that production and playback equipment for access channels be provided.

The Board asserted that elimination of the public access requirement is consistent with the proposed classifications created in Section 4.200 and discussed in Finding 38. The Board has determined that franchise areas normally served by Class A systems lack the diversity of interests necessary to support reservation of a channel for public access. The Board noted that only 23% of proposed Class A systems had access channels that were used and the use was predominantly for educational or governmental purposes. In contrast, 85% of the systems in Classes B and C reported use of the access channels. The Board felt it was unfair to continue requiring Class A cable system operators to incur the expense of reserving a channel for public use and of providing playback and recording equipment. The Board's decision was also premised on its assessment that the potential for future use of public access in these franchise areas was poor. The Board noted that if a need for public access were to develop in the future, the franchising authority could bargain for such service.

The Board strongly maintained that the justifications for eliminating public access requirements are not applicable to governmental or educational uses. The small size of these franchise areas may mean that they have no local television or radio stations or newspaper. The governmental access would provide them with a valuable method to keep apprised of local public affairs. Furthermore, educational access may enable small school districts, restricted by tight budgets, to provide a wider range of subjects than would otherwise be possible. The Board cited testimony given by the Minnesota Department of Education on September 26, 1979 in this regard. The Board also noted that Minn. Stat. Ch. 238 is replete with references to the need for access channels. Specifically mentioned were Minn. Stat. §§ 238.05, subd. 2(b), 238.01, 238.05, subd.

15, and 238.11, subd. 2. The Board also noted that its Statewide Plan of service objectives had consistently included access considerations. In addition, the Board indicated that reservation of an access channel for educational or governmental purposes produces no costs to be passed on to the subscriber. The Board noted that this analysis led it to eliminate the requirement that equipment be provided. The Board reasoned that the cost of equipment might have to be passed on to a narrow subscriber base which might then discourage cable development.

Testimony at the hearing and written comments submitted afterward were critical of the Board's proposed Section 4.202 D.D. The Minnesota Board on Aging maintained that public access and equipment requirements should be retained. It was argued that the reasons for the lack of public access use were the newness of cable, the attitude that cable was for entertainment, and lack of promotion by cable operators. The Board on Aging contended that cable communications are on the threshold of dramatic changes and that public access should be preserved until the industry matures and an objective analysis of the need for public access can be made. It also indicated that equipment provided under the existing rules is of poor quality which hampers the development of public access programming. The Board on Aging indicated that eliminating the equipment requirement would end public access altogether. Similar opinions were presented in written comments by Howard Bergstrom, Director of Instructional Services, Minnesota Community College System. He asserted that programming for the access channels is in its infancy. He noted that studio-classrooms are now being built in many schools and colleges. He also predicted that education by television could rapidly increase if gasoline rationing is ever instituted. He urged that the access requirements be retained.

Testimony at the hearing and written comments from the Association and individual cable operators argued for elimination of all access and equipment requirements. Lack of use, expense, and interference with local decision making were cited as reasons supporting this position. Association Exhibit 2 was a letter from Richard J. Sjoberg, who operates six systems in northwestern Minnesota. He cited his experiences with the lack of interest in access channels and the expenses he has undertaken in trying to stimulate interest and to accommodate access requests. Similar testimony or written comments were also received from Calvin F. Carlson of Willmar Video, Russ Haber of New Ulm T.V. Signal Company and Tom Novotny of Grand Fords Cable T.V. The Association also noted that the Board at its meeting of September 14, 1979, had voted to eliminate all access requirements but later changed its position. Association Exhibit 3 is the minutes of that meeting. The Association also asserted that Midwest Video Corporation vs. FCC, 571 F.2d 1025 (8th Cir. 1978) and FCC vs. Midwest Video Corp., 99 S.Ct. 1435 (1979) (Association Exhibits 4 and 5), suggest that required access may violate the First Amendment. The Association also submitted as a written comment, a poll taken of small system operators which it contended establishes the lack of access channel use. Association Exhibit 6 is a proposed amendment to Section 4.202 D.D. The amendment would allow the franchisee to charge a reasonable rate for use of the access channel and would not require the franchisee to provide any special equipment. That amendment provides as follows:

DD. A provision establishing the minimum number of access channels that the franchisee shall make available.

> 1. 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. The franchisee shall be allowed to charge a reasonable rate for use of the channel. The franchisee shall not be required to provide any special equipment beyond the designated channel capacity to any access user. Franchisees providing subscribers only alarm services or only data transmission services for computer operated functions shall be exempt from this requirement.

The Board responded to the Association's contentions in posthearing written comments. It noted that the cases cited by the Association concerned a federal agency's imposition of access requirements without authority from its enabling legislation. The Board cited New York's use of access requirements and noted that the Minnesota Cable Communications Act was based on the New York statute. The Board cited the New York Commission's rulemaking notice wherein the need to preserve access channels was deemed critical because of the rapid growth of commercial programming services. The Board also dismissed the Association's First Amendment contention as dicta and indicated that the legislature envisioned access as serving other First Amendment interests. The Board also maintained that required access channels and equipment have never been demonstrated by the Association as economically burdensome. The Board attacked the expenses cited by individual cable operators as expenses not required under the proposed rules. Furthermore, the Board pointed out that the operator was free to use the access channel for commercial services, when not in use for access purposes.

The Board attacked the Association's proposed amendment to Section 4.202 DD. as contrary to the Board's intent. In removing mandatory equipment requirements, the Board acted to relieve cost restrictions on cable companies.

The Board responded to the comments of the Board on Aging by asserting that requiring equipment pursuant to uniform standards could produce too many hardship cases. The cost would be passed to the subscribers and deter cable development.

The Examiner notes that Section 4.202 DD. places fewer restrictions and burdens upon the cable operator than exist in the present rules. It is also noted that if access channels are not being used, as asserted by the Association, then the channels would be available to the operator for his own commercial purposes. As discussed in Findings 38 and 40, the Board has the authority and discretion to impose franchise standards such as those found in Section 4.202 DD. The Board has stated substantial reasons for its manner of regulation and no evidence was submitted to show that these regulations directly result in economic hardships. The Examiner therefore finds Section 4.202 DD. to be necessary and reasonable. However, the Examiner also notes that the Board is free to consider a change in the proposed rules prior to adoption if the changes do not constitute substantial changae pursuant to 9 MCAR § 2.111. no changes made.

59. Section 4.203 A. specifies the access and equipment which must be available in Class B franchises. Channel time and playback of prerecorded

programming on the access channel must be provided free to the general public; but the cost of personnel, equipment, and production costs can be assessed for live studio presentations longer than five minutes. The Examiner notes that much of the discussion in Finding 58 is applicable to this section. The Examiner finds this section to be necessary and reasonable.

60. Section 4.204 specifies the access and equipment which must be provided in Class C franchises. The Board's rationale is similar to that discussed in Finding 58. The Examiner finds this section to be necessary and reasonable.

61. Sections 4.203 A.1. and 4.204 A.1. and 4. provide that franchisees who provided subscribers only with alarm system services or data transmission systems are exempt from access and equipment requirements. The Examiner finds this provision to be necessary and reasonable.

62. The Board deleted existing Section 4.121 L. which had set minimum operational standards because the FCC has preempted the field. The Examiner finds the amendment to be necessary and reasonable.

63. The Board deleted existing Section 4.121 BB. which required creation of an advisory board to monitor performance by the franchisee. The Board asserted that franchising authorities have had difficulty securing persons willing to serve on the advisory board. Reports produced by these boards are also said to be of negligible value. In testimony and by written comment, the Association supported this deletion. The Examiner finds this amendment to be necessary and reasonable.

64. Section 4.205 enables the municipality and franchisee to negotiate additional terms to a franchise. Although a specific presentation by the Board on this section is not included in the Statement of Need and Reasonableness, the Examiner finds that the Board's criteria No. 7 of the Statement of Need and Reasonableness, page 2, supports this section. The Examiner finds this section to be necessary and reasonable.

65. The Board deleted existing Section 4.097 and 4.098 entitled, "Special Certificates of Confirmation" and "Interim Certificate of Confirmation", respectively. These mechanisms were used during the "start up" phase of the Board's existence and no longer serve any purposes. The Examiner finds the deletions to be necessary and reasonable.

V. Proposed Amendments Producing Non-Substantive Changes

66. The Board has proposed the following amendments which result in non-substantive changes:

(a) Section 4.004, amend by adding phrase "by law, rule on";

(b) Section 4.005, amend by adding "referred to a Hearing Examiner pursuant to Chapter Four";

(c) Section 4.006, amend by making uniform all references to the Administrative Procedure Act (Minn. Stat. Ch. 15);

(d) Section 4.007, amend by adding phrase "unless otherwise provided by law or rule";

(e) Section 4.046, amend by adding "in the rules of the Office of Hearing Examiners";

(f) Section 4.097, amend by deleting "Special Certificates of Confirmation";

(g) Section 4.098, amend by deleting "Interim Certificates of Incorporation";

(h) Substituting "Request for Proposal" for "Invitation for Applications" wherever it appears. The Examiner finds that these amendments are necessary and reasonable.

67. The Board has also renumbered and reordered certain rules and sections thereof as noted in Exhibit 1 attached hereto. The Examiner finds that these amendments are necessary and reasonable.

CONCLUSIONS

1. The Minnesota Cable Communications Board gave proper notice of the promulgation of the proposed rules.

2. The Minnesota Cable Communications Board has statutory authority to take the proposed action, to wit, the promulgation of the proposed rules.

3. The Minnesota Cable Communications Board has fulfilled all relevant substantive and procedural requirements of law or rule.

4. That 4 MCAR § 4.202 T. is not legal because it delegates rulemaking authority to a federal agency.

5. The Minnesota Cable Communications Board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record with any exceptions noted in the Report herein at Findings 21 and 37.

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

RECOMMENDATION

It is recommended that the proposed rules be adopted by the Minnesota Cable Communications Board with consideration given to the Findings of Fact herein.

Dated: March 6 , 1980.

Natalie L. Gaull by Jeanne Cleveland

NATALIE L. GAULL
Hearing Examiner

Rules As Proposed

STATE REGISTER

STATE OF MINNESOTA



VOLUME 4, NUMBER 23

December 10, 1979

Pages 901-972

STATE REGISTER

Volume 4 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 4		
24	Monday Dec 3	Monday Dec 10	Monday Dec 17
25	Monday Dec 10	Monday Dec 17	Monday Dec 24
26	Monday Dec 17	Friday Dec 21	Monday Dec 31
27	Friday Dec 21	Friday Dec 28	Monday Jan 7

*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.

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CONTENTS

MCAR AMENDMENTS AND ADDITIONS 904

RULES

Department of Personnel
Adopted Rules Regarding Personnel Administration 905

PROPOSED RULES

Public Hearings on Agency Rules
December 17-24, 1979 912

Department of Administration Cable Communications Board
Proposed Rules Governing Definitions, Classification of Systems, Franchise Procedures, Length of Renewal Term, and Other Non-substantive Changes Including the Deletion of Redundant Rules, the Addition of Clarifying Language and the Reordering and Renumbering of Rules 912

Department of Commerce Insurance Division
Proposed Temporary Rules Governing Self-Insurance for Workers' Compensation 953

SUPREME COURT
Decisions Filed Friday, November 30, 1979 962

STATE CONTRACTS

Department of Administration Information Services Bureau
Notice of Availability of Contract for Back-up Programming Services 963
Notice of Availability of Contract for Back-up Systems Analysis Services 963

Department of Administration Intergovernmental Information Systems Advisory Council
Notice of Request for Proposals for the Feasibility of An Integrated Data Processing System for County and Municipal Governments 963

Minnesota Educational Computing Consortium
Notice of Availability of Contract for Educational Researcher 964

Department of Natural Resources Minerals Division
Notice of Request for Proposals for a Study of Organic Acids in Minnesota's Peatland Waters 964

State Planning Agency
Notice of Correction of Submission Date for Proposals for Development and Delivery of Training Programs Regarding the HUD Community Development Block Grant Program 964

OFFICIAL NOTICES

Department of Commerce Securities Division
Notice of Intent to Solicit Outside Opinions Concerning the Possible Adoption, Amendment, Suspension or Repeal of Rules Relating to Minn. Stat. ch. 80A (Minnesota Securities Act) 966

Department of Commerce Banking Division
Bulletin No. 2148: Maximum Lawful Rate of Interest for Mortgages for the Month of December 1979 966

Department of Education Instruction Division
Notice of Opening for a Leadership Development Specialist/Consultant 966

Energy Agency Data and Analysis Division
Northern States Power Company Certificate of Need Application to Increase the Storage Capacity of the Spent Fuel Pool at the Prairie Island Nuclear Generating Facility 967

Ethical Practices Board
Notice of Regular Meeting 969

Department of Health Emergency Medical Services Section
Notice of Filing of Application by City of Oakdale for License to Operate a Life Support Transportation Service 969
Notice of Filing of Application by Stillwater EMS, Inc., for License to Operate A Life Support Transportation Service 969

Office of the Secretary of State
Notice of Vacancies in Multi-member State Agencies 969

Department of Transportation
Notice of Application and Opportunity for Hearing Regarding Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove the Easterly 800 Feet of the ICC Track No. AFE8994, the Easterly 800 Feet of ICC Track No. (unknown), and Crossover Track No. (unknown) All Located at Waterville, MN 970

MCAR AMENDMENTS AND ADDITIONS

The following is a listing of all proposed and adopted rules published in Volume 4, Number 1 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 is published each quarter and at the end of the volume year.

TITLE 2 ADMINISTRATION

Part 2 Personnel Department

2 MCAR §§ 2.009-2.010, 2.018-2.019, 2.024-2.029,2.031, 2.039, 2.045-2.046, 2.061-2.065, 2.067, 2.086-2.087, 2.091, 2.097, 2.099, 2.108-2.110, 2.118-2.119, 2.131, 2.133-2.136, 2.138, 2.141, 2.181-2.182, 2.201-2.203, 2.226, 2.232, 2.240-2.241, 2.244 (adopted) 905

TITLE 3 AGRICULTURE

Part 1 Agriculture Department

3 MCAR §§ 1.0112-1.0113 (adopted temporary) 845
3 MCAR §§ 1.0112-1.0113 (proposed) 889

TITLE 4 COMMERCE

Part 1 Commerce Department

4 MCAR §§ 1.9285-1.9288, 1.9290-1.9294 (proposed temporary) ..953

Part 4 Cable Communications Board

4 MCAR §§ 4.001-4.046, 4.061-4.239 (proposed) 912

Part 6 Accountancy Board

4 MCAR § 6.110 (adopted temporary) 736

TITLE 5 EDUCATION

Part 1 Education Department

EDU 641 (proposed) 573
5 MCAR §§ 1.0100-1.0105, 1.01051, 1.0106-1.0118, 1.01101-1.01102 (proposed) 708
5 MCAR §§ 1.0104, 1.01051 (adopted temporary) 753
5 MCAR §§ 1.0800, 1.0805 (proposed temporary) 707
5 MCAR §§ 1.0900-1.0904 (proposed) 573

Part 3 Teaching Board

5 MCAR §§ 3.001, 3.060, 3.102-3.103, 3.108, 3.114 (proposed) 543
5 MCAR § 3.002 (withdrawn) 572
5 MCAR § 3.106 (adopted) 540
5 MCAR § 3.142 (adopted) 572

TITLE 6 ENVIRONMENT

Part 1 Natural Resources Department

6 MCAR §§ 1.0057-1.0058, 1.5030-1.5034 (adopted) 685
6 MCAR §§ 1.5050-1.5057 (proposed) 854
6 MCAR §§ 1.5400 (adopted) 753

Part 2 Energy Agency

6 MCAR §§ 2.2101-2.2102, 2.2104, 2.2110, 2.2115, 2.2120 (adopted) 801

Part 4 Pollution Control Agency

SW 11 (proposed) 579
6 MCAR §§ 4.0033, 4.0040 (proposed) 622
6 MCAR §§ 4.8051-4.8052 (adopted) 883
SW 51-61 (adopted repeal) 883

TITLE 7 HEALTH

Part 1 Health Department

7 MCAR §§ 1.210-1.211, 1.217-1.224 (adopted) 601
7 MCAR §§ 1.327-1.328 (proposed) 577
7 MCAR §§ 1.536-1.538 (proposed) 719

TITLE 8 LABOR

Part 1 Labor and Industry Department

MOSHC 1 (adopted) 883

TITLE 9 LAW

Part 1 Ethical Practices Board

9 MCAR §§ 1.0100-1.0111 (adopted) 753

TITLE 10 PLANNING

Part 1 State Planning Agency

10 MCAR §§ 1.300-1.305 (adopted) 541
10 MCAR §§ 1.401-1.404 (proposed) 849

TITLE 11 PUBLIC SAFETY

Part 1 Public Safety Department

11 MCAR §§ 1.0188-1.0196 (adopted) 699
11 MCAR §§ 1.4051-1.4056, 1.4061-1.4062 (proposed) 757

TITLE 12 SOCIAL SERVICE

Part 2 Public Welfare Department

12 MCAR § 2.014 (proposed temporary) 802
DPW 43 (12 MCAR § 2.043) (adopted) 845
12 MCAR § 2.047 (adopted temporary) 701
12 MCAR § 2.047 (proposed) 737
12 MCAR § 2.049 (adopted) 703
12 MCAR § 2.163 (adopted temporary) 848
12 MCAR §§ 2.204, 2.207 (proposed) 759
12 MCAR §§ 2.490a, 2.491a (proposed temporary) 759

Part 3 Housing Finance Agency

12 MCAR §§ 3.002, 3.052, 3.063, 3.070-3.074 (proposed) 704

TITLE 13 TAXATION

Part 1 Revenue Department

13 MCAR §§ 1.0001-1.0007 (TaxAdVal 1-7) (adopted) 756
13 MCAR § 1.6020 (proposed) 771

TITLE 14 TRANSPORTATION

Part 1 Transportation Department

14 MCAR §§ 1.3001-1.3043 (proposed) 628
14 MCAR §§ 1.5050 (proposed) 775

RULES

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 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 Personnel

Adopted Rules Regarding Personnel Administration

The rules proposed and published at *State Register*, Volume 4, No. 6, pp. 117-139, August 13, 1979 (4 S.R. 117) are adopted with the following amendments:

Amendments as Adopted

2 MCAR § 2.039 C. Selection processes for incumbents of reallocated positions. The Commissioner may authorize any appointing authority to promote the incumbent of a reallocated position to a higher class without examination in accordance with law. In the absence of such authorization the incumbent of a position which has been reallocated in accordance with 2 MCAR § 2.019 and 2 MCAR § 2.240 shall be permitted to compete in the selection process for the class to which the position has been reallocated. ~~provided~~ (Minn. Stat. § 43.19, subd. 1(2))

If the incumbent of a reallocated position passes the examination process, notwithstanding the provisions of 2 MCAR § 2.084, the Commissioner may certify only the name of the eligible incumbent.

Where the incumbent of a position which has been reallocated has failed to qualify in the selection process and/or otherwise is ineligible to continue in the position in the new class, the employee must be removed from the position within 30 calendar days from the date of notification to the appointing authority of the incumbent's failure to qualify.

Where the incumbent is ineligible to continue in the position and is not transferred, promoted or demoted, the lay-off provisions of the Personnel Law and Rules apply.

2 MCAR § 2.131 Holidays. Holidays will be observed as prescribed by the legislature. (Minn. Stat. § 645.44, subd. 5)

This rule applies to all classified employees and, notwithstanding 2 MCAR § 2.004, all full-time unlimited unclassified employees in the executive branch of government, except non-tenured laborers; temporary employees; emergency employees; student workers appointed after January 1, 1980; and project employees. Intermittent employees shall become eligible for holidays after completion of 100 working days in any twelve month period. Interns do not receive holiday pay. Holiday leave provisions may be established by the appointing authority for employees not covered by this rule, provided they are not specifically excluded from coverage.

The following days are holidays and an alternate day off shall be granted for work done on these days, except where payment is allowed under the overtime provisions of 2 MCAR § 2.130.

New Year's Day	January 1
Washington's and Lincoln's Birthday	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day After Thanksgiving	~~Fourth Friday in November~~ Friday After Thanksgiving
Christmas Day	December 25
Employee's Birthday	Employee's Birthdate

Where a collective bargaining agreement specifies holidays, covered employees shall receive only the holidays set forth in that agreement.

~~Medical doctors compensated under the provisions of Minn. Stat. § 43.126 shall observe a floating holiday in lieu of the birthday holiday.~~

A. When New Year's Day, Independence Day, Veterans Day, Christmas Day or the employee's birthday fall on Sunday, the following day shall be considered the official holiday for employees. When these holidays fall on Saturday, the preceding day shall be considered the official holiday for employees. An employee, regardless of work schedule, shall receive the same number of holidays as an employee whose regular work week is Monday through Friday. Where seven day a week schedules are in effect, the actual holiday shall be observed as the holiday for employees working within such schedule. When any of the above holidays fall on the employee's regularly scheduled day off, the employee's scheduled work day which is closest to the holiday, which is not a holiday, shall be scheduled as a holiday for that employee unless other arrangements are agreed to between the appointing authority and the employee.

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."

When an employee has days off that are not consecutive and the holiday falls on one of the scheduled days off, either the date before or the day after the holiday(s) shall be observed as the holiday at the appointing authority's discretion unless other arrangements are agreed to between the appointing authority and the employee. When an employee has three or more consecutive days off and a holiday falls on one or more of the scheduled days off, either the day(s) before or the day(s) after the consecutive days off or any combination thereof shall be observed as the holiday(s) at the appointing authority's discretion unless other arrangements are agreed to between the appointing authority and the employee.

For purposes of this rule, when a workshift includes consecutive hours which fall in two calendar days, that workshift shall be considered as falling on the calendar day in which the majority of hours in the shift fall. When a workshift includes an equal number of consecutive hours in each of two calendar days, that workshift shall be considered as falling on the first of the two calendar days.

When an employee's birthday falls on any of the other holidays listed above, the employee's first scheduled work day following the holiday which is not a holiday, shall be observed as the birthday holiday. Except in leap years, when an employee's birthday falls on February 29, March 1 shall be observed as the birthday holiday. An eligible employee whose birthday falls during a period of seasonal layoff shall be entitled to be paid for the birthday holiday during the first payroll period after return from layoff.

B. The appointing authority in an agency which remains open on a holiday for performance of public business may designate a sufficient number of employees to maintain the continuity of the agency's operations on such days.

C. Holidays which occur within the employee's vacation or sick leave period will not be charged to the employee's vacation or sick leave time.

D. Employees must be on the payroll on the work day immediately preceding and the work day immediately following a holiday to be eligible for such holiday.

For the purpose of determining eligibility for holiday pay, "on the payroll" shall mean those who are on paid leave or actively working.

E. Employees who normally work less than full-time and eligible intermittent employees shall have their holiday pay prorated on the following basis:

Hours that would have been worked during the pay period had there been no holiday	Holiday hours earned for each holiday in the pay period
Less than 9.5	0
At least 9.5, but less than 19.5	1
At least 19.5, but less than 29.5	2
At least 29.5, but less than 39.5	3
At least 39.5, but less than 49.5	4
At least 49.5, but less than 59.5	5
At least 59.5, but less than 69.5	6
At least 69.5, but less than 79.5	7
At least 79.5	8

Eligible intermittent employees shall receive a holiday if they work the day before and the day after a holiday. If such intermittent employee works on a holiday, that employee will be reimbursed for the holiday in addition to the pay for the time worked. This pay shall be in accordance with the above schedule. Seasonal employees are entitled to holidays as defined in this rule.

With the approval of the appointing authority, part-time employees may be allowed to arrange their work schedules, in payroll periods that include a holiday, to avoid any reduction in salary due to a loss of hours because of the proration of holiday hours, provided such rescheduling does not result in the payment of overtime.

Any eligible employee mandatorily retired on a holiday or holiday weekend shall be entitled to be paid for the holiday(s).

Holiday pay shall be computed at the employee's normal day's pay (i.e., the employee's regular hourly rate of pay multiplied by the number of hours in his/her normal work day), and shall be paid in cash.

Any employee who works on a holiday shall be paid cash at the employee's appropriate overtime rate for all hours worked in addition to holiday pay described in this section, or at the discretion of the appointing authority, shall be paid in cash at the employee's appropriate overtime rate for all hours worked in addition to an alternate holiday in lieu of holiday pay provided in this section. Such alternate holiday shall be granted within thirty days of the pay period in which the holiday occurs, but if there is no agreement as to the date of the alternate holiday between the appointing authority and the employee, such holiday shall be paid in cash.

F. Employees who observe religious holidays on days which do not fall on a Sunday or a legal holiday shall be entitled to such days off to observe the religious holiday upon 21 days advanced written notice to the appointing authority. Such days off to observe these religious holidays shall be taken without pay, or upon the election of the employee, may be charged against accumulated vacation leave. If the appointing authority can arrange to have the employee work an equivalent number of hours at another time during the fiscal year to compensate for the days lost for observance of religious holidays, these holidays may be taken against such hours actually worked.

2 MCAR § 2.135 Vacation leave. This rule applies to all classified state employees in the executive branch except for non-tenured laborers; emergency employees; project employees; student workers appointed after January 1, 1980; or temporary appointment employees and also applies to all full-time unclassified employees appointed for a period in excess of 6 months in the executive branch except those listed in 2 MCAR § 2.004. Intermittent employees shall become eligible after completion of 100 working days in any twelve month period. Interns shall not accrue vacation leave. Vacation leave provisions may be established by the appointing authority for those unclassified employees listed in 2 MCAR § 2.004 and for other employees who are not covered by this rule provided they are not specifically excluded from coverage.

Each eligible non-managerial employee shall accrue vacation with pay according to the rate listed below:

HOURS OF VACATION ACCRUED DURING EACH PAYROLL PERIOD OF CONTINUOUS SERVICE

No. Hours Worked During Pay Period	0 thru 3 yrs. if appointed on or after 7/1/79	0 thru 3 yrs. if appointed before 7/1/79	After 3 thru 5 years	After 5 thru 8 years	After 8 thru 12 years	After 12 thru 20 years	Over 20 years
Less than 9.5	0	0	0	0	0	0	0
At least 9.5, but less than 19.5	.50	.75	.75	1	1.25	1.50	1.50
At least 19.5, but less than 29.5	.75	1	1	1.25	1.75	2	2
At least 29.5, but less than 39.5	1	1.50	1.50	2	2.75	3	3
At least 39.5, but less than 49.5	1.50	2	2	2.50	3.50	3.75	4
At least 49.5, but less than 59.5	2	2.50	2.50	3.25	4.50	4.75	5
At least 59.5, but less than 69.5	2.25	3	3	3.75	5.25	5.75	6
At least 69.5, but less than 79.5	2.75	3.50	3.50	4.50	6.25	6.75	7
At least 79.5	3	4	4	5	7	7.50	8

~~Medical-Doctors-Compensated-Under-the-Provisions of-Minn.-Stat.-§-43.126-Shall-Accrue Vacation-with-Pay-According-to-the-Rate Listed-Below:~~

~~No.-of-Hours Worked-During Pay-Period~~	~~0-thru-3 Years~~	~~3-thru 5-years~~	~~5-thru 12-years~~	~~After-12 years~~
~~Less-than-9.5~~	~~0~~	~~0~~	~~0~~	~~0~~
~~At-least-9.5 but-less-than-19.5~~	~~1~~	~~1.25~~	~~1.50~~	~~1.75~~
~~At-least-19.5 but-less-than-29.5~~	~~1.25~~	~~1.50~~	~~2~~	~~2.25~~
~~At-least-29.5 but-less-than-39.5~~	~~2~~	~~2.25~~	~~3~~	~~3.50~~
~~At-least-39.5 but-less-than-49.5~~	~~2.50~~	~~3~~	~~4~~	~~4.50~~
~~At-least-49.5 but-less-than-59.5~~	~~3.25~~	~~3.75~~	~~5~~	~~5.75~~
~~At-least-59.5 but-less-than-69.5~~	~~3.75~~	~~4.50~~	~~6~~	~~6.75~~
~~At-least-69.5 but-less-than-79.5~~	~~4.50~~	~~5.25~~	~~7~~	~~8~~
~~At-leat-79.5~~	~~5~~	~~6~~	~~8~~	~~9~~

When sick leave and/or vacation leave is used in conjunction with the Workers' Compensation benefit, an eligible employee receiving Workers' Compensation benefits shall accrue vacation leave for the total number of hours compensated by Workers' Compensation, sick leave and vacation leave.

Changes in the rate of accumulation for eligible employees shall be made effective at the beginning of the next payroll period following completion of the specified amount of service.

Service shall begin on the date of state employment. Time on suspension or non-medical leave of absence without pay, if at least one full payroll period in duration, except as otherwise provided by law or these rules, shall not be counted in determining the date of completion of a full year. An eligible employee, who is paid for less than the full payroll period of 80 hours, will have vacation accrual pro-rated for that payroll period. Vacation leave shall not be granted or accrued before completion of six calendar months of service. Upon completion of such period, vacation leave shall accrue to the employee from the date of hire or in the case of intermittent employees, from the date of eligibility. The appointing authority may permit employees transferred to the classified state civil service from another jurisdiction under the provisions of 2 MCAR § 2.091 E. to accrue vacation leave on the basis of their length of service in the agency from which the transfer was made.

The appointing authority may determine the time and establish schedules governing the use of vacation leave, except that in no instance will vacation leave be granted in increments of less than one-half hour except to permit utilization of lesser fractions that have been accrued.

Unused vacation leave may be accumulated to a total of 240 working hours. Supervisors should make every effort to schedule vacation leaves for their employees on a regular basis each calendar year in order to reduce the possibility of an employee losing vacation leave because of a maximum accumulation having been exceeded. An eligible employee on military leave as provided by these rules shall not be limited to the maximum accrual of vacation leave. Such employee may immediately upon reinstatement from military leave take all vacation in excess of the maximum accumulation. As an alternative, the employee may elect to be credited with the vacation leave in excess of the maximum accumulation, but such leave shall be taken at a time determined by the appointing authority within two years of the date of reinstatement.

If an employee becomes ill or disabled while on vacation, such leave shall be changed to sick leave effective the date of illness or disability, upon notice to the employee's appointing authority. The appointing authority may require the employee to furnish a medical statement from a medical practitioner as soon as practicable.

Any eligible employee who is separated from the state service by layoff, resignation, death, or otherwise, shall be paid for the number of working hours of unused vacation leave accumulated to that employee's credit. An intermittent employee's accured but unused vacation leave shall be liquidated by cash payment on the last payroll period in June of each fiscal year.

An employee who is transferred or accepts employment under the jurisdiction of a new appointing authority, or in the unclassified service of the state, or an unclassified employee who transfers to the classified service, without interruption of services to the state shall be entitled to credit of accumulated unused vacation leave earned in the former employment. Notwithstanding 2 MCAR § 2.004, any state employee except an elected employee who is separated from the state service or who is transferred or accepts employment under a new appointing authority, is entitled to pay for any accumulated vacation leave. (Minn. Stat. §§ 43.222-43.224)

Department heads and deputies of departments listed in Minn. Stat. § 15A.081, subd. 1 plus the Department of Military Affairs shall earn vacation pay at the rate of six hours per full payroll period for the first five years of continuous state service; eight hours per full payroll period after five years of continuous state service; and nine hours per full payroll period after twelve years of continuous state service.

Employees in positions designated as managerial shall accrue vacation leave in accordance with a schedule established by the Commissioner.

2 MCAR § 2.136 Sick leave. This rule applies to all classifed state employees in the executive branch except for non-tenured laborers; emergency employees; project employees; student workers appointed after January 1, 1980; or temporary appointment employees and also applies to all full-time unclassified employees appointed for a period in excess of 6 months in the executive branch except those listed in 2 MCAR § 2.004. Intermittent employees shall become eligible for purposes of this rule after completion of 100 working days in any twelve month period. Interns shall not accrue sick leave. Sick leave provisions may be established by the appointing authority for those unclassifed employees listed in 2 MCAR § 2.004 and for other employees who are not covered by this rule provided they are not specifically excluded from coverage. Sick leave shall be accrued by each eligible employee according to the rate schedule indicated below:

HOURS OF SICK LEAVE ACCRUED DURING EACH PAYROLL PERIOD OF CONTINUOUS SERVICE

Number of Hours Worked During Pay Period	Less than 900 hours	900 hours and maintained
Less than 9.5	0	0
At least 9.5, but less than 19.5	.75	.25
At least 19.5, but less than 29.5	1	.50
At least 29.5, but less than 39.5	1.50	.75
At least 39.5, but less than 49.5	2	1
At least 49.5, but less than 59.5	2.50	1.25
At least 59.5, but less than 69.5	3	1.50
At least 69.5, but less than 79.5	3.50	1.75
At least 79.5	4	2

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."

Changes in the rate of accumulation for eligible employees shall be made effective following the payroll period in which the 900 hour maximum accrual is attained.

~~An eligible employee who is paid for less than a full payroll period of 80 hours will have sick leave pro-rated for that payroll period. An employee on Workers' Compensation will accrued sick leave based on the total hours compensated by Workers' Compensation, sick leave, and vacation leave.~~ When sick leave and/or vacation leave is used in conjunction with the workers' compensation benefit, an eligible employee receiving workers' compensation benefits shall accrue sick leave for the total number of hours compensated by workers' compensation, sick leave and vacation leave. Unused sick leave hours may be accumulated to a total of 900 working hours. When the maximum limitation has been accumulated, the rate of accumulation will be reduced to two hours per full payroll period, and these hours shall be placed in a lapsed sick leave bank. Any employee who has such lapsed sick leave recorded may apply to the appointing authority to have the lapsed sick leave restored in the event of an extended illness. The appointing authority may authorize use of all or any part of the lapsed sick leave after thorough investigation, including submission of complete medical reports providing both a diagnosis and prognosis of the illness. The appointing authority shall report to the Commissioner all instances of lapsed sick leave restored in such form as prescribed by the Commissioner.

Time off on authorized sick leave will be deducted from the first 900 hours.

Full Time Employees Shall
Earn Sick Leave on the Following Basis Each Payroll Period:

Sick Leave Balance at Start of Payroll Period	Number of Hours Credited to Balance	Number of Hours Credited to Bank
896 or less	4	0
897	3	1
898	2	2
899	1	2

Employees may utilize their allowance of sick leave, without regard to length of service, on the basis of application to and approval by the appointing authority, where absence is necessitated by inability to perform the duties of the position by reason of illness, pregnancy or pregnancy-related problems, or disability; by necessity for medical, dental, or chiropractic care; by exposure to contagious diseases under the circumstances in which the health of employees with whom they are associated or members of the public with whom they deal may be endangered by their attendance on duty; or by illness in their immediate family for such periods as their attendance shall be necessary. Sick leave to arrange for the birth or adoption of a child shall be limited to not more than three consecutive work days. The term "immediate family" shall be limited to the spouse, minor or dependent children, or parent living in the household of the employee and where the parent has no other person to provide the necessary nursing care. Either the appointing authority or the Commissioner may require medical examination, medical certificate, or statement from a chiropactor, as deemed necessary for approving the utilization of sick leave. A written statement from a Christian Science practitioner that the employee is a Christian Scientist and is undergoing treatment may be accepted in lieu of a medical statement. Use of a reasonable period of sick leave shall be authorized in case of death of a spouse, the parents of a spouse, and the parents, grandparents, guardian, children, brothers, sisters, or wards of the employee. In no instance will sick leave be granted in increments of less than ½ hour except to permit utilization of lesser fractions that have been accrued.

An employee incurring an on the job injury shall be paid his/her regular rate of pay for the remainder of the workshift. Any necessary deductions from accrued sick leave for employees so injured shall not commence until the first scheduled work day following the injury.

Employees receiving injury on duty pay shall not have this time deducted from their regular accrued sick leave balance.

A former state employee who is reappointed within four years of separation from the state service under the provisions of the act and these rules except as a provisional, temporary or emergency appointee, may have his/her previously accumulated, unused balance of sick leave restored upon approval of the new appointing authority.

An employee who is transferred or accepts employment under the jurisdiction of a new appointing authority, or in the unclassified service of the state, or an unclassified employee who is appointed to the classified service, without interruption of services to the state shall be entitled to credit of accumulated unused sick leave earned in the former employment.

An employee of another jurisdiction or the federal competitive service with probationary or permanent status may be transferred under the provisions of 2 MCAR § 2.091 E. or appointed to a position in the state service. The appointing authority may credit the employee with the amount of sick leave accumulated not to exceed 12 days. Such credit shall be reduced proportionately as sick leave is accumulated in the state service.

2 MCAR § 2.138 B. Appearance before court, legislative committee, or other judicial or quasi-judicial body in response to a subpoena or other direction by proper authority for ~~job related~~ purposes related to the employee's state job other than those instituted by the employee or his exclusive representative. The employee shall receive regular pay less any fee received, exclusive of court paid expenses for serving as a witness, as required by the court.

2 MCAR § 2.181 Expense allowances.

A. Means of travel.

1. State-owned vehicles. An employee may be permanently assigned a state-owned vehicle when required by law or if circumstances make such assignment necessary when recommended by the appointing authority and approved by the Commissioner of Administration.

Agencies operating vehicles not in the Central Motor Pool shall operate them on a pool basis following rules of the Department of Administration for the operation of such state-owned vehicles.

2. Privately-owned vehicles and aircraft. The compensation for use of a personal automobile is 19 cents per mile when a

motor pool vehicle is not available. Mileage shall be paid based on the most direct route according to Transportation Department records. Deviations from the shortest direct route, such as vicinity driving or driving from the employee's residence where the employee's residence becomes the point of departure, shall be shown on the expense account as a daily total, with a separate explanation outlining the reasons for such mileage. No additional reimbursement will be made for incidental expenses to the operation or maintenance of a personal automobile for state business except for payment of toll charges and parking.

The employee who elects to use a personal car on official state business with the approval of the appointing authority when traveling within the state in cases where a motor pool vehicle is available shall be reimbursed at the rate of 14 cents per mile. The higher rate may be paid if the use of the motor pool vehicle would have resulted in a greater cost to the state than the reimbursement of the personal car rate~~.~~ or if an employee requires a vehicle with hand controls or other adaptive driving devices, or if the vehicle must be large enough to accommodate a wheelchair and such a state-owned vehicle is not available.

Employees who use a specially equipped personal van or van-type vehicle on official state business shall be reimbursed for mileage at the rate of 31 cents per mile. In order to qualify for this reimbursement rate, the vehicle must be equipped with a ramp, lift, or other level changing device designed to provide access for a wheelchair. ~~and the vehicle must be operated by the handicapped employee from the wheelchair.~~

The appointing authority may authorize travel in personal aircraft when it is deemed in the best interest of the state. Mileage reimbursement in such cases shall be 31 cents per mile and shall be based on the shortest route based on direct air mileage between the point of departure and the destination.

3. Out-of-state travel. Payment for expenses for transportation by personal vehicle for out-of-state travel shall be made on the basis of a single coach air fare for each vehicle used.

If available, motor pool vehicles or state-owned vehicles may be used for out-of-state travel. When a central motor pool vehicle is used, reimbursement will be made to the Central Motor Pool. The expense of such vehicles shall be charged against the out-of-state authorization of the agency.

When personal vehicles are used in driving to out-of-state locations not available by commercial transportation, travel reimbursement shall be made on an actual mileage basis in accordance with these rules.

Any in-state travel expense directly related to an out-of-state trip shall be charged against the annual out-of-state travel allowance for the agency involved.

4. Commercial transportation. State employees may travel in-state and out-of-state by commercial transportation when authorized by the agency head. Air transportation shall be by coach class except in those instances where such space is not available. When an employee has a reservation for a flight that is not going to be used, such employee shall be accountable for the cancellation of such reservation. Air charter service may be used for in or out-of-state travel where such charter service is more practical than commercial transportation. The appointing authority may reimburse the employee for the use of a public bus on state business, where the use of the bus results in less cost to the state than the use of a state or personal vehicle.

5. Motorcycle reimbursement. Reimbursement for use of a motorcycle on official state business, when authorized in advance by the appointing authority, shall be at the rate of 10 cents permile.

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PROPOSED RULES

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 rule or amendment. 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.

Public Hearings on Agency Rules December 17-24, 1979

Date	Agency and Rule Matter	Time & Place
Dec. 20	Transportation Weight Limitation on Interstate Highways and Designated Routes Hearing Examiner: Harry S. Crump	9:30 a.m., Rm. 81, State Office Bldg., Wabasha St., St. Paul, MN

Department of Administration Cable Communications Board

Proposed Rules Governing Definitions, Classification of Systems, Franchise Standards, Transfer of Ownership, Initial and Renewal Franchise Procedures, Length of Renewal Term, and Other Non-substantive Changes Including the Deletion of Redundant Rules, the Addition of Clarifying Language and the Reordering and Renumbering of Rules

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, in the Conference Room adjacent to Minnesota Cable Communications Board offices at 500 Rice Street, Saint Paul, Minnesota 55103, on January 16, 1980, commencing at 9:00 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/or written materials may be submitted at the hearing or by mail to Natalie Gaull, Office of Hearing Examiners, 1745 University Avenue, Room 300, Saint Paul, Minnesota 55104, (612) 296-8114, either before the hearing, or within 5 working days after the close of the hearing. The Hearing Examiner may extend the time for receipt of written comments for a period not to exceed 20 calendar days.

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

I. Renumbering and Reordering

Upon completion of the Rules Hearing process and adoption of proposed rules, the following renumbering and reordering will be effective. All internal cites have been changed to reflect the proposed renumbering and reordering. For purposes of this Notice, existing cites and chapter titles are stricken; proposed cites and chapter titles are underlined (e.g. Chapter ~~Fourteen~~ Six). Those cites and chapter titles that are neither stricken nor underlined will remain in existing form.

[Proposed rules continued on next page.]



THESE BADGES were worn by delegates to the Republican National Convention held in Minneapolis in June 1892. (Courtesy of Minnesota Historical Society)

Existing Chapter	MCAR Cite	Renumbered to		Chapter Title
1	4.001-4.025			Practice and Procedure General
2	4.026-4.045			Board Meetings
3	4.046-4.060			Rule Making
4	4.061-4.085			Rules for Contested Cases
5	4.086-4.091			Delegations of Authority
		New Chapter	MCAR Cite	
14	4.201-4.210	6	4.092-4.093	Reports to Board
15	4.211-4.220	7	4.094-4.099	Board Billings
11	4.156-4.165	8	4.100-4.104	Ownership and Control
10	4.141-4.147	9	4.105-4.119	Discrimination Prohibited
17	4.237-4.255	10	4.120-4.129	Poles, Ducts and Conduits
16	4.221-4.236	11	4.130-4.139	Cable Service Territories
7	4.111-4.120	12	4.140-4.149	Existing Title: Franchising and Franchise Renewal Procedures Revised Title: Franchising, Franchise Renewal and Franchise Amendment Procedure
9	4.131-4.140	13	4.150-4.159	Existing Title: Transfer of Ownership, Renewal, or Amendment of Franchise Revised Title: Sale or Transfer of a Franchise, Sale or Transfer of Stock
8	4.121-4.130	14	4.200-4.209	Franchise Standards
6	4.096-4.110	15	4.210-4.219	Certificates of Confirmation
12	4.166-4.190	16	4.220-4.229	Interconnection
13	4.191-4.200	17	4.230-4.239	Obscenity and Defamation.

II. Non-substantive Rulemaking Changes

The following non-substantive changes have been approved by the Board for Public Hearing:

4.004 Amend by adding phrase "by law, rule or"

4.005 Amend by adding "referred to a Hearing Examiner pursuant to Chapter Four"

4.006 Amend by making uniform all references to the Administrative Procedures Act (Minn. Stat. ch. 15)

4.007 Amend by adding phrase "unless otherwise provided for by law or rule"

4.031 Amend by changing 3 days to 5 days to conform with § 4.034

4.046 Amend by adding "and Hearing Examiners rules and regulations"

4.097* Special Certificates of Confirmation — Amend by deleting

4.098* Interim Certificates of Confirmation — Amend by deleting

* All internal references to Interim and Special Certificates have been deleted except those references that still have force and effect on existing special and interim certificates.

III. Substantive Changes

A. Chapter 1 Practices and Procedure General

1. 4.002E. "Franchise Area"— Amend by adding a definition of franchise area so that all references to the area served by the franchise are uniform.

2. ~~4.002 E.~~ 4.002 F. "Franchising Authority"— Amend by clarifying references to joint powers situations.

3. 4.008 Practice before the Board. Amend by deleting.

4. 4.009 Notice to authorized representatives. Amend by deleting.

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5. ~~4.010~~4.008 Censure or suspension of persons appearing before the Board. Amend by deleting phrase "as lacking in professional integrity."

6. ~~4.011~~ 4.009 Form of papers filed with the Board. Amend by deleting.

B. Chapter ~~Fourteen~~ Six Reports to Board.

~~4.201~~ 4.029 — Amend by deleting requirement that FCC Form 326 "Cable Television Annual Financial Report" be filed with the Minnesota Cable Communications Board.

C. ~~Chapter Seven Franchising and Franchise Renewal Procedures.~~ Chapter 12 Franchising, Franchise Renewal and Franchise Amendment Procedures.

Amend by deleting 4 MCAR §§ 4.111 and 4.112 of the existing title and retitling. Substantive changes made in existing title detailed below. Where language has been added to that in the existing title, the cite of the proposed rule wherein that change occurs is listed in parentheses.

Amend by adding § 4.140. Requiring any municipality served by a cable company, as defined in 4 MCAR § 4.002 B., to issue a cable television franchise pursuant to procedures set by the Board. (Proposed § 4.140)

Initial Franchise §~~4.111~~ §4.141.

§ 4.111 A. Amend by deleting "except as provided in Minn. Stat. § 238.09, subd. 3, 4, 5 and 9 (1976), and Rule of this Chapter." Amend by adding language exempting those systems granted franchises pursuant to the alternative initial franchising procedure (4 MCAR § 4.113) from following 4 MCAR § 4.111. (Proposed § 4.140 A.1.)

§ 4.111 B. Amend by deleting "with Rules of the Board pertaining to cable service territories before a franchising authority shalll adopt an invitation for applications for a cable communications franchise as described in 4 MCAR § 4.111 C. of this Rule." Amend by adding "with 4 MCAR § 4.134 before the Needs Assessment is completed and the Invitations for Applications is issued." (Proposed § 4.141 B.)

§ 4.111 C. Amend by deleting requirement that franchising authority appoint an advisory body to prepare a needs assessment, requiring that the franchising authority or 2 or more individuals appointed by the franchising authority shall complete a Needs Assessment Report on cable communications for the proposed area to be served within the cable service territory. The individuals compiling the Report shall not be employed by or knowingly have any financial interest in any cable communications company bidding on such franchise, or their subsidiaries, and major equipment or program suppliers. Amend by allowing the Report to be a joint undertaking of two or more municipalities in a joint powers agreement if participating condition is satisfied. (Proposed § 4.141 C.)

Amend by deleting requirement that an advisory body make a report to the franchising authority, and deleting all other references to advisory body appearing herein.

§ 4.111 E.6. Amend by deleting "franchising authority" and adding "area requested to be served in the Invitation for Applications." (Proposed § 4.141 D.4.a.)

§ 4.111 G. Amend by deleting requirement that franchising authority submit franchise within 10 days after the ordinance takes effect.

Amend by adding a provision dealing with issuance of cable franchise(s) pursuant to a joint powers agreement. (Proposed § 4.141 F.)

Franchise Renewal ~~§ 4.113~~ § 4.143

§ 4.112 A. Amend by adding "Upon renewal of a cable communications franchise, the franchise shall obtain a renewal of its certificate of confirmation pursuant to 4 MCAR § 4.103." (Proposed § 4.143 A.)

§ 4.112 B.1. Amend by deleting the requirement that an advisory body appointed by the franchising authority complete a report appraising the company's performance. Amend by allowing the franchising authority to conduct the study as required under this rule as it so chooses. Persons employed by or having a financial interest in any cable communications company presently holding the franchise or bidding on the franchise, or their subsidiaries, and major equipment or program suppliers are prohibited from compiling the report. (Proposed § 4.143 B.)

Amend by exempting those franchisees meeting the criteria set forth in 4 MCAR §~~4.113F.~~ 4.142F (Alternative initial franchising procedure) from the renewal report requirement. Amend by allowing report to be a joint undertaking of two or more municipalities in a joint powers agreement if participation requirement is satisfied. (Proposed § 4.143 B.3.) Amend by deleting § 4.112 B.2.

§ 4.112 C. Amend by requiring that the franchising authority commence re-negotiation at least one year prior to the expiration of the franchise. (Proposed § 4.143 C.)

§ 4.112 D. Amend by changing publication requirement from 30 to 15 days prior to hearing. (Proposed § 4.143 D.)

§ 4.112 E. Amend by allowing those franchising authorities seeking additional applicants and meeting the eligibility requirements of ~~§ 4.113 F.~~ § 4.142 F. to grant the franchise pursuant to the alternative intitial franchising procedure of 4 MCAR ~~§ 4.113~~ 4.142. (Proposed § 4.143 E.)

Alternative Initial Franchising §~~4.113~~ 4.142

Amend by adding a provision dealing with issuance of cable franchise(s) pursuant to a joint powers agreement. (Proposed 4.142 I.)

Amend by adding § 4.144 Franchise Amendments. Requires that the franchising authority act pursuant to local law pertaining to ordinance amendment procedures. Requires that the franchising authority file the amendments with the Board (Replaces the franchise amendment procedure in existing 4 MCAR §§ 4.136 and 4.137).

D. ~~Chapter Nine. Transfer of Ownership, Renewal, Amendment of Franchise.~~ Chapter 13: Sale or Transfer of Ownership, Sale or Transfer of Stock.

Amend by deleting existing language. Retitle the Chapter "Sale or Transfer of a Franchise, Sale or Transfer of Stock."

Amend by deleting the concept of "Transfer of an entire legal

ownership interest in a cable communications system'' and adding the concept of ''fundamental corporate change'' followed by specific examples of fundamental corporate changes.

Amend by deleting the requirement for a public hearing for any corporate change, and by adding a requirement that the franchising authority be given the discretion of ordering a hearing for fundamental corporate changes.

Amend by deleting the requirement that notice for the hearing be given 30 days before the hearing and be published once each week for two successive weeks. Amend by adding a requirement that the notice for public hearing be published once at least fourteen days before the hearing.

Amend by deleting references to ''municipality.'' Amend by adding the concept of ''franchising authority.''

Amend by adding the requirement that the franchising authority give written reply to the franchisee within 30 days of receipt of such request. Amend by adding the requirement that the franchising authority conduct a public hearing within 30 days of issuing determination that such hearing is necessary. Amend by deleting the procedure specified for a public hearing.

Amend by referring to local law procedure for scheduling a public hearing, or in cases where there is no applicable local law, specify and alternative procedure.

Amend by adding a procedure to be followed when a transfer of stock occurs that changes the controlling interest.

Amend by deleting 4 MCAR § 4.134 Franchise renewal.

Amend by deleting 4 MCAR § 4.4135 Appeals to the Board.

Amend by deleting 4 MCAR § 4.136 Approval of franchise amendments.

E. Chapter ~~Eight~~ Fourteen: Franchise Standards. Amend by deleting existing language, and redrafting. Substantive changes made in the existing title are detailed below with reference to the existing citation. Where language has been added to that found in the existing title, the cite of the proposed rule wherein the change occurs is listed in parentheses.

§ 4.200-4.201 Adding following classification of systems based on location, population of franchise area, and number of subscribers served, and adding a transition for systems:

§ 4.200 Definitions. As used in these rules, the following classifications shall have the meaning given herein, unless a different meaning clearly appears in the test. (Proposed § 4.200)

A. Class A Cable Systems. All systems that are located outside of the Twin City metropolitan area; and are located in a franchise area having a population of 4,000 or less persons and serving fewer than 1,000 subscribers.

B. Class B Cable Systems. All systems except those systems meet the criteria of the Class A system listed above, that are located outside of the Twin City metropolitan area; and are located in a franchise area having a population of less than 15,000 persons and serving fewer than 3,500 subscribers.

C. Class C Cable Systems. All systems that are located in the Twin City metropolitan area; or are located in a franchise area having a population of 15,000 or more persons or serving 3,500 or more subscribers.

§ 4.201 Reclassification of Systems.

A franchise shall be amended by the franchising authority when the number of subscribers served by the cable communications system in the franchise area changes so as to result in reclassification of the system pursuant to 4 MCAR § 4.200. Such amendments shall include provisions consistent with the requirements of that class of cable communications systems. (Proposed 4.201)

§ 4.121 B.2. Amend by changing the maximum duration of the renewal term from 10 to 15 years. (Proposed § 4.202 D.)

§ 4.121 B.3. Amend by requiring that the renegotiation periods for a cable communications franchise commence at least one year prior to the end of a franchise term. (Proposed § 4.202 E.)

§ 4.121 C. Amend by exempting those cable owners conducting telemetering for the purpose of verifying system integrity from receiving written permission to transmit signals from the subscriber terminal. Amend by requiring that the cable company secure written permission to release any information gained about individuals through telemetering, whether or not written permission is required to gather such data under this rule. (Proposed § 4.202 W.)

§ 4.121 D. Amend by deleting the requirement that subscriber contracts not exceed 12 months in duration and deleting the word ''residential'' appearing in the first sentence. (Proposed § 4.202 I.)

§ 4.121 F. Amend by allowing the franchisee to provide a collect telephone in lieu of a toll free number for reception of subscriber complaints. Amend by deleting language setting forth a procedure to be used in the servicing of such complaints. (Proposed § 4.202 Y.)

§ 4.121 G.1. Amend by deleting. (The criteria of population, number of subscribers and location determining that a system shall provide a minimum 20 channel capacity are set forth in the definition of a Class C cable system — Proposed § 4.200 C.)

§ 4.121 G.2. Amend by deleting. (The criteria of population, number of subscribers and location determining that a system shall provide a minimum 12 channel capacity are set forth in the definitions Class A and Class B systems — Proposed § 4.200 A. and B. above.)

§ 4.121 H.1. and § 4.121 H.2. Amend by deleting. (Criteria for these systems required to reserve one channel and those systems required to reserve four channels for use by the general public, local government, local educational authorities and commercial or noncommercial users are set forth in the definition of the Class B and C

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systems respectively — Proposed § 4.200 B. and § 4.200 C. The only substantive change in the present access provisions is that those systems meeting the criteria of a Class A, proposed § 4.200 A., will be required to reserve one channel for use by only educational authorities and local governments, or leased access users when not being used for governmental or educational purposes. See Proposed § 4.202 DD. below.)

§ 4.121 H.1.a. and § 4.121 H.2.a. Amend by exempting franchisees providing subscribers only alarm system services or only data transmission services from the access requirements of these rules. (Proposed § 4.202 DD., § 4.203 A.1., § 4.204 A.1., § 4.204 A.4.)

§ 4.121 I.1. Amend by deleting. (The criteria for those systems required to provide equipment for production of programming and playback of prerecorded programs pursuant to § 4.121 I.a. are set forth in the definition of a Class C cable system, Proposed § 4.200 C.)

§ 4.121 I.2. Amend by deleting. (The criteria for those systems required to provide equipment for playback of prerecorded programs and for recording at remote locations pursuant to § 4.121 I.2.a. are set forth in the definition of a Class B cable system, Proposed § 4.200 B.)

§ 4.121 J. Amend by clarifying that when an initial franchise is granted the franchisee shall provide the technical capacity for non-voice return communications. (Proposed § 4.202 V.)

§ 4.121 K. Amend by requiring franchisees and franchising authorities to conform to all state laws and rules regarding cable communications no later than one year after they become effective, unless otherwise stated, and to conform to all federal laws as they become effective. (Proposed § 4.202 B.)

§ 4.121 L. Amend by deleting. (Technical Standards of operation governed by Federal Communications Commission.)

§ 4.121 N. Amend by granting only those franchising authorities collecting a franchise fee the authority to audit the franchisee's accounting and financial records, to require that the franchisee file with the authority annually reports of gross subscriber revenues. (Proposed § 4.202 H.)

§ 4.121 O. Amend by prohibiting the transfer or sale of stock so as to create a new controlling interest except at the approval of the franchising authority. (Proposed § 4.202 G.)

§ 4.121 P. Amend by requiring that upon termination of a franchise, the franchisee remove its wires, cables, etc. only upon the request of the franchising authority. (Proposed § 4.202 BB.)

§ 4.121 Q. Amend by deleting and replacing with a provision "that when a franchise or a cable system is offered for sale, the franchising authority shall have the right to purchase the system." (Proposed 4.202 § CC.)

§ 4.121 R. Amend by deleting § 4.121 R.1. and § 4.121 R.2.

§ 4.121 S. Amend by allowing the franchisee to furnish a certificate of deposit or any other type of instrument approved by the franchising authority in lieu of a performance bond at the approval of the franchising authority. (Proposed § 4.202 L.)

§ 4.121 T. Amend by clarifying the construction provision applies only in cases of initial franchises. (Proposed § 4.202 P.)

§ 4.121 U., V., W., X., Y., Z. Amend by deleting. Amend by adding provisions that unless otherwise already provided for by local law the franchisee shall obtain a permit, comply with applicable codes, and negotiate a procedure for removal of wires, equipment when the franchising authority undertakes public improvements which affect such equipment. (Proposed § 4.202 Q., R., S.)

§ 4.121 BB. Amend by deleting. Amend by adding a provision requiring Class A cable communications systems, as defined in Proposed 4 MCAR 4.200 A. above to provide an access channel for use by local government and educational authorities only. During those hours when the channel is not in use by local government or local educational authorities, the franchisee shall lease time to commercial or non-commercial users on a first come, non-discriminatory basis if the demand for such time arises. The franchisee may also use this channel for local origination when not used for the above purposes. Requires franchisee establish rules pertaining to administration of this channel. (Proposed § 4.202 DD.)

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, Saint Paul, Minnesota 55103. The Agency's authority to promulgate the proposed rules is contained in Minn. Stat. §§ 238.05 and 238.06, subd. 1 (1978).

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 Hearing Examiners at a minimal charge.

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).

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. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

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.

Notice: The proposed rules are subject to change as a result of the Rules Hearing Process. The Agency, therefore, strongly urges those who are potentially affected in any manner by the substance of the proposed rules and/or rule amendments to participate in the rules hearing process.

November 7, 1979

W. D. Donaldson, Executive Director
Cable Communications Board

Rules as Proposed

Chapter one: § 4.001-4.025 Practice and Procedure General

4 MCAR § 4.001 Policy. These rules shall be liberally construed to effectuate the purposes and provisions of Minn. Stat. §§ 238.01-238.16. ~~(1976), as amended by Laws of 1977, Ch. 414, § 14, ch. 444, § 16, and ch. 496, §§ 3 and 4.~~

4 MCAR § 4.002 Definitions. As used in these rules the following words and phrases shall have the meanings given them herein unless a different meaning clearly appears in the text.

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

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

1. Any system which serves fewer than 50 subscribers;

2. Any master antenna television system;

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

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

C. "Board" mean the cable communications board created by the provisions of Minn. Stat. § 238.04. ~~(1976), as amended by laws of 1977, ch. 414, § 14 and ch. 444, § 16.~~

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

E. "Franchise area" means that geographic area to be served by the franchisee pursuant to the terms of the franchise.

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

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

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

I. ~~H.~~ "Municipality" means any organized town, city or county with respect to the unorganized territory within its boundaries.

J. ~~I.~~ "Person" means any individual, trustee, partnership, municipality, association, corporation or other legal entity.

K. ~~J.~~ "Program" means any broadcast-type program, signal, message, graphics, data or communication content service.

L. ~~K.~~ "State" means the State of Minnesota.

M. ~~L.~~ "State agency" means any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of the state.

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

4 MCAR § 4.003 Requests for Board action. Any motion, petition, or other official pleading shall set forth clearly and concisely the facts relied upon, the relief sought, any statutory provisions and/or other legal authority pursuant to which the pleading is filed and under which relief is sought, and the interest of the person submitting the pleading. A copy thereof shall be served on every party or person named in the motion, petition, or other official pleading as an adverse party or person.

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4 MCAR § 4.004 Oppositions and replies.

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

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

4 MCAR § 4.005 Subscriber complaints — procedure.

A. The following is the sequence the Board requires as a condition for the Board's taking action on a subscriber complaint. The complainant must have directed the complaint to the cable communications company concerned. The cable communications company shall then have had the period of time to rectify the matter complained of as provided for in the franchise as required by Chapter ~~Eight~~ Fourteen of these rules, provided that a response to the complaint shall have been made by the cable communications company within 24 hours of receipt of the complaint by the company. If the complainant was not satisfied with the action taken by the company to rectify the complaint within the time period specified, the complainant must then have filed a complaint with the governing body of the municipality concerned.

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

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

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

4 MCAR § 4.006 Proceedings before the Board. The Board may, on its own motion or on petition of any interested party, hold such proceedings as it may deem necessary in connection with any matter which it has power to investigate under the law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations. Procedures to be followed by the Board shall, unless specifically prescribed in these rules or ~~the Minnesota Administrative Procedures Act,~~ Minn. Stat. ch. 15, be such as in the opinion of the Board will best serve the purposes of such proceedings.

4 MCAR § 4.007 Intervention in Board proceedings. Unless otherwise provided for by law or rule, ~~I~~intervention in Board proceedings may be made as a matter of right or upon permission of the Board, as hereinafter specified.

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

1. The Federal Communications Commission; or

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

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

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

C. Any person who intervenes or who is permitted to intervene in any proceeding in accordance with paragraphs A. and B. of this section shall be deemed a party to said proceeding.

~~**4 MCAR § 4.008 Practice before the Board.**~~

~~A. Any party to a Board proceeding may be heard in person or through any authorized representative.~~

~~B. Any person transacting business with the Board in a representative capacity may be required to show his credentials to act in such capacity in a form satisfactory to the Board which may include a power of attorney.~~

~~4 MCAR § 4.009 Notice to authorized representatives.~~ ~~With respect to any matter pending before the Board in which an authorized representative has appeared for, submitted a document on behalf of, or been otherwise designated to represent any person, any Board notice, order or other written communication pertaining to that matter will be communicated to the authorized representative, or to one of such authorized representatives if more than one is designated. If, pursuant to law, a cable communications company has designated an agent for receipt of process within the State of Minnesota, that person shall receive the appropriate written communication from the Board. If direct communication with a person so represented is appropriate, a copy of such communication will be mailed to the authorized representative.~~

~~4 MCAR § 4.010~~ 4 MCAR § 4.008 Censure or suspension of persons appearing before the Board.

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

~~1. Is lacking in character or professional integrity; and/or~~

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

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

~~4 MCAR § 4.011~~ 4 MCAR § 4.009 Form of papers filed with the Board.

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

A. ~~B.~~ Except as otherwise specifically provided by order, an original and a duplicate of all papers shall be filed.

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

~~4 MCAR § 4.012~~ 4 MCAR § 4.010 Service of papers and proof of service.

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

B. Service shall be made on or before the day on which the paper is filed.

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

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

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

1. To the chairman of the county board or to the county auditor of a county.

2. To the chief executive officer or to the clerk of a city.

3. To the chairman of the town board or to the clerk of a town.

4. To any member of the Board or any governing body of a school district.

5. To any member of the board or any governing body of a public board or a public body.

6. To any officer, agent, or representative designated by a joint powers agreement as the individual to be served in the instance of a board, group, body, or entity created by such agreement; or, in the lack of such designation, to the managing officer of such board, group, or entity; or in the alternative, to all of the proper municipal officers of the member municipalities as such delivery is provided for above in this subdivision.

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

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

~~4 MCAR § 4.013~~ 4 MCAR § 4.011 Withdrawal papers. The Board will retain at least one copy of every paper presented to it for filing. The granting of a request to dismiss or withdraw a pleading does not authorize the removal of such pleading from the Board's records.

~~4 MCAR § 4.014~~ 4 MCAR § 4.012 Changes in information furnished to the Board. Any person requesting Board action is responsible for the continuing accuracy and completeness of information furnished in a pending request for such action or in Board proceedings involving any pending request. Whenever the information furnished in a pending request is no longer substantially accurate and complete in all significant respects, the person seeking Board action shall as promptly as possible, and in any event within 30 days of the date that such information has become inaccurate or incomplete, unless good cause is shown, amend his request so as to furnish such additional or corrected information as may be appropriate. Whenever an event of decisional significance with respect to a pending request for Board action occurs, the party seeking such action shall as promptly as possible, and in any event within 30 days of the event of decisional significance, unless good cause is shown, submit a statement to the Board furnishing such additional or corrected information as may be appropriate and shall serve the same upon all parties of record. Where the matter is before any court for review, the amendments and statements referred to above shall also be served upon the Board's counsel of record in the court proceeding. For the purposes of this section, a request for Board action is "pending" before the Board from the time it is accepted for filing by the Board until a Board grant or denial of the request is no longer subject to reconsideration by the Board.

~~4 MCAR § 4.015~~ 4 MCAR § 4.013 Form of Board orders. Orders may be issued in any form (e.g., as captioned orders, letters, telegrams) and may, if appropriate, be issued orally. Orders issued orally shall be confirmed promptly in writing. All written orders will indicate the date on which they are released by the Board. All written orders will be available for public inspection at the Board's offices.

~~4 MCAR § 4.016~~ 4 MCAR § 4.014 Petitions for reconsideration.

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

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

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

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

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

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

G. The Board may, on its own motion, set aside any order within 20 days after release of the order.

~~4 MCAR § 4.017~~ 4 MCAR § 4.015 Ex parte communications. In order to avoid all possibilities of prejudice, real or apparent, to the public interest and to persons involved in proceedings pending before the Board, no person who is a party, witness or interceder in any on-the-record proceeding, nor any representative of any such person, shall submit ex parte off-the-record communications to any member of the Board or to any employee of the Board regarding any matter at issue in such on-the-record proceeding, except as authorized by law; and no Board member nor any employee shall request or entertain any such ex parte, off-the-record communications. For the purposes of this rule, the term "on-the-record proceeding" means a proceeding required by statute, constitution or published Board rule, regulation or order to be decided on the basis of the record of a Board hearing; the term "interceder" shall include any person outside the Board or other agency.

~~4 MCAR § 4.018~~ 4 MCAR § 4.016 Computation of time.

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

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

~~4 MCAR § 4.019~~ 4 MCAR § 4.017 Board officers.

A. The officers of the Board are the chairman and vice-chairman.

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

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

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

~~4 MCAR § 4.020~~ **4 MCAR § 4.018 Variances.** The Board may grant a variance from any of its rules, regulations or standards, except where inconsistent with or otherwise prohibited by law, to promote the public interest, to avoid undue hardship and to promote the effective and reasonable application of its rules, regulations or standards relating to cable communications. Any person may petition the Board for a variance from a rule, regulation or standard. The petition shall set forth the text of the rule, regulation or standard from which a variance is sought, the specific variance requested, and all facts, views, arguments and data deemed to support the granting of a variance. Any such petition shall be submitted to the Board at least 20 days prior to the Board meeting for which it is requested to be heard. The petitioner shall cause to be published once each week for two successive weeks in a newspaper of general circulation in the municipality in which the system for which the variance is requested is located, a concise statement of the variance sought and the time, date and place of the Board meeting at which the variance is to be considered. Any interested person may file with the Board a petition in opposition to the granting of the variance. Any such petition shall state with particularity the reasons why the variance should not be granted. The Board may hear testimony from all interested persons concerning the granting of a variance. If the granting of a variance is substantially contested, the Board may deem the matter a contested case to which the Board is not party for disposition under Chapter Four of these Rules. A variance shall be granted if, upon good cause shown, there is a finding that the granting of the variance is necessary or proper to avoid undue hardship on the petitioner and to promote the development and utilization of cable communications in the State of Minnesota. A variance which differs from that requested may be granted and it may be of a specific limited duration.

~~4 MCAR §§ 4.021-4.025~~ 4 MCAR §§ 4.019-4.025 Reserved for future use.

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 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.

4 MCAR § 4.027 Special meetings. The chairman of the Board may call a special meeting of the Board when, in his opinion, a meeting is necessary or desirable. The chairman shall call a special Board meeting upon receipt of a written request, therefor, from any two members of the Board. The executive director shall give as much notice as possible to all Board members prior to any special meeting, which notice shall state the time, place, and subject matter of the meeting. The executive director shall give such notice of the special meeting to the public as is reasonable under all the attendant circumstances, provided that the executive director shall at least notify those members of the public who have caused their names, addresses and telephone numbers to be placed on file with the executive director of the Board for purpose of such notice.

4 MCAR § 4.028 Quorum. A majority of the members of the Board shall constitute a quorum, and a quorum must be present for the transaction of business.

4 MCAR § 4.029 Voting. The affirmative vote of a majority of the quorum present shall be necessary to make any decision. All members present, including the chairman, shall vote or abstain on every matter presented for decision. No action or decision of the Board shall be finally determined by an equally divided vote of the Board members or by a vote of less than three Board members, but shall either be placed on the agenda of the next regular meeting or considered at a special meeting instead.

4 MCAR § 4.030 Open meetings. All regular and special meetings of the Board, other than administrative meetings not affecting the public interest at which no public business is permitted to be transacted, shall be open to the public, and all decisions of the Board shall be made at such meetings, except the quasijudicial

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deliberations in contested case proceedings before the Board. All persons in attendance at a regular or special meeting shall be given opportunity to comment on any subject under discussion at the discretion of the presiding chairman.

4 MCAR § 4.031 Agenda. A proposed agenda of business to be conducted shall be prepared for all regular meetings of the Board. Except when the exigencies of time and circumstances warrant, an agenda shall be prepared for all special meetings as far in advance of the special meeting as possible. The agenda shall include a list of all matters to be considered at the meeting. The agenda may be amended or modified by the Board at any time.

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

4 MCAR § 4.032 Filing of agenda matters. Except when the Board in its discretion determines otherwise, no matter shall be considered at a regular Board meeting unless it has been placed on the agenda and all relevant public information has been made available for public inspection at the offices of the Board, at least three days prior to such regular meeting. Public information regarding matters to be considered at a special meeting shall be made available for public inspection at the meeting place prior to the meeting and as far in advance of a special meeting as is reasonable at the office of the Board.

4 MCAR § 4.033 Staff discussion papers. Papers prepared by the Board's staff for purposes of discussion will be distributed as follows:

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

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

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

4 MCAR § 4.034 Notice of the agenda. The executive director shall mail a copy of the agenda to every member of the Board and to those persons whom the executive director deems appropriate in the circumstances, at least five days prior to the meeting for which the agenda has been prepared, provided that the executive director shall mail an agenda to every person who has caused his name, address and telephone number to be placed on file with the executive director for purposes of receiving such agendas.

4 MCAR § 4.035 Minutes. The Board shall keep minutes of all meetings, including a record of all votes of individual members. A copy of the approved minutes shall be mailed to every person who has caused his name, address and telephone number to be placed on file with the executive director for purposes of receiving such approved minutes.

4 MCAR § 4.036 Committees. The Board may from time to time establish committees of Board members as it may deem necessary and desirable to facilitate its work. All committee recommendations shall be duly submitted to the Board for appropriate action. All committees shall be appointed by the chairman subject to the approval of the Board.

4 MCAR § 4.037 Advisory committees. The Board may from time to time establish committees advisory to the Board on any subject matter within the scope of the Board's duties. All such committees shall be appointed by the chairman of the Board subject to the approval of the members of the Board. A member of the Board designated by the chairman of the Board shall preside over the meetings of each such advisory committee, provided, however, that the chairman of the Board may delegate to the executive director of the Board the responsibility to select a member of the Board's staff to preside over the meetings of any such advisory committee.

4 MCAR § 4.038 Parliamentary procedure. The Board, in its procedure, shall follow generally recognized principles of parliamentary procedure. In the event of a parliamentary dispute, the applicable provisions of Roberts Rules of Order shall be the governing authority.

4 MCAR §§ 4.039-4.045 Reserved for future use.

Chapter Three: §§ 4.046-4.060 Rule Making

4 MCAR § 4.046 Rule making proceedings. The Board shall adopt, amend, suspend, or repeal its rules in accordance with the procedures set forth in Minn. Stat. ch. 15 ~~(1976)~~ and Hearing Examiner rules and regulations.

Chapter Four: §§ 4.061-4.085 Rules for Contested Cases

~~4 MCAR § 4.063~~ 4 MCAR § 4.061 Initiating a contested case.

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

1. The name and address of the applicant;

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

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

4. The signature of the applicant or his attorney.

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

1. The name and address of the complainant;

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

3. The relief sought and the grounds therefor; and

4. The signature of the complainant or his attorney.

C. Initiation by Board order. Where authorized by law, the Board may order a contested case commenced to determine the rights, duties and privileges of specific parties.

4 MCAR § 4.064 4 MCAR § 4.062 Commencement of contested case. Within ten days following receipt of a complaint or application or the adoption of an order by the Board initiating a contested case, the Board shall proceed to commence a contested case hearing in accordance with the procedures set forth in the rules of the Office of the Hearing Examiners.

~~4 MCAR § 4.076~~ 4 MCAR § 4.063 The Board decision.

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

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

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

~~4 MCAR § 4.077~~ 4 MCAR § 4.064 Rehearing.

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

B. Obtaining a rehearing.

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

a. The name and address of the petitioner;

b. The Board designation for the case;

c. The reasons for the petition.

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

3. Default judgments. A party against whom a default has been adjudged pursuant to ~~(4 MCAR § 4.068)~~ Office of the Hearing Examiners rule ~~208~~ (9 MCAR § 2.208) may obtain a rehearing upon a timely showing of good cause for his failure to appear or plead.

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

C. Rehearing procedure. A rehearing in a contested case shall be conducted in the same manner prescribed by the rule of the Office of the Hearing Examiners.

D. Decision after rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing as provided in 4 MCAR § ~~4.076~~ 4.063 (9 MCAR § 2.076).

~~4 MCAR § 4.078~~ 4 MCAR § 4.065 Appeal by Board. The Board may appeal pursuant to Minn. Stat. § 15.0424 (~~1976~~) any adverse decision. The Board shall be deemed a "person" for such purposes.

~~4 MCAR § 4.079~~ 4 MCAR § 4.066 Fees. In every contested case, the plaintiff, petitioner or other moving party shall pay, when the first paper on his part is filed or the first appearance is entered, a fee of $15, provided that the Board shall not be required to pay such fee. The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay, when the first paper on his or their part is filed, or the first appearance is entered, a fee of $10, provided that the Board shall not be required to pay such fee. All such fees shall be credited to the general revenue fund in the state treasury.

~~4 MCAR § 4.080~~ 4 MCAR §§ 4.067-4.085 Reserved for future use.

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."

Chapter Five: §§ 4.086-4.091 Delegations of Authority

4 MCAR § 4.086 General provisions.

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

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

4 MCAR § 4.087 Authority of person to whom functions are delegated.

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

B. Except as provided elsewhere in these rules, any action taken pursuant to delegated authority shall have the same force and effect and shall be made, evidenced and enforced in the same manner as actions of the Board.

4 MCAR § 4.088 The exercise of delegated authority.

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

B. Authority delegated to any person to issue orders or to enter into correspondence under subparagraph A. of this rule may be exercised only by that official.

C. Except as otherwise provided in these Rules, actions taken as provided in subparagraph A. of this rule shall be noted in writing, called to the Board's attention at its next regularly scheduled session, and thereafter recorded in the official minutes of the Board.

4 MCAR § 4.089 Authority delegated to chairman. The responsibility for the general administration of the internal affairs of the Board is delegated to the chairman of the Board. The chairman will keep the Board advised concerning his actions taken under this delegation of authority. This authority extends to:

A. Actions of routine character;

B. Actions taken by the chairman as chief executive officer for the Board, including actions designating appropriate subordinate persons to act as executive officers for the Board.

4 MCAR § 4.090 Authority delegated to executive director and counsel. The Board's executive director, or the counsel to the Board, is delegated authority, subject to Board review upon application being made by any interested person:

A. To receive emergency action notifications and to authorize emergency action necessitated by natural disasters;

B. To act upon requests for extensions of time in which to comply with Board orders, upon a showing of good cause;

C. To act upon requests for extensions of time within which to file papers;

D. To authorize withdrawal of pleadings in accordance with these rules;

E. To return applications or pleadings which are not acceptable under Board rules;

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

4 MCAR § 4.091 Authority delegated to executive director. The Board's Executive Director is delegated authority upon application being made by any franchising authority to review applications, and determine eligibility for use of the alternative franchising procedures set forth in 4 MCAR § ~~4.113~~ 4.142.

Chapter ~~Fourteen~~ Six: §§ ~~4.201-4.210~~ 4.092-4.093 Reports to ~~Commission~~ Board

~~4 MCAR § 4.201~~ 4 MCAR § 4.092 Operator required to file reports with Board. ~~A copy of the form entitled "Cable Television Annual Financial Report" (FCC Form 326) shall be filed annually with the Board, by every cable communications company for each cable communications system operating in the State of Minnesota, substantially at the same time as the report is filed with the Federal Communications Commission~~. The Board requires an annual report of cable system data from each system operator which is due on the first of May of each year and the Board may require such additional information and supporting documentation to be filed at such time and in such form as the Board may deem appropriate.

~~4 MCAR § 4.202~~ 4 MCAR § 4.093 Mailing address and telephone number to be furnished by cable communication companies.

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

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

~~4 MCAR §§ 4.203-4.210 Reserved for future use.~~

Chapter ~~Fifteen~~ Seven: §§ ~~4.211-4.220~~ 4.094-4.099 ~~Commission~~ Board Billings

~~4 MCAR § 4.213~~ 4MCAR § 4.094 Payments to Board. Each franchised cable communications company shall pay one percent of its annual gross subscriber receipts to the Board. This amount shall be paid on a quarterly basis, in the following manner: Beginning with the quarter commencing April 1, 1976, and ending

June 30, 1976, and for each successive quarter, every cable communications company shall, for each franchised cable communications system operating in Minnesota, pay to the Board one-fourth of one percent (.0025) of the gross subscriber receipts received for regular subscriber services during said cable communications company's previous fiscal year. Such payment shall be due and payable on the 10th calendar day of the month succeeding each quarter. For the purpose of computing the amount payable, gross subscriber receipts received for regular subscriber service shall not include payments received for installation-related services. The amount of any overpayment made in any one or more previous billing periods shall be deducted from the first payment due after the effective date of this Rule, and a separate computation of any such overpayments shall be made and submitted with the first quarterly payment due after the effective date of this Rule.

~~4 MCAR § 4.214~~ 4 MCAR § 4.095 Billings. The Board shall, not later than 10 calendar days before any payment is due and payable, send the cable communications company a bill in such form as the Board may direct, stating that the quarterly payment is due.

~~4 MCAR § 4.215 Effective Date.~~ ~~4 MCAR § 4.211 and 4 MCAR § 4.212 of this Chapter are repealed effective March 31, 1976, and 4 MCAR §§ 4.213 and 4.214 shall be effective on that date.~~

4 MCAR §§ 4.096-4.099 Reserved for future use.

Chapter ~~Eleven~~ Eight: §§ ~~4.156-4.165~~ 4.100-4.104 Ownership and Control

~~4 MCAR § 4.156~~ 4 MCAR § 4.100 Certain ownership prohibited. None of the following shall directly or indirectly own, operate, control or have a legal or equitable interest in a cable communications system:

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

B. A national television network; or

C. A television translator station licensed to the municipality of such system; or

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

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

F. A radio or television broadcast station, broadcasting from within the Twin Cities metropolitan area as designated in Minn. Stat. § 473.121, subd. 4. ~~(1976)~~.

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

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

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

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

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

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

~~4 MCAR § 4.157~~ 4 MCAR § 4.101 Exceptions. The provisions of 4 MCAR § ~~4.156~~ 4.100 shall not be applicable to any cable communications company or the ownership thereof during the term of a special certificate of confirmation obtained pursuant to Minn. Stat. § 238.09, subds. 3, 4 or 5 ~~(1976)~~, or during the term of an interim certificate of confirmation obtained pursuant to Minn. Stat. § 238.09, subd. 9. ~~(1976)~~.

~~4 MCAR §§ 4.158-4.165~~ 4 MCAR §§ 4.102-4.104 Reserved for future use.

Chapter ~~Ten~~ Nine: §§ ~~4.141-4.147~~ 4.105-4.119 Discrimination Prohibited

~~4 MCAR § 4.141~~ 4 MCAR § 4.105 Discrimination in franchising. No municipality shall discriminate aginsst a prospective franchisee, in any manner, on the basis of race, color, religion, national origin or sex.

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~~4 MCAR § 4.142~~ 4 MCAR § 4.106 Discrimination by cable communications company.

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

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

~~4 MCAR § 4.143~~ 4 MCAR § 4.107 Employment. Equal opportunity in employment shall be afforded by all operators of cable communications systems to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, national origin or sex.

~~4 MCAR § 4.144~~ 4 MCAR § 4.108 Equal employment opportunity program.

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

B. Under the terms of its program a system shall:

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

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

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

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

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

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

~~4 MCAR § 4.145~~ 4 MCAR § 4.109 Additional information to be furnished.

A. Equal employment programs to be filed by operators of systems:

1. The operator of each cable communications system shall file with the Board and with the Department of Human Rights a statement of its equal employment opportunity within one year after the effective date of these rules, indicating specific practices to be followed in order to assure equal employment opportunity without regard to race, color, religion, national origin or sex, in such aspects of employment practices as recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff and termination. Any changes or amendments to existing programs shall be filed with the Board and the Department of Human Rights on or before September 1st of each year thereafter;

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

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

4. Where, pursuant to Rule 4 MCAR § ~~4.144 C.~~ 4.108 C., a program is jointly established by two or more systems with an aggregate total of 10 or more full-time employees, a multiple system operator shall file a combined statement. A multiple system operator shall file a separate equal employment opportunity program statement for each headquarters office if that office has five or more full-time employees, and its work is primarily related to the operation of more than one cable communications system under common ownership or control;

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

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

1. To assure nondiscrimination in employment:

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

b. Placing a notice in bold type on the employment application informing prospective employees that discrimination because of sex, race, color, religion or national origin is prohibited and that they may notify the Federal Equal Employment Opportunity Commission, the Federal Communications Commission, or the Minnesota Department of Human Rights if they believe they have been discriminated against;

c. Placing employment advertisements in media that have significant circulation among minority-group people in the recruiting area;

d. Recruiting through schools and colleges with significant minority-group enrollment;

e. Maintaining systematic contacts with minority and human relations organizations, leaders and spokesmen to encourage referral of qualified minority or female applicants;

f. Encouraging present employees to refer minority or female applicants;

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

2. To assure non-discrimination in selection and hiring:

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

b. Where union agreements exist, cooperating with the union or unions in the development of programs to assure qualified minority group persons or females of equal opportunity for employment, and including an effective non-discrimination clause in new or renegotiated union agreements;

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

3. To assure non-discriminatory placement and promotion:

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

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

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

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

a. Examining rates of pay and fringe benefits for present employees with equivalent duties and adjusting any inequities found;

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

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

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

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

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

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G. Where, pursuant to subdivisions E. and F. of this rule, if more than one annual employment report is filed with respect to cable communications systems under common ownership or control, or headquarters offices performing work related to such systems, a multiple cable system operator shall also file a consolidated report covering all systems and headquarters office employees included in those reports;

H. The date contained in each annual employment report required by subdivision D. of this rule and subdivisions E. and F. of this rule shall reflect the figures from any one payroll period in January, February, or March of the year during which the report is filed. The same payroll period shall be used in each year's annual employment report;

I. Annual employment reports required by the rule shall be filed on or before September 1st of each year;

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

~~4 MCAR § 4.146~~ 4 MCAR § 4.110 Records available to the public.

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

B. Records to be maintained locally for public inspection by operators:

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

2. The documents specified in subsection B. of this section shall be maintained for a period of five years;

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

~~4 MCAR § 4.147~~ 4 MCAR § 4.111 Compliance mechanism. The Minnesota Department of Human Rights shall be the compliance mechanism to oversee compliance with the provisions of this Chapter and to investigate complaints made pursuant thereto; provided, however, that only the Board may revoke or suspend a certificate of confirmation for a cable communications company after an appropriate hearing.

4 MCAR §§ ~~4.148-4.155~~ 4.112-4.119 Reserved for future use.

Chapter ~~Seventeen~~ Ten: §§ ~~4.237-4.255~~ 4.120-4.129 Poles, Ducts and Conduit Agreements

~~4 MCAR § 4.237~~ 4 MCAR § 4.120 Policy. These rules shall be liberally construed to effectuate the purposes and provisions of Minn. Stat. § 238.13. (~~1976~~).

~~4 MCAR § 4.238~~ 4 MCAR § 4.121 Definitions. As used in this Chapter, the following words and phrases shall have the meanings given them herein unless a different meaning clearly appears in the text:

A. "Conduit system" means any reinforced passage or opening in, on, under or through the ground capable of containing communications facilities and includes the following: main conduit; underground dips and short sections of conduit under roadways, driveways, parking lots and similar conduit installations; laterals to poles and into buildings; ducts; and manholes.

B. "Cable communications company's equipment" means aerial wires, cables, amplifiers, associated power supply equipment, and other transmission apparatus necessary for the proper operation of the cable communications system in a franchised area.

C. "Public utility company poles" means poles owned by the public utility and poles owned by others for which the public utility has the right to permit others to attach in the communications space on said pole.

~~4 MCAR § 4.239~~ 4 MCAR § 4.122 Application. The provisions of this Chapter shall only apply to pole, duct and conduit agreements entered into or renewed between public utilities and cable communications companies on or after January 1, 1976 and shall have no application to such agreements executed prior to January 1, 1976 until such agreements are either renewed or substantially renegotiated. If a public utility company and a cable communications company enter into an agreement regarding only pole attachments, the provisions of this Chapter relating to conduit systems shall not be applicable to such agreement and if a public utility company and a cable communications company enter into an agreement regarding only use of a conduit system, the provisions of this Chapter relating to pole attachments shall not be applicable to such an agreement.

~~4 MCAR § 4.240~~ 4 MCAR § 4.123 Permits. Every pole, duct and conduit agreement shall contain a provision that before attach-

ing to the public utility company's poles or occupying any part of the public utility's conduit system, the cable communications company shall make application and receive a permit therefor on a form provided by the public utility company. If the cable communications company accepts the permit, it may attach its equipment to the poles covered by said permit or occupy the conduit system of the public utility to the extent authorized by said permit, subject to the provisions of this Chapter and all terms of the agreement between the contracting parties. In granting or denying a permit, the public utility has the right to determine whether a grant of a permit would adversely affect its public services, duties and obligations or have an adverse effect on the economy, safety, and future needs of the public utility.

~~4 MCAR § 4.241~~ **4 MCAR § 4.124 Legal authority.** Every pole, duct and conduit agreement shall contain a provision that the cable communications company shall submit to the public utility company evidence of the cable communications company's lawful authority to place, maintain and operate its facilities within public streets, highways, and other thoroughfares and shall secure any legally necessary permits and consents from federal, state, county and municipal authorities and from the owners of private property to construct, maintain and operate facilities at the locations of poles or conduit systems of the public utility company which it uses. The parties to the agreement shall at all times observe and comply with, and the provisions of a pole, duct and conduit agreement shall be subject to, all laws, ordinances and regulations which in any manner affect the rights and obligations of the parties to any such agreement, so long as such laws, ordinances or regulations remain in effect.

~~4 MCAR § 4.242~~ **4 MCAR § 4.125 Indemnification.** Every pole, duct and conduit agreement shall contain a provision that the cable communications company shall defend, indemnify, protect and save harmless the public utility from and against any and all claims and demands for damages to property and injury or death to persons, including payments made under any workmen's compensation law or under any plan for employees' disability and death benefits, which may arise out of or be caused by the erection, maintenance, presence, use or removal of the cable communications company's cable, equipment and facilities or by the proximity of the cables, equipment and facilities of the parties to the agreement, or by any act of the cable communications company on or in the vicinity of the public utility company's poles and conduit system, in the performance of the agreement. Nothing contained herein shall relieve the public utility company from liability for the negligence of the public utility company or anyone acting under its direction and control. The cable communications company shall also indemnify, protect and save harmless the public utility from any and all claims and demands of whatever kind which arise directly or indirectly from the operation of the cable communications company's facilities including taxes, special charges by others, claims and demands for damages or loss infringement of copyright, for libel and slander, for unauthorized use of television broadcast programs, and for unauthorized use of other program material, and from and against all claims and demands for infringement of patents with respect to the manufacture, use and operation of the cable communications equipment in combination with the public utility company's poles, conduit system or otherwise. Nothing contained herein shall relieve the public utility company from liability for the negligence of the public utility company or anyone acting under its direction and control. The cable communications company shall carry insurance to protect the parties to the agreement from and against any and all claims demands, actions, judgments, costs, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury, claim or damage. The amount of any such insurance shall be agreed to by the parties to this agreement. The cable communications company shall also carry such insurance as will protect it from all claims under any workmen's compensation laws in effect that may be applicable to it. All insurance required shall remain in effect for the entire term of the agreement.

~~4 MCAR § 4.243~~ **4 MCAR § 4.126 Additional terms.** Nothing contained in these rules shall in any way prohibit a public utility company from including in its pole, duct and conduit agreements with cable communications companies additional terms which do not conflict with the provisions of this chapter.

4 MCAR §§ ~~4.244-4.255~~ 4.127-4.129 Reserved for future use.

Chapter ~~Sixteen~~ Eleven: §§ ~~4.221-4.236~~ 4.130-4.139 Cable Service Territories

~~4 MCAR § 4.221~~ **4 MCAR § 4.130 Policy.** These rules shall be liberally construed to effectuate the purposes and provisions of Minn. Stat. § 238.05. ~~(1976)~~.

~~4 MCAR § 4.222~~ **4 MCAR § 4.131 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 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 judgment 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~~ **4 MCAR § 4.132 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. §

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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~~ 4 MCAR § 4.133 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~~ 4 MCAR § 4.134 Board procedures.

A. Pursuant to the requirements of 4 MCAR § ~~4.111~~ 4.140 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 company, or any party who has announced an intention to form a cable communications company. 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 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 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 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. 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 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 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~~ 4 MCAR § 4.135 Factors and criteria to be considered. 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~~ 4.136-4.139 Reserved for future use.

~~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, subds. 3, 4, 5 and 9 (1976), and rules 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. The closing date for submission of applications;~~

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

~~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.~~

~~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 systems 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 Commission;~~

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."

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 head-end(s);

b. Schedule for activating two-way capability;

c. Type of automated services to be provided;

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 communication system, directly, or indirectly, or has outstanding franchises for which no system has been built;

9. Plans for financing the proposed site, 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 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 it is 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.

4 MCAR § 4.112 Franchise renewal.

A. For purposes of these rules a franchise is renewed whenever the franchising authority awards a subsequent franchise to the same cable communications company or its successor in interest which extends the franchise term beyond its previous termination date.

B. 1. Three months prior to the expiration of a franchise and to the expiration of a certificate of confirmation, the advisory body created in 4 MCAR § 4.121 B.1. of these rules shall submit a report to the franchising authority, to the cable communication system operator and to the Board, which report shall include a written appraisal of the performance of the franchisee during the franchise term with regard to the provisions of the franchise. The report shall also include recommendations for revised or additional provisions of the franchise, considering at least the following items: channel capacity; channels for access cablecasting; facilities and staff assistance available for access cablecasting; two-way capability; and the need for further service to be extended within the franchised area based upon a reassessment of the communications needs of the persons residing within the franchised area in relation to the services generally offered by the cable industry.

2. At least six months prior to the expiration of the franchise, franchising authorities which are being served by cable communications systems which are operating under a franchise which expires before May 1, 1979, shall create an advisory body to submit the report to the franchising authority, required by 4 MCAR § 4.112 B.1. of this rule.

C. The franchising authority shall commence re-negotiation of the franchise at least 30 days prior to the expiration of the franchise in accordance with 4 MCAR § 4.121 B.3. of these rules, and may proceed with a renewal of the franchise unless the governing body determines not to reissue the franchise to the franchisee or desires to consider additional applicants for a franchise.

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

E. If the franchising authority determines that additional applicants are to be sought, the franchising authority must follow the procedure prescribed in 4 MCAR § 4.111 of this Chapter.

~~4 MCAR § 4.113~~ 4 MCAR § 4.142 Alternative initial franchising procedures.

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

B. No franchising authority determined eligible for the use of

this rule shall award a cable communications franchise, unless the procedures of this subdivision have been followed as required.

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

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

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

a. Name of municipality making the request;

b. The closing date for submission of applications;

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

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

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

f. A statement that all applications for the franchise must contain at least the information required by 4 MCAR § ~~4.111~~ E. 4.141 D.;

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

h. The name, address and telephone number of ~~a municipal official~~ the individual(s) who may be contacted for further information.

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

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

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

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

E. 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.

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

1. At least one municipality within the cable service territory shall meet one of the following requirements:

a. Be adjacent to an already approved cable service territory having a cable communications system from which the extension of cable communications services has been offered or is desired, or;

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

c. Have a population of less than 1200, and;

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

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

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

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

G. The Board may also allow the use of the procedures of this rule, in cases which it determines that the requiring of a franchising authority to comply with the procedures of 4 MCAR § ~~4.111~~ 4.141 would not be in the public interest or would bring undue hardship to any of the parties involved.

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

I. Joint powers. In the cases of municipalities acting in concert, such municipalities may delegate to another entity such duties, responsibilities, privileges or activities described in these rules, if such delegation is proper according to state and local law.

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."

4 MCAR §§ 4.143-4.149 Reserved for future use.

Chapter 12: §§ 4.140-4.149 Franchising, Franchise Renewal and Franchise Amendment Procedures

4 MCAR § 4.140 Franchising eligibility. Any franchise area provided cable television service by a company meeting the criteria of a "cable communications system" as defined in 4 MCAR § 4.002 B. shall issue a franchise pursuant to 4 MCAR § 4.141 or MCAR § 4.142 provided the eligibility requirements of 4 MCAR § 4.142 are satisfied.

4 MCAR § 4.141 Initial franchise.

A. Procedure. Except as provided in 4 MCAR § 4.442, the procedure described in 4 MCAR § 4.141 of this chapter shall be observed by all franchising authorities before and during the awarding of any cable communications franchise.

B. Cable Service Territory approval. The proposed boundaries for all cable service territories must be approved by the Board in accordance with 4 MCAR § 4.134 before the Needs Assessment is completed and the Invitation for Applications is issued.

C. Needs Assessment Report. The franchising authority or a group of two or more individuals appointed by the franchising authority shall compile a "Needs Assessment Report" on cable communications for the proposed area to be served within the Cable Service Territory. The individuals compiling the Report shall not be employed by or shall knowingly have any financial interest in any cable communications company bidding on such franchise, or their subsidiaries, and major equipment or program suppliers. The group making the Needs Assessment Report shall inform itself about cable communications through at least a review of the published information, state and federal statutes, rules and regulations, and the experience of other municipalities that have studied cable communications. Such report shall include an assessment of the communications needs of the persons residing within the proposed area to be served within the Cable Service Territory, and recommendations on the means to satisfy those needs. The franchising authority shall make such report publicly available. In cases of joint powers agreements, the report may be a joint undertaking of more than one municipality as long as at least two representatives from each municipality which is a party to the agreement participate in making the Needs Assessment Report.

D. Invitation for applications.

1. After approval of the Cable Service Territory by the Minnesota Cable Communications Board, and consideration of the recommendations of the Needs Assessment Report, 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, the invitation for applications for a cable communications franchise, which invitation shall include but not necessarily by limited to, the following items:

a. 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;

b. Criteria and priorities which the franchising authority has developed to review franchise applications;

c. Information regarding applications for the cable communications franchise including:

(1) The closing date for submission of applications;

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

(3) The name, address and telephone number of an individual(s) who may be contacted for further information.

2. The franchising authority shall mail a copy of the invitation to the Board and make a copy available for public inspection at the city office (or in the case of joint powers, offices) during normal business hours within 10 days after adoption of an invitation for applications of a cable communications franchise. The franchising authority shall also 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.

3. The franchising authority shall consult with the Board and may consult with the appropriate regional development commission.

4. The franchising authority shall give public notice of the availability of the invitation for applications for a cable communications franchise at least 45 days before the public hearing awarding the franchise. The notice shall be published at least once in a newspaper of general circulation within the boundaries of the franchise area. A copy of the notice shall be provided to the Board on the date of initial publication, together with an affidavit of publication. The notice shall also be published 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, at a minimum, the following information:

a. The name(s) of the municipalities within the area requested to be served in the invitation for applications;

b. The date by which all applications must be submitted;

c. The name, address and telephone number of the individual(s) from whom the invitation for applications for a cable communications franchise must be obtained;

d. The amount of any application fee;

e. A statement that the applications 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.

5. The 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:

a. 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;

b. A statement of the television and radio broadcast signals for which permission to carry will be requested from the Federal Communications Commission;

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

(1) General area for location of antenna(e) and headend(s);

(2) Schedule for activating two-way capacity;

(3) Type of automated services to be provided;

(4) 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.

d. The terms and conditions under which particular service is to be provided to governmental and educational entities.

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

f. A time schedule for construction of the entire system with the time sequence for wiring the various parts of the area requested to be served in the Invitation for Applications.

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

h. 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;

i. 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;

j. 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,

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

E. Public hearings.

1. 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.

2. If a franchise is granted, it shall be granted by ordinance. No franchise is effective until the Board has confirmed the franchise pursuant to Minn. Stat. § 238.09, subd. 5. The franchisee shall obtain a Certificate of Confirmation pursuant to 4 MCAR §§ 4.210-4.216.

3. 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.

4. Nothing contained in any rule of the Board shall prohibit a franchising authority from franchising a non-profit or municipally operated system provided that it is granted pursuant to Minn. Stat. §§ 238.09-238.16.

F. Joint powers. In the cases of municipalities acting in concert, such municipalities may delegate to another entity such duties, responsibilities, privileges or activities described in these rules, if such delegation is proper according to state and local law.

4 MCAR § 4.143 Franchise renewal.

A. Procedure. For purposes of these rules, a franchise is renewed whenever the franchising authority awards a subsequent franchise to the same cable communications company or its successor in interest which extends the franchise term beyond its previous termination date. Upon renewal of a cable communications franchise, the franchisee shall obtain a renewal of its certificate of confirmation pursuant to 4 MCAR § 4.215.

B. Renewal report. Three months prior to the expiration of a franchise, the franchising authority shall submit a renewal report to the cable communications system operator and the Board. Franchising authorities that franchised or would be eligible to franchise under the provision of 4 MCAR § 4.142 (alternative initial franchising procedure) shall be exempt from the report requirement of this rule.

1. The franchising authority or a group of two or more individuals appointed by the franchising authority shall compile a "Renewal Report." The individuals compiling the Report shall not be employed by or shall knowingly have any financial interest in any cable communications company bidding on such franchise, or the cable communications company granted the franchise, or their subsidiaries, and major equipment or program suppliers.

2. The Renewal Report shall assess the performance of the franchisee according to the terms of the franchise and make recommendations to the franchising authority regarding the apparent or likely need for upgrading the system to meet the current state of the art. 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 franchise area based upon a reassessment of the communications needs of the persons residing within the franchise area in relation to the services generally offered by the cable industry.

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."

3. In cases of joint powers agreements, the report may be a joint undertaking of more than one municipality as long as at least two representatives from each municipality who is a party to the agreement participate in making the report.

C. Renegotiation period. The franchising authority shall commence renegotiation of the franchise at least one year prior to the expiration of the franchise pursuant to 4 MCAR § 4.202 E., and may proceed with a renewal of the franchise unless the franchising authority determines not to reissue the franchise to the franchisee or desires to consider additional applicants for a franchise.

D. Public hearing. The renewal shall be granted only after holding a public hearing thereon with reasonable notice and reasonable opportunity to be heard. Unless otherwise already provided for by local law, notice of any such hearing shall be given by publishing two notices in a newspaper of general circulation within the boundaries of the franchising authority. First publication shall appear not less than 15 days prior to the hearing. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the franchising authority.

E. Additional applicants. If the franchising authority determines that additional applicants are to be sought, the franchising authority shall follow the procedure of 4 MCAR § 4.141 or 4 MCAR § 4.142 (alternative initial), provided the eligibility requirements of 4 MCAR § 4.142 F. are satisfied.

F. Joint powers. In the cases of municipalities acting in concert, such municipalities may delegate to another entity such duties, responsibilities, privileges or activities described in these rules, if such delegation is proper according to state and local law.

4 MCAR § 4.144 Franchise amendments. The franchising authority shall act pursuant to local law pertaining to ordinance amendment procedures. The franchising authority shall file the franchise amendments with the Board.

4 MCAR §§ 4.145-4.149 Reserved for future use.

~~Chapter Nine: §§ 4.131-4.140 Transfer of Ownership, Renewal, or Amendment of Franchise~~

~~4 MCAR § 4.131 Requirement of public hearing.~~ ~~Transfer of an entire legal ownership interest in a cable communications system, the transfer of a franchise, the renewal of a franchise, the termination of a franchise except for the expiration of the term thereof, or the amendment of a franchise requires the written approval of the municipality given only after holding a public hearing thereon. Notice of any such hearing shall be given not less than 30 days prior to the hearing by publishing notice thereof once each week for two successive weeks in a newspaper of general circulation in the municipality. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the municipality.~~

~~4 MCAR § 4.132 Notice to Board.~~ ~~Transfer of an entire legal ownership interest in a cable communications system or the transfer of a franchise requires notification to the Board by the municipality. The notification shall be accompanied by the written certification of the transferee that he meets all of the requirements with respect to technical ability, good character and financial stability demanded of an original franchisee. The municipality shall cause to be sent to the Board a copy of all public documents relating to the amendment, renewal, transfer of ownership or termination of a franchise.~~

~~4 MCAR § 4.133 Transfer of ownership of a franchise.~~ ~~The parties to the transfer of ownership of only a franchise without the inclusion of a cable communications system in which at least substantial construction has been commenced, shall be required to establish that the transfer of a franchise only will be in the public interest.~~

~~4 MCAR § 4.134 Franchise renewal.~~ ~~When any franchise is renewed, the franchisee shall agree to abide by all rules and regulations of the Board. No franchise shall be renewed for a period longer than ten years. A franchise is renewed for purposes of these Rules whenever the franchising authority awards a subsequent franchise which extends the franchise term beyond its previous termination date.~~

~~4 MCAR § 4.135 Appeals to the Board.~~

~~A. The franchisee may appeal a decision of the franchising authority terminating a franchise to the Board pursuant to Minn. Stat. § 238.14 (1976) and the determination of the municipality shall be stayed pending a decision of the appeal as provided by 4 MCAR § 4.121 R. of these rules. Any such appeal is a contested case to which the Board is not a party.~~

~~B. A franchisee aggrieved by a material modification of its franchise may appeal to the Board pursuant to Minn. Stat. § 238.14 (1976). Any such appeal is a contested case to which the Board is not a party.~~

~~4 MCAR § 4.136 Approval of franchise amendments.~~ ~~Any amendment of a provision of a franchise which is within the required content of a franchise prescribed by Chapter Eight of these Rules, except amendments which change monthly subscriber service charges, shall not be effective unless approved by the Board. Such approval shall be given if consonant with the public interest and shall not be unreasonably withheld by the Board.~~

~~4 MCAR § 4.137 Amendments to franchise ordinance.~~ ~~The municipalities shall file any amendments to the franchise ordinance with the Board within 10 days of adoption by the municipality.~~

~~4 MCAR §§ 4.138-4.140 Reserved for future use.~~

Chapter Thirteen: §§ 4.150-4.159 Sale or Transfer of a Franchise, Sale or Transfer of Stock

4 MCAR § 4.150 A provision specifying the requirements for the sale or transfer of a franchise.

A. Any sale or transfer of a franchise, including a sale or transfer by means of a fundamental corporate change, requires the written approval of the franchising authority. Any sale or transfer of a franchise shall be subject to the provisions of 4 MCAR § 4.100. The parties to the sale or transfer of a franchise shall make a written request to the franchising authority for its approval of a sale or transfer of a franchise. The franchising authority shall reply in writing within 30 days of the request and shall indicate its approval

of the request or its determination that a public hearing is necessary. The franchising authority shall conduct a public hearing on the request within 30 days of such determination if it determines that a sale or transfer of a franchise may adversely affect the company's subscribers.

B. Unless otherwise already provided for by local law, notice of any such hearing shall be given 14 days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the area being served by the franchise. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the franchising authority. Within 30 days after the public hearing, the franchising authority shall approve or deny in writing the sale or transfer request.

C. Any sale or transfer of a franchise, including a sale or transfer by means of a fundamental corporate change, requires notification to the Board by the franchising authority. The notification shall be accompanied by the written certification of the transferee that it meets all of the requirements with respect to technical ability and financial stability demanded of the original franchisee. The franchising authority shall cause to be sent to the Board a copy of all public documents related to sale or transfer of the franchise.

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

E. For purposes of this provision, fundamental corporate change means the sale or transfer of all or a majority of a corporation's assets, merger (including any parent and its subsidiary corporation), consolidation, or creation of a subsidiary corporation.

4 MCAR § 4.151 Sale or transfer of stock. Sale or transfer of stock in a corporation so as to create a new controlling interest in a cable communication system shall be subject to the requirements of 4 MCAR § 4.100 and 4 MCAR § 4.150.

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

4 MCAR § 4.152-4.159 Reserved for future reference.

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

~~D. *A provision specifying all subscriber charges and, if existent, the length of residential subscriber contracts, which contracts may not exceed 12 months in duration unless after 12 months the contract may be terminated by the subscriber, at any time at his option, with no penalty to the subscriber and a provision stating 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.~~

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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 a channel capacity, available for immediate or potential use, equal to a minimum of 120 MHZ of bandwidth (the equivalent of 20 television broadcast channels).

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

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

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

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

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

H. *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 this 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 of 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 on a first come, nondiscriminatory basis during those hours when the channel is not in use by the general public. During those hours that the specially designated access channel is not being used by the general public, local educational authorities, or local government, the franchisee shall lease time to commercial or noncommercial users on a first come, nondiscriminatory basis of 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 specially 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.2.0 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 necessary 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 techni-

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cal 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 communication electronic modules:

1. For municipalities which are within a major television market as defined by the Federal Communications Commission in § 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 § 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:

2.b. For municipalities which are not within a major television market as defined by the Federal Communications Commission in § 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 laws, 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 oportunity 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 affect, unless the term thereof sooner expires. If the Board approves of the action of the municipality, the franchise shall terminate immediately; if the Board disapproved 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 attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the franchisee of claims, liens and taxes due 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 already provided for by local law, a provision that the franchisee shall not open or disturb the surface of any street, sidewalk, driveway or public place for any purpose without first having obtained a permit to do so from the proper municipal authority, for which permit the municipality may impose a reasonable fee to be paid by the franchisee. The lines, conduits, cables and other property placed in the streets and public places pursuant to such permit shall be located in the streets or portions of the streets and public places as shall be determined by the proper municipal authority. The franchisee shall, upon completion of any work requiring the opening of any street or public place, restore the same, including the paving and its foundations, to as good a condition as formerly, and in a manner and quality approved by the proper municipal authority, and shall exercise reasonable care to maintain the same thereafter in good condition. Such work shall be performed with due diligence and if the franchisee shall fail to perform the work promptly, to remove all dirt and rubbish and to put the street or public place back in good condition, the municipalities shall have the right to put the street or public place back into good condition at the expense of the franchisee and the franchisee shall, upon demand, pay to the municipality the cost of such work done or performed by the municipality, together with an additional sum as liquidated damages to be determined by the municipality.~~

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

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

Y. *Unless otherwise already provided for by local law, a provision that all construction, installation, maintenance and operation of any cable communications system or any facilities employed in connection therewith shall be in compliance with the provisions of the National Electrical 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 standard 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 effect 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.

4 MCAR § 4.122 Additional terms and conditions permitted. Any franchise may contain such additional terms and conditions as the municipality and the franchisee deem appropriate, provided such additional terms and conditions are consistent with all federal and state laws, rules, regulations and orders. The Board shall make itself available to municipalities who desire assistance in the development of a franchise ordinance and the awarding of a franchise.

4 MCAR § 4.123-4.130 Reserved for future use.

Chapter Fourteen: §§ 4.200-4.209 Franchise Standards

4 MCAR § 4.200 Definitions. As used in these rules, the following classifications shall have the meaning given herein, unless a different meaning clearly appears in the text.

A. Class A Cable Systems. All systems that are located outside of the Twin City metropolitan area; and are located in a franchise area having a population of 4000 or fewer persons and serving fewer than 1000 subscribers.

B. Class B Cable Systems. All systems except those systems meeting the criteria of the Class A system listed above, that are located outside of the Twin City metropolitan area; and are located in a franchise area having a population of fewer than 15,000 persons and serving fewer than 3500 subscribers.

C. Class C Cable Systems. All systems that are located in the Twin City metropolitan area; or are located in a franchise area having a population of 15,000 or more persons or serving 3500 or more subscribers.

4 MCAR § 4.201 Reclassification of systems. A franchise shall be amended by the franchising authority when the number of subscribers served by the cable communications system in the franchise area changes so as to result in reclassification of the system pursuant to 4 MCAR § 4.200. Such amendments shall include provisions consistent with the requirements of that class of cable communications systems.

4 MCAR § 4.202 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, 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. The following requirements apply to all classes of systems (A, B, and C,) unless hereafter provided otherwise.

A. A provision that the franchise complies with the Minnesota Cable Communications Board's franchise standards.

B. A provision requiring the franchisee and the franchising authority to conform to all state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to all federal laws and regulations regarding cable as they become effective.

C. A provision that the franchise shall cease to be of any force and effect if the franchisee fails to obtain either a regular certificate of confirmation or renewal of a certificate of confirmation from the 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.

D. A provision limiting the initial and renewal franchise term to not more than fifteen years each.

E. A provision specifying renegotiation periods mutually agreed to between the franchising authority and the company, such renegotiation periods to occur not less than one year before the end of any franchise term, unless the franchising authority determines not to reissue the franchise to the franchisee or desires to consider additional applicants for a franchise.

F. A provision specifying that the franchise is non-exclusive.

G. A provision prohibiting sale or transfer of the franchise or sale or transfer of stock so as to create a new controlling interest pursuant to Chapter Thirteen, except at the approval of the franchising authority, which approval shall not be unreasonably withheld, and that such sale or transfer is completed pursuant to Chapter Thirteen.

H. A provision granting the franchising authority collecting a franchise fee the authority to audit the franchisee's accounting and financial records upon reasonable notice, and requiring that the franchisee file with the franchising authority annually reports of gross subscriber revenues and other information as the franchising authority deems appropriate.

I. A provision specifying all subscriber charges and, if existent, the length and terms of residential subscriber contracts, and a provision stating the procedure by which all subscriber charges may be changed, unless contrary to state or federal law. Nothing in this provision shall be construed to limit the length of subscriber contracts with entities that operate for profit.

J. A provision indicating by title the office or officer of the franchising authority that is responsible for the continuing administration of the franchise.

K. A provision requiring the franchisee to indemnify and hold harmless the franchising authority 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 franchising authority may require insuring both the franchising authority 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.

L. 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 franchising authority, the franchisee shall furnish a performance bond, certificate of deposit or any other type of instrument approved by the franchising authority in such amount as the franchising authority deems to be adequate compensation for damages resulting from the franchisee's nonperformance. The franchising authority may, from year to year, in its sole discretion, reduce the amount of the performance bond or instrument.

M. 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.

N. A provision that the franchisee's technical ability, financial condition and legal qualification were considered and approved by the franchising authority in a full public proceeding affording reasonable notice and a reasonable opportunity to be heard.

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

P.1. A provision in initial franchises that there be full description of the system proposed for construction and a schedule showing:

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 franchising authority only upon occurrence of unforeseen events or acts of God.

2. Provided however, that for franchise areas which will be served by a system proposed to have 100 plant miles of cable or more, a provision:

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 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;

c. 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;

d. That the requirement of this rule be waived by the franchising authority only upon occurrence of unforeseen events or acts of God.

Q. Unless otherwise provided already for by local law, a provision that the franchisee shall obtain a permit from the proper municipal authority before commencing construction of any cable communications system, including the opening or disturbance of any street, sidewalk, driveway or public place. Such provision shall specify remedies available to the franchising authority in cases where the franchisee fails to meet the conditions of the permit.

R. Unless otherwise already provided for by local law, a provision that all wires, conduits, cable and other property and facilities of the franchisee be located, constructed, installed and maintained in compliance with applicable codes. Such provision shall also specify that the franchisee keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic, or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.

S. Unless otherwise already provided for by local law, a provision that the franchising authority and the franchisee shall establish a procedure in the franchise for the relocation or removal of the franchisee's wires, conduits, cables and other property located in said street, right-of-way or public place whenever the franchising authority undertakes public improvements which affect the cable equipment.

T. 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 Communication's Commission rules and regulations relating to cable communications systems, as the same now provide and may hereafter be amended or modified. 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.

U. 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.

V. A provision pertaining to the franchisee's construction and maintenance of a cable communication 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. In cases where an initial franchise is granted, the franchisee shall provide a cable communications system having the technical capacity for non-voice return communications.

2. When a franchise is renewed, sold, or transferred and is served by a system that does not have the technical capacity for non-voice return communications, the franchising authority 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.

W. A provision stating that no signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewed 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 permission shall be required for each type or classification of Class IV cable communications activity planned for the purpose.

1. No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of such subscribers or any lists that identify the viewing habits of subscribers shall be sold or otherwise made available to any party other than to the company and its employees for internal business use, and also to the subscriber subject of that information, unless the company has received specific written authorization from the subscriber to make such data available.

2. Written permission from the subscriber shall not be required for systems conducting systemwide or individually addressed electronic telemetering for the purpose of verifying system integrity. Confidentiality of such information shall be subject to the provision set forth in 4 MCAR § 4.202 W.1.

3. For 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 communications system.

X. 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 other matters.

Y. A provision requiring that at least a toll-free or collect 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 state who will bear the costs included in making such repairs, adjustments, or installations.

Z. A provision granting the franchising authority 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, attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the franchising authority. 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. 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.

AA. 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 franchising authority for damages resulting to it from such abandonment.

BB. 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 franchise area if the franchising authority so requests, 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 franchise area.

CC. A provision that when a franchise or a cable system is offered for sale, the franchising authority shall have the right to purchase the system.

DD. A provision establishing the minimum number of access channels that the franchisee shall make available.

1. 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. Franchisees providing subscribers only alarm services or only data transmission services for computer operated functions shall be exempt from this requirement. The specially designated access channel may be used by local educational authorities and local government on a first come, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the 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 local educational authorities, local government, or commercial or noncommercial users who have leased time on the specially designated access channel. The VHF spectrum shall be used for the specially designated access channel required in this subdivision.

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2. The provision shall also require that the franchisee shall establish rules pertaining to the administration of the specially designated access channel. The operating rules if established by the franchisee governing the specially designated access channel shall be filed with the Minnesota Cable Communication Board within 90 days after any such channels are put into use.

3. 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 MCAR § 4.203 Required franchise provisions for a Class B cable system.

Franchises for Class B cable systems shall contain recitations and provisions consistent with 4 MCAR § 4.202, unless hereafter provided otherwise, and recitations and provisions consistent with the following requirements:

A. A provision establishing the minimum number of access channels that the franchisee shall make available. Franchisees subject to the requirement of this provision shall not be subject to the requirements of 4 MCAR § 4.202 DD.

1. The provision shall require that the franchisee 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. Franchisees providing subscribers only alarm system services or only data transmission services for computer operated functions shall be exempt from this requirement. 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 education authorities and local government on a first come, nondiscriminatory basis during those hours when the channel is not in use by the general public. During those hours that the specially designated access channel is not being used by the general public, local educational authorities, or local government, the franchisee shall lease time to commercial or non-commercial 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.

2. The provision shall also require that the franchisee shall establish rules pertaining to the administration of the specially designated access channel. The operating rules if established by the franchisee governing the specially designated access channel shall be filed with the Minnesota Cable Communications Board within 90 days after any such channels are put into use.

3. The provision shall require that whenever the specially designated access channel required in 4 MCAR § 4.203 A.1. of this rule is in use during 80% of the weekdays (Monday-Friday), for 80% ofthe time during any consecutive 3 hour period for six weeks running, and there is a 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 coverters. 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.

B. A provision establishing the minimum equipment that the franchisee shall make available for public use. 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.

4 MCAR § 4.204 Required franchise provisions for a Class C cable system.

Franchises for Class C cable systems shall contain recitations and provisions consistent with 4 MCAR § 4.202, unless hereafter provided otherwise, and recitations and provisions consistent with the following requirements:

A. A provision establishing the minimum number of public, educational, governmental and leased access channels that the franchisee shall make available. Franchisees subject to the requirement of this provision shall not be subject to the requirements of 4 MCAR § 202 DD.

1. 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 available 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. Franchisees providing subscribers only alarm system services or only data transmission services for computer operated functions shall be exempt from this requirement. 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 this 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.

2. The provision shall require that whenever the specially designated noncommercial public access channel, the specially designated education access channel, the speciaally designated local government access channel, or the specially designated leased access channel required in 4 MCAR § 4.204 A.1. 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 franchisee 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.

3. The provision shall also require that the franchisee shall establish rules pertaining to the administration of the specially designated noncommercial public access channel, and the specially designated educational access channel, and the specially designated leased access channel required in this rule. 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 this rule shall be filed with the Minnesota Cable Communications Board within 90 days after any such channels are put into use.

4. 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 education access channel, and the specially designated local government access channel required in this Rule. Franchisees providing subscribers only alarm system services or only data transmission services for computer operated functions shall be exempt from this requirement.

5. 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 therefore, 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.

B. A provision establishing the minimum equipment that the franchisee shall make available for public use.

1. The provision shall require that the franchisee shall make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the specially designated noncommercial public access channel required by 4 MCAR § 4.204 A.1. of this rule. The franchisee shall also make readily available, upon need being shown, the minimum equipment necessary to make it possible to record programs at remote locations with battery operated portable equipment. Need within the meaning of this Rule shall be determined by subscriber petition. 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.

C. A provision establishing the minimum system-wide channel capacity that the franchisee shall make available. Franchisees subject to the requirement of this provision shall not be subject to the requirements of 4 MCAR § 4.202 DD.

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

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

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

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4 MCAR § 4.205 Additional terms and conditions permitted. Any franchise may contain such additional terms and conditions as the municipality and the franchisee deem appropriate, provided such additional terms and conditions are consistent with all federal and state laws, rules, regulations and orders. The Board shall make itself available to municipalities who desire assistance in the development of a franchise ordinance and the awarding of a franchise.

4 MCAR § 4.206-4.209 Reserved for future use.

Chapter ~~Six~~ Fifteen: §§ ~~4.096-4.110~~ 4.210-4.219 Certificates of Confirmation

~~4 MCAR § 4.096~~ 4 MCAR § 4.210 Introduction. The Board shall issue certificates of confirmation only in accordance with the rules prescribed in this Chapter.

~~**4 MCAR § 4.097 Special certificates of confirmation.**~~

~~A. Pursuant to Minn. Stat. § 238.09, subd. 3 (1976), any cable communications company which under an existing franchise was lawfully engaged in actual operation on May 24, 1973, may continue to exercise said franchise pursuant to the term thereof, provided the company files with the Board by such date as the Board shall set, an application for a special certificate of confirmation in such form and containing such information and supporting documentation as the Board may require. Failure to file the written information shall not be cause for requiring a regular certificate of confirmation pursuant to 4 MCAR § 4.099. The Board shall grant a certificate of confirmation without further proceedings which shall be valid for a period of five years. Each such certificate shall be granted only at a public meeting of the Board by an affirmative vote of at least three members of the quorum.~~

~~B. Pursuant to Minn. Stat. § 238.09, subd. 4 (1976), cable communications companies which have been granted a franchise prior to April, 1, 1973, and which were not in operation prior to May 24, 1973, shall be given a ten year certificate of confirmation without further proceedings, provided such company files with the Board by such date as the Board shall set, an application for a special certificate of confirmation in such form and containing such information and supporting documentation as the Board may require, and further provided such companies have commenced substantial construction, indicated by erection of the "head end" and stringing of no less than five miles of trunk and distribution cable, by January 1, 1974. Failure to file the written information shall not be cause for requiring a regular certificate of confirmation pursuant to 4 MCAR * 4.099. Each such certificate shall be granted only at a public meeting of the Board by an affirmative vote of at least three members of the quorum.~~

~~C. Pursuant to Minn. Stat. § 238.09, subd. 5 (1976), a municipality may issue a franchise by September 15, 1973, if done so pursuant to a municipal enabling ordinance on cable communications enacted by April 1, 1973, containing detailed specifications for the construction and operation of a cable communications system. Any cable communications company so franchised may exercise its franchise pursuant to the terms thereof, provided such company files with the Board an application in such form and containing such information and supporting documentation as the Board may require. Failure to file the written information shall not be cause for requiring a regular certificate of confirmation pursuant to 4 MCAR § 4.099. The Board shall issue, without further proceedings, a certificate of confirmation to such a cable communications company valid for ten years. Each such certificate shall be granted only at a public meeting of the Board by an affirmative vote of at least three members of the quorum.~~

~~**4 MCAR § 4.098 Interim certificate of confirmation.** The Board may issue an interim certificate of confirmation after its acceptance of an application in such form and containing such information and supporting documentation as the Board may require, such certificate to be valid for not more than five years, to an operating company having a franchise approved by the Board to erect a community antenna and establish cable television services for any municipality having a population not greater than 15,000 according to the 1970 federal census; provided that the system shall be constructed and ready for operation by July 1, 1975, in full compliance with all applicable regulations of the Federal Communications Commission and with any special terms or conditions set by the Board to apply in any individual situation, not subject to Minn. Stat. ch. 15, to include stipulations regarding minimum channel capacity; extent of two-way capability; means for interconnection; and availability of facilities for public access cablecasting and for local program origination. Each such certificate shall be granted only at a public meeting of the Board by an affirmative vote of at least three members of the quorum.~~

~~4 MCAR § 4.099~~ 4 MCAR § 4.211 Necessity for a certificate of confirmation. Any cable communications company ~~which is not authorized by law to receive a special or interim certificate of confirmation pursuant to 4 MCAR § 4.097 or 4 MCAR § 4.098~~ shall be required to secure a regular certificate of confirmation from the Board before becoming operational. Such certificate may be issued only upon compliance with 4 MCAR §§ ~~4.111~~ 4.141 or ~~4.113~~ 4.142 and 4 MCAR §§ ~~4.121~~, 4.200-4.204 after full Board proceedings and shall be for a period of ten years from the effective date of the municipal franchise ordinance.

~~4 MCAR § 4.100~~ 4 MCAR § 4.212 Procedure for making application for a regular certificate of confirmation.

A. Each cable communications company applying for a certificate of confirmation pursuant to 4 MCAR § ~~4.099~~ 4.211 shall file, no later than 30 days before the Board is to consider the application, an application in such form and containing such information and supporting documentation as the Board may require.

B. Each cable communications company applying for a certificate of confirmation pursuant to 4 MCAR § ~~4.099~~ 4.211 shall cause to be published, weekly for two successive weeks, at its own expense, in a legal newspaper of general circulation in each municipality for which a certificate of confirmation is sought the following:

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

2. That it is seeking a certificate of confirmation from the Board and designating the municipality or municipalities;

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

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

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

C. The executive director of the Board may cause such additional notices to be given to such persons as in his opinion is reasonable.

~~4 MCAR § 4.101~~ 4 MCAR § 4.213 Public meeting.

A. No later than 60 days after a completed application for a certificate of confirmation is received, the Board shall hold a public meeting thereon. Any such public meeting may be combined with a regular or special Board meeting. If, at any such meeting, application is substantially contested, the Board may adjourn the public meeting and deem the matter a contested case for disposition in accordance with Chapter Four of these rules, provided that the decision of any hearing examiner, appointed thereunder, shall not be binding unless adopted by the Board. For purposes of the contested case procedure, the Board shall not be deemed a party to any proceeding in which only the granting of a regular certificate of confirmation is at issue.

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

~~4 MCAR § 4.102~~ 4 MCAR § 4.214 Grant of certificate. If the Board determines to grant a ~~special, interim~~, regular or renewal certificate of confirmation it shall issue the certificate of confirmation within 30 days after the public meeting at which the certificate of confirmation is granted. If the Board determines not to grant a ~~special, interim~~ regular or renewal certificate of confirmation, it shall, within 30 days after the last public meeting at which the granting of the certificate of confirmation is discussed, issue to the applicant a statement of reasons for its decision not to issue a certificate of confirmation. The Board may require the applicant for the certificate to complete an application form, which it may by resolution prescribe.

~~4 MCAR § 4.103~~ 4 MCAR § 4.215 Renewal of a certificate of confirmation. Upon expiration of its certificate of confirmation or the renewal of its cable communications franchise, a cable communications company must obtain renewal of its certificate of confirmation. The renewal of any certificate of confirmation shall be issued only after compliance with 4 MCAR §§ ~~4.121~~ 4.200-4.204. The renewal of a certificate confirmation shall be issued only after full Board proceedings and shall be valid for a period of ten years from the expiration date of the previously issued certificate, except when a certificate is renewed before its expiration date, the term of the renewed certificate shall begin on the date of its issue; any remaining term of a previously issued certificate shall then be expired. The procedure for obtaining the renewal of a certificate of confirmation shall be the same as is herein provided for obtaining a regular certificate of confirmation. Nothing in this rule shall prohibit a cable communications company from renewing its certificate of confirmation prior to the expiration of any existing certificate of confirmation.

~~4 MCAR § 4.104~~ 4 MCAR § 4.216 Transferability of certificate of confirmation. A certificate of confirmation shall be transferable or in any way assignable only upon full compliance with the applicable provisions of Chapter Nine Thirteen of these Rules pertaining to the transfer of a franchise. Transfer of the certificate of confirmation shall not extend the duration of the certificate of confirmation. The transferee, as a condition of the transfer of the certificate, shall within 30 days of the transfer complete any application form required of any person for the original grant of a certificate of confirmation.

4 MCAR §§ ~~4.105-4.110~~ 4.217-4.219 Reserved for future use.

Chapter ~~Twelve~~ Sixteen: §§ ~~4.166-4.190~~ 4.220-4.229 Interconnection

~~4 MCAR § 4.166~~ 4 MCAR § 4.220 Interconnection. These rules shall be liberally construed to effectuate the purposes and provisions of Minn. Stat. § 238.05, subd. 2(c), 2(d), and 12. (~~1976~~).

~~4 MCAR § 4.167~~ 4 MCAR § 4.221 Definitions. As used in this Chapter, the following words and phrases shall have the meanings given them herein unless a different meaning clearly appears in the text.

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

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

C. "Interim interconnection" is the provision of temporary interconnection between two or more existing cable communications systems brought about through the mutual participation of those

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systems and without the intervention of a separate interconnection entity, as defined in paragraph B. of this rule.

D. "Regional channel" is a segment of the electromagnetic spectrum provided by cable communications systems or an interconnection entity operating within the Twin Cities metropolitan area for programming on the standard VHF Channel 6.

E. "Regional channel entity" is an entity designated by the Board for purposes of scheduling the programming and facilitation the use of the regional channel.

~~4 MCAR § 4.168~~ 4 MCAR § 4.222 Interim interconnection.

A. In accordance with the provisions of Minn. Stat. §§ 238.05, subd. 2(c) and 238.06, subd. 5, (1976) the Board upon suitable showing of need, may order the iterim interconnection between cable communications systems. Before an interim interconnection occurs, the parties designated herein shall submit to the Board the information specified herein.

1. The cable companies involved shall submit the following information:

a. A full schedule of capital costs anticipated for such interconnection;

b. A projection of expected operating costs;

c. An identification of the economic effect of such proposed interconnection upon existing cable service.

2. The parties seeking to arrange the interim inteconnection shall submit the following information:

a. A description of available sources of capital for construction and operating, including programming, of the interconnection system;

b. An identification of the uses, with a description of the attendant benefits, of such interconnection.

B. The Board may hold a meeting to receive testimony from interested persons concerning the proposed interim interconnection. At least 30 days notice shall be provided to all interested persons. Any cable communications system potentially involved in the interconnection shall carry an appropriate notice of the hearing on its system for at least five consecutive days immediately preceding the hearing. The Board may order interim interconnection incorporating the interconnection plan if it is satisfied from all available evidence that such plan is in the public interest, will be fair both to participating systems and the public and will not impair the ability of any system to deliver other services to subscribers and users. In determining whether to order an interim interconnection, the Board may also consider the extent to which the interim interconnection plan is compatible with the applicable operational objectives contained in 4 MCAR § ~~4.172~~ 4.226.

C. In the event that interim interconnection occurs, the Board may assume jurisdiction over the provision of such interim interconnection. The Board shall have the following responsibility and duties:

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

2. Requiring and reviewing reports regarding the operation of such interim interconnection as may be deemed appropriate;

3. Assuring that all tariffs and rules pertinent to the operation of the interim interconnection have been filed with the Board.

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

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

~~4 MCAR § 4.169~~ 4 MCAR § 4.223 Regional channel. The Board hereby requires that all franchises for cable communications systems franchised in whole or in part within the Twin Cities metropolitan area shall contain a provision designating the standard VHF Channel 6 for uniform regional channel usage; provided, however, that until the regional channel becomes operational, the designated VHF Channel 6 may be utilized by the cable communications company as it deems appropriate. Subject to approval of the municipality concerned, such designated regional channel may be shared with the government access channel as may be required until such time as the municipality requests a separate channel or until combined usage of the channel expands to such point as it is in use during 80% of the time between 8:00 a.m. and 10:00 p.m. during any consecutive six-week period. Use of time on the regional channel or channels shall be made available without charge.

~~4 MCAR § 4.170~~ 4 MCAR § 4.224 Regional channel entity.

A. The board upon the activation of the regional channel as defined in 4 MCAR § ~~4.167~~ 4.221 shall designate a regional channel entity for the Twin Cities metropolitan area.

B. The Board may designate the regional channel entity after the Board has reviewed and approved an applicant's qualifications in accordance with the procedures provided hereinafter:

1. The Board may, upon the activation of the regional channel, entertain requests for consideration of the designation of a regional channel entity. In the event the Board determines to desig-

nate a regional channel entity, the Board shall give public notice of that intention.

2. The Board shall require that all requests for designation for the regional channel entity contain a description of the applicant's proposed operation along with such other supporting information as the Board may require.

3. The Board shall, in its designation of an applicant for programming and facilitation of use of the regional channel, consider the following criteria:

a. the plans for programming including identification of sources, users, and revenues;

b. plans for fostering extended regional participation in existing and expanded regional channel uses;

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

d. participatory representation of users in the entity operational structure and the demonstrated identification of such applicants with the regional public interest.

C. The Board shall consider such applications at a public meeting providing reasonable opportunity for all interested parties to be heard.

D. The Board shall confer designation on such regional channel entity for a period of three years.

E. Renewal of such designation shall be issued only after full Board proceedings and shall be a period specified by the Board. The procedure for obtaining a renewal of such designation shall be the same as is herein provided for obtaining the initial designation.

~~4 MCAR § 4.171~~ 4 MCAR § 4.225 Interconnect entity.

A. No person shall, without prior notification to the Board, construct, install, maintain or operate within the State of Minnesota any equipment or facilities for an interconnection entity unless such activity complies fully with all standards provided in 4 MCAR § ~~4.172~~ 4.226 and the provisions of this rule.

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

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

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

B. Before an interconnection entity commences operation, it shall submit to the Board the following information:

1. Plans for channel capacity including both immediate and eventual capacity;

2. Plans for the interconnection system layout design operation and service area;

3. The terms and conditions, including tariffs, under which services are to be provided;

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

5. The entity's qualifications and/or experience in the broadband telecommunications field;

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

7. The plans for financing the proposed system;

8. Descriptions of the equipment used in providing interconnection;

9. Such other information as the Board may deem relevant.

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

~~4 MCAR § 4.172~~ 4 MCAR § 4.226 Technical standards.

A. Interconnection entity-video signals.

1. Microwave. Whenever an interconnection is completed via a microwave circuit, the following shall be the minimum operational objectives as measured at the microwave receiving location:

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a. Composite video and associated sound levels: The composite video level shall be 1 volt peak to peak ± 0.1 volts across 75 ohms. The associated sound carrier level shall be maintained 20 db below the 1 volt peak to peak video level.

b. Differential gain: The differential gain objective of the microwave system shall be within ± 1.5 db (50% APL).

c. Differential phase: The differential phase objective of the microwave system shall be within ± 2.25° (50% APL).

d. Frequency response: 60 Hz square wave tilt shall be within 2%, 10 KHz-4.5 MHz within ± 1.0 db.

e. Signal to noise: The peak to peak signal to RMS noise ratio shall be weighted per CCIR and determined by the following formula: S/N = 65-10 log N where N equals the number of hops in the interconnection.

f. Design reliability: For microwave interconnections, the total microwave path, whether single or multiple microwave hops, shall have a design reliability of no less than 99.9 percent per operational week. Outages due to causes beyond the control of the interconnection entity, shall not be counted as to the allowable outages accrued.

g. Demodulator requirements: Field proven state of the art demodulators shall be used to process the "off the air" signals prior to insertion onto the carriers' microwave systems. The final composite video as measured with a 75 ohm terminal load shall not exceed the following:

(1) differential phase of ± .5°

(2) differential gain of ± .25 db

(3) group delay of ±50 ns

(4) 20 db IF quieting with 100 uv input.

2. Cable. Whenever a cable system acts as a final link in an interconnect path for video signals, its technical operational objectives as measured at the using subscriber location shall as a minimum be in accordance with the technical requirements set forth in Part 76, Subpart K of the Federal Communications Commission's Rules and Regulations for Class I signals or those set forth in its franchise, whichever is more stringent.

a. The signal level as measured across 75 ohms at the video carrier frequency at the using subscribers locations shall be not less than 1000 microvolts.

b. All specifications set forth above shall be met over an outdoor temperature range of -20°F to + 100°F over variations in supply voltages from 105 to 130 VAC.

B. Interconnection entity-data grade signals. Whenever an interconnection is completed via either a microwave or coaxial cable circuit for the transmission of data grade signals the technical operational objectives shall be in accordance with the specifications promulgated by the Federal Communications Commission for data grade signals. In the absence of any such specifications, the interconnect entity and its subscriber shall mutually agree on the objectives and file pertinent data with the Board.

C. Coaxial cable facilities. Whenever a coaxial cable facility acts as the initial or interim link in an interconnect path for video signals, its technical operational objectives as measured at the end interface location shall as a minimum be in accordance with the technical requirements set forth in Part 76, Subpart K of the Federal Communications Commission's Rules and Regulations for Class I signals. In addition the following design requirements shall be observed:

1. The video carrier level to RMS noise ratio shall be not less than 43 db across a 4 MHz band as measured across 75 ohms.

2. For interconnection of multiple video channels, spurious beat components shall be not less than 52 db below the video carrier level for the worst channel.

3. For interconnection of multiple video channels cross modulation components shall be not less than 63 db below the video carrier level for the worst channel.

4. Ghost, echoes, hum modulation and other coherent disturbances shall be not less than 40 db below the video carrier level.

5. The ratio of the amplitude of the horizontal synchronization pulse to peak color burst shall not be greater than 2 db.

6. The signal level as measured across 75 ohms at the video carrier frequency at the using subscribers location shall not be less than 1000 microvolts.

7. All specifications set forth above shall be met over an outdoor temperature range of -20°F to + 100°F over variations in supply voltages from 105 to 130 VAC.

D. Coaxial cable facilities. Whenever a coaxial facility acts as the initial or interim link in an interconnection path for data grade signals, its technical operational objectives shall be in accordance with the specifications promulgated by the Federal Communications Commission for data grade signals. In the absence of any such specifications, the cable system, the interconnect entity, and the subscriber shall mutually agree on the objectives and file pertinent data with the Board.

E. Report of measurements. At the completion of the installation of any interconnection, the interconnecting entity shall conduct a measurement of all specifications set forth herein and file these with the Board. Also upon written request, remeasurements may be requested at any time by the Board.

F. The Board may require full compliance with the objective standards in this Chapter and the performance of such tests as may be necessary to assure compliance in order to resolve such recurring problems in performance as may be brought to the attention of the Board. In addition, the Board reserves the prerogative to impose more stringent standards as may be necessary to resolve such problems.

4 MCAR §§ ~~4.173-4.190~~ 4.227-4.229 Reserved for future use.

Chapter ~~Thirteen~~ Seventeen: §§ ~~4.191-4.200~~ 4.230-4.239 Obscenity and Defamation

4 MCAR § 4.191 4 MCAR § 4.230 Obscenity.

A. Neither the cable communications system whose facilities are used to transmit a program produced by a person other than a cable

communications system, nor the officers, directors, or employees of the cable communications system shall be liable for any penalty or damages arising from any obscene program presented thereon when the cable communications system or its employees does not originate or produce the program. Any entity which schedules the programming of the access channels of a cable communications system shall not be liable for the presentation of any obscene program thereon unless the entity itself originates or produces the program. The foregoing provision does not affect the liability of those responsible for the origination or production of any obscene program.

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

~~4 MCAR § 4.192~~ 4 MCAR § 4.231 Defamation.

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

B. Except as hereinafter provided, whoever has knowledge of the defamatory character of the matter and communicates the defamatory matter to a third person without the consent of the person defamed violates this rule; provided that neither the cable communications system whose facilities are used to transmit a program produced by a person other than a cable communications system, nor the officers, directors or employees of the cable communications system shall be liable for any penalty or damages arising from any defamatory material presented thereon when the cable communications system or its employees does not originate or produce the program. Any entity which schedules the programming of the access channels of a cable communications system shall not be liable for the presentation of any defamatory material presented thereon unless the entity itself originates or produces the program containing the defamatory material. The foregoing provision does not affect the liability of those responsible for the origination or production of any defamatory material presented in a program.

C. The following shall not constitute a violation of 4 MCAR § ~~4.192~~ 4.231.

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

2. The communication is absolutely privileged; or

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

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

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

4 MCAR §§ ~~4.193-4.200~~ 4.232-4.239 Reserved for future use.

Department of Commerce Insurance Division

Proposed Temporary Rules Governing Self-Insurance for Workers' Compensation

Request for Public Comment

Notice is hereby given that the Insurance Division of the Department of Commerce has proposed the following temporary rules governing self-insurance for workers' compensation. These temporary rules are promulgated pursuant to Minn. Stat. § 176.181, subd. 2 (Laws of 1979, Spec. Ses. ch. 3, § 50).

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the State Register by writing to Berton W. Heaton or Dale L. McDonnell, Insurance Division, Department of Commerce, 5th Floor, Metro Square Building, St. Paul, Minnesota, 55101. The temporary rules may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rules. Publication is hereby ordered.

[Continued on next page.]

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Table of Contents

4 MCAR § 1.9285 Authority.

4 MCAR § 1.9286 Purpose and scope.

4 MCAR § 1.9287 Definitions.

4 MCAR § 1.9288 Acceptable securities and surety bonds.

4 MCAR § 1.9289 Filing of reports.

4 MCAR § 1.9290 Revocation of self-insurance authority.

4 MCAR§ 1.9291 Requirements for individual self-insurers.

4 MCAR § 1.9292 Requirements for group self-insurers.

4 MCAR § 1.9293 Group self-insurers' fund.

4 MCAR § 1.9294 Qualification for service companies.

4 MCAR § 1.9295-1.9299 Reserved for future use.

Appendix I Surety bond form.

Appendix II Indemnity agreement form.

Temporary Rules As Proposed

4 MCAR § 1.9285 Authority. 4 MCAR § 1.9285-1.9293 are promulgated under the authority of Minn. Stat. § 176.181, subd. 2 (Laws of 1979, Spec. Ses. Ch. 3, § 50).

4 MCAR § 1.9286 Purpose and scope. These rules are designed to assure that the self-insurance plans are financially solvent, administered in a fair and capable fashion, and able to process claims and pay benefits in a prompt, fair and equitable manner; and to allow the Commissioner to authorize qualified entities to engage in such business in a manner which is fair, equitable and consistent with the legislative intent of the Workers' Compensation Act.

4 MCAR § 1.9287 Definitions.

A. "Certified Audit" or "Certified Financial Statement" means an audit or financial statement upon which an independent Certified Public Accountant expresses his professional opinion that the accompanying statements present fairly the financial position of the self-insurer or fund in conformity with generally accepted accounting principles and generally accepted auditing standards consistently applied.

B. "Commissioner" means the Commissioner of Insurance.

C. "Current ratio" means the ratio of current assets to current liabilities in the most recent financial statement.

D. "Fund" means self-insurers fund.

E. "Affiliated company" means any company that directly, or indirectly through one or more intermediates, controls, is controlled by, or is under common control with, the applicant company.

F. "Modified premium" shall mean the total manual premium as defined in the Workers' Compensation Insurers Rating Association's manual of Rules, Classifications, and Rates approved for use in Minnesota, modified by an experience rating plan approved by the Commissioner, and reduced by the appropriate premium discount.

G. "Self-insurers fund" means any monetary fund or account created by a group self-insurer to pay workers' compensation claims due under the Workers' Compensation Act.

H. "Self-insurer" means both individual and group self-insurers unless the context clearly indicates a more restrictive definition.

I. "Service company" shall mean an entity which has obtained a license from the Commissioner pursuant to 4 MCAR § 1.9294 to contract with self-insurers for the purpose of providing services necessary to plan and maintain an approved self-insurance program.

J. "Workers' Compensation Reinsurance Association" shall mean that Association created by Laws of 1979, Spec. Ses. Ch. 3, §§ 17 to 25 (hereinafter referred to as the "WCRA").

K. "Workers' Compensation Act" shall mean Minn. Stat. ch. 176.

4 MCAR § 1.9288 Acceptable securities and surety bonds.

A. Acceptable securities and surety bonds for the purposes of 4 MCAR § 1.9291 G. and 1.929 H. shall be:

1. U. S. Government bonds;

2. Any bonds or securities which are issued by the State of Minnesota and which are secured by the full faith and credit of this State;

3. Certificates of deposit issued by a bank in the State of Minnesota, which is protected by the Federal Deposit Insurance Corporation;

4. Savings certificates issued by any savings and loan association in the State of Minnesota which is protected by the Federal Savings and Loan Insurance Corporation;

5. Surety bonds issued by a corporate surety authorized by the Commissioner to transact such business in the State of Minnesota;

6. Any guarantee from the United States government whereby the payment of the workers' compensation liability of a self-insurer is guaranteed.

B. All securities shall be deposited with the State Treasurer and surety bonds shall be filed with the Commissioner. The Commissioner and the State Treasurer shall be authorized to sell and/or collect, in the case of default of the employer or fund, such amount thereof as shall yield sufficient funds to pay compensation due arising pursuant to the Workers' Compensation Act.

C. Securities must bear the following assignment which shall be signed by an officer, partner, or owner: Assigned to the State of Minnesota for the benefit of injured employees of the self-insured employer under the Minnesota Workers' Compensation Act.

D. Interest accruing on any negotiable securities so deposited shall be collected and transmitted to the depositor, provided that the depositor is not in default in payment of compensation, premiums due the WCRA, or any assessments levied by the Department of Labor and Industry under Minn. Stat. § 176.131.

E. All surety bonds shall conform to the bond form set forth in Appendix I.

F. All deposits shall remain in the custody of the State Treasurer or the Commissioner for a period of time as the applicable Statute of Limitations provided in the Workers' Compensation Act dictates.

G. No securities on deposit with the State Treasurer shall be released without an order from the Commissioner.

H. Any securities deposited with the State Treasurer or surety bonds held by the Commissioner may be exchanged or replaced by the depositor with other acceptable securities or surety bonds of like amount so long as the market value of the securities or amount of the surety bond exceeds the amount of deposit required.

4 MCAR § 1.9289 Filing of reports.

A. Incurred losses, paid and unpaid, by classification and payroll, and current estimated outstanding liability for workers' compensation shall be reported to the Commissioner by each self-insurer on forms available from the Commissioner. Such information shall be reported on a calendar year basis and must be filed by April 1 of the following year, beginning April 1, 1981.

B. Each self-insurer shall under oath, attest to the accuracy of each report submitted pursuant to subdivision A above. Where the Commissioner has reason to doubt the accuracy of such reports he may require the self-insurer to submit a certified audit of payroll and claim records conducted by an independent auditor approved by the Commissioner. Reasons for such an audit include, but are not limited to, the following factors: where the losses reported appear significantly different from similar type businesses or where major changes in the reports exist from year to year which are not solely attributable to economic factors. If any discrepency is found, the Commissioner may require changes in the self-insurer's or service's company's record keeping practices. If the self-insurer or service company does not comply with such order, the Commissioner may fine the self-insurer or service company to up $50,000 or revoke the self-insurer's authority to self-insure, and the service company's license to act as a service company.

C. Each self-insurer shall report to the Commissioner any workers' compensation claim estimated to exceed $50,000 within ten days of obtaining knowledge that the claim may exceed $50,000.

D. Each individual self-insurer shall, within four months after the end of its fiscal year, file with the Commissioner its latest 10K Report required by the Securities and Exchange Commission. If an individual self-insurer does not prepare a 10K Report, it shall file an annual certified financial statement, together with such other financial information as the Commissioner may require.

E. Each group self-insurer shall, within four months after the end of the fiscal year for that group, file a statement showing the combined net worth of its members based upon each individual member's annual certified financial statement.

F. In addition to the financial statements required by subdivisions D. and E. above, interim financial statements, or 10Q Reports required by the Securities and Exchange Commission may be required by the Commissioner upon an indication that there has been deterioration in the self-insurer's financial condition, including but not limited to a worsening of current ratio, lessening of net worth, net loss of income, the down grading of the company's bond rating, or any other significant change that may adversely affect the self-insurer's ability to pay expected losses. Any self-insurer which files an 8K Report with the Securities and Exchange Commission shall also file a copy of the report with the Commissioner within thirty (30) days.

G. Any self-insurer that fails to file any report required by these rules within the time prescribed shall be subject to the same penalty as insurance companies for failure to file required reports pursuant to Minn. Stat. § 72A.061.

4 MCAR § 1.9290 Revocation of self-insurance authority.

The following shall constitute grounds for revocation of the authority to self-insure:

A. Failure to comply with 4 MCAR §§ 1.9285-1.9293;

B. Failure to comply with any order of the Commissioner;

C. Failure to comply with any provision of the Workers' Compensation Act.

D. A deterioration of financial condition adversely affecting the self-insurer's ability to pay expected losses, including, but not limited to, a worsening of the current ratio, a lessening of net worth, a net loss of income, or the failure of the self-insurer to meet the net worth standards of 4 MCAR § 1.9291 C. or 1.9292 C.

E. Committing an unfair or deceptive act or practice as defined in Minn. Stat. § 72A.20, subd. 12.

F. Failure to abide by the Plan of Operation of the WCRA.

4 MCAR § 1.9291 Requirements for individual self-insurers.

A. Each employer desiring to self-insure individually shall apply to the Commissioner on forms available from the Commissioner. The Commissioner shall have thirty (30) days after receipt of a complete application is filed to either grant or deny the application. Such time limit may be extended for another thirty (30) days upon fifteen (15) days prior notice to the applicant. Any grant of authority to self-insure shall continue in effect until revoked by order of the Commissioner or until such time as the employer becomes insured.

B. Each application for self-insurance shall be accompanied by a certified financial statement. Certified financial statements for a

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period ending more than six (6) months prior to the date of the application must be accompanied by an affidavit signed by a company officer under oath stating that there has been no material lessening of the net worth nor other adverse changes in its financial condition since the end of the period.

C. Each individual self-insurer shall have a net worth of not less than ten (10) times the retention limit selected with the WCRA. In no event shall the net worth be less than one third (1/3) the amount of the self-insurer's current annual modified premium. Provided that the requirements of this subdivision may be modified if the self-insurer can demonstrate through a reinsurance program, other than coverage provided by the WCRA, that it can pay expected losses without endangering the financial stability of the company.

D. Each individual self-insurer shall be in sound financial condition. In determining whether a self-insurer meets this requirement the Commissioner shall consider: the self-insurer's current ratio; its long-term and short-term debt to equity ratios; its net worth; financial characteristics of the particular industry in which the self-insurer is involved; any recent changes in the management and ownership of the company; any reinsurance purchased by the self-insurer from a licensed company or an authorized surplus line carrier, other than reinsurance from the WCRA; and any other financial data submitted to the Commissioner by the company.

E. Where an employer seeking to self-insure fails to meet the financial requirements set forth in subdivisions C. and D. above, the Commissioner may grant authority to self-insure provided that an affiliated company, whose financial statement is filed with the Commissioner and meets the requirements set forth in subdivisions C. and D. above and provides a written guarantee adopted by resolution of its board of directors that it will pay all workers' compensation claims incurred by its affiliate. If said guarantee is withdrawn or if the guarantor ceases being an affiliate, the self-insurer shall give written notice to the Commissioner and its authority to self-insure shall automatically terminate twenty-one (21) days following withdrawal of the guarantee or termination of affiliate status.

F. Each individual self-insurer shall agree to fully discharge by cash payment or other form of benefit approved by the Department of Labor and Industry, all amounts required to be paid by the provisions of the Workers' Compensation Act.

G. Each individual self-insurer shall be required to deposit acceptable securities or surety bonds in an amount equal in value to:

1. Seventy percent (70%) of the employer's modified premium, up to a maximum of one million dollars ($1,000,000.00); or

2. The employer's outstanding workers' compensation liability up to a maximum of one million dollars ($1,000,000.00) if the employer has been self-insured for at least two (2) years. Provided that if the self-insurer provides in its financial statement a specific line item setting forth its outstanding workers' compensation liability then the maximum deposit required shall be five hundred thousand dollars ($500,000.00).

H. No deposit shall be required of a self-insurer than has had its workers' compensation liability guaranteed pursuant to subdivision E. above, provided that the affiliated company is required to make a deposit and the self-insurer's outstanding workers' compensation liabilities are included in the determination of the affiliate's deposit.

I. Each individual self-insurer shall not have a record administering insurance claims in an unfair or inequitable manner.

J. Each individual self-insurer shall designate those employees who will administer its self-insurance program, and shall specify their professional qualifications. If a self-insurer contracts with another entity for the administration of its program, including adjustment of claims, or administration of loss control or safety engineering programs, the self-insurer shall contract with only a service company duly licensed for those specific areas of program administration.

4 MCAR § 1.9292 Requirements for group self-insurers.

A. Two or more employers in the same industry may apply to the Commissioner for the authority to self-insure as a group on forms available from the Commissioner. This initial application shall be accompanied by a copy of the bylaws or plan or operation adopted by the group. Such bylaws or plan of operation shall conform to the conditions prescribed by 4 MCAR §§ 1.9292 and 1.9293. The Commissioner shall within thirty (30) days approve or disapprove the bylaws unless a question as to the legality of a specific bylaw provision has been referred to the Attorney General's office.

B. After the initial application along with the bylaws or plan of operation have been approved by the Commissioner or at the time of the initial application the group shall then submit: the names of the employers that will be members of the group; an indemnity agreement as set forth in Appendix II signed by an officer of each member; and a certified financial statement of each member.

C. The indemnity agreements and financial statements shall be accompanied by a statement showing that:

1. The combined net worth of all of the members is not less than ten (10) times the retention selected with the WCRA and not less than one-third (1/3) of the current annual modified premium of the members. Provided that the requirements of this subdivision may be modified if the self-insurer can demonstrate that through a reinsurance program, other than coverage provided by the WCRA, that it can pay expected losses without endangering the financial stability of the group.

2. That the group is in sound financial condition. In determining whether a group is in sound financial condition consideration shall be given to: the combined net worth of the member companies; the consolidated current ratios of the member companies; the consolidated long-term and short-term debt to equity ratios of the member companies; the particular industry that the member companies are engaged in; any reinsurance other than with the WCRA purchased by the group from an insurer licensed to do business in Minnesota or from an authorized surplus line carrier; and any other financial data submitted by the group to the Commissioner.

D. In determining whether two or more employers are engaged in the same industry the Commissioner shall consider the following factors:

1. The similarity of the applicable governing industry clas-

sification for each employer as determined pursuant to the manual of Rules, Classifications and Rates approved for use in Minnesota.

2. The similarity or resemblence of the work or tasks performed by a majority of employees of each employer.

3. The similarity of manual premium rate of each employer as evidenced by a relatively small variation of the manual rates for the governing classifications of each employer as defined in the manual of Rules, Classifications and Rates approved for use in Minnesota.

E. The Commissioner shall have thirty (30) days to review the financial statements of the group members and grant or deny their application to self-insure provided that such time may be extended for an additional thirty (30) days upon fifteen (15) days prior notice to the applicant. Upon a determination that: the financial ability of the self-insurers group is sufficient to fulfill all joint and several obligations of the member companies which may arise under the Workers' Compensation Act; the gross annual premium of the group members is at least three hundred thousand dollars ($300,000.00); the required securities or surety bond shall be on deposit prior to the effective date of coverage for any member; and all of the member companies are engaged in the same industry; the Commissioner may grant approval for self-insurance. Such approval shall be effective until revoked by order of the Commissioner or until the employer members of the group become insured.

F. Each group self-insurer shall contract with a service company licensed pursuant to 4 MCAR § 1.9294 to administer its program. The service company shall have the sole authority to make claim determinations regarding injured workers of the member employers.

G. Each group self-insurer shall establish a group self-insurers fund pursuant to 4 MCAR § 1.9293, which shall be administered by the board of directors of the group.

H. Prior to the providing of coverage to any member company, a group self-insurer shall deposit acceptable securities or surety bonds in an amount equal to 70% of the members modified premium for the previous year plus the amount payable to the service company under the service contract; provided that, the deposit required shall not be greater than five hundred thousand dollars ($500,000.00). After the group self-insurer has been in existence for two (2) years the deposit shall be an amount equal to the outstanding workers' compensation liability of the group subject to a maximum of five hundred thousand dollars ($500,000.00).

I. If a member voluntarily terminates its membership in a group prior to completion of the third consecutive year, the group self-insurer shall assess the terminating member at least the following penalties: 25% of its premium if termination occurs within the first year of membership; 15% of its premium if termination occurs within the second year; and 5% of its premium if termination occurs within the third year. Following completion of three consecutive years of membership in the group, withdrawal from the group may be allowed without penalty upon ninety (90) days advance written notice given to the board of directors of the group.

J. Upon the receipt of any notice of a member to withdraw or a decision by the board of directors to expel a member, the group self-insurer shall give notice to the Commissioner and then immediately reevaluate its net worth and financial condition. If the consolidated net worth or financial condition of the group, excluding the terminating or expelled member, fails to meet the requirements specified in subdivision C above, the group shall so notify the Commissioner within fifteen (15) days and advise the Commissioner of its plan for bringing the group into compliance with subdivision C above.

K. The group self-insurer shall file with the Commissioner the name of all employer members accepted into the group. The group shall not accept any liability for a new member until a signed indemnity agreement in the form set forth in Appendix II has been completed by that new member and filed with the Commissioner; and the Commissioner has determined that the new member is in the same industry as the rest of the members of the group and that the admission of the new member will not adversely affect the financial stability of the group. The Commissioner shall have thirty (30) days after notice is given to make the determination whether to allow a new member into a group.

L. Each group self-insurer shall be prohibited from accepting as a member any employer that owes an outstanding debt to a previous group self-insurer. A judgment obtained under the laws of Minnesota shall be required as proof of such debt. If a group has such an employer member, upon receipt of the required proof the fund administrator shall issue thirty (30) days notice of cancellation to the member.

M. The directors of each group self-insurer shall cause to be adopted a set of bylaws or plan of operation which shall govern the operation of the group. All bylaws or plans of operations or amendments thereto, shall be subject to prior approval by the Commissioner.

1. These bylaws or plans of operation shall contain, but not be limited to, the following subjects:

a. Qualifications for group self-insurer membership, including underwriting considerations.

b. The method for selecting the board of directors, including the directors terms of office.

c. The procedure for amending the bylaws or plan of operation.

d. Investment of all assets of the fund.

e. Frequency and extent of loss control or safety engineering services provided to members.

f. A schedule for payment and collection of premiums.

g. Expulsion procedures, including expulsion for nonpayment of premium and expulsion for excessive losses.

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."

h. Delineation of authority granted to the administrator.

i. Delineation of authority granted to the service company.

j. Basis for determining premium contributions by members including any experience rating program.

k. Procedures for resolving disputes between members of the group, which shall not include submitting them to the Commissioner.

2. The directors shall review at least annually the following items for the purpose of determining whether these areas of concern are being adequately provided for:

a. Service company performance.

b. Loss control and safety engineering.

c. Investment policies.

d. Collection of delinquent debts.

e. Expulsion procedures.

f. Initial member review.

g. Administrator performance.

h. Claims handling and claims reporting.

3. All group self-insurers shall file copies of its current bylaws or plan of operation with the Commissioner. Any changes in the bylaws or plan of operation shall be filed with the Commissioner no later than thirty (30) days prior to their taking effect. The Commissioner reserves the right to order the group self-insurers to rescind or revoke any bylaw or plan or operation if it is in violation of 4 MCAR § 1.9283 to 1.9294 or any law.

N. All group self-insurers shall maintain at a location within the State of Minnesota such records as are necessary to verify the accuracy and completeness of all reports submitted to the Commissioner pursuant to 4 MCAR §§ 1.9283 to 1.9294. However, the group self-insurers shall be authorized to transfer its financial records to the offices of the certified public accountant for the group self-insurers upon the written permission of the Commissioner. In addition, if the group self-insurer has contracted with a service company for claims handling, then the claims files and related records may be located at the offices of the service company. The location of these records shall be designated with the application for self-insurance authority and thereafter shall be provided to the Commissioner through written notice of any change in its location within thirty (30) days of any such change.

O. Failure of any employer to maintain membership in any group while not otherwise procuring insurance for its workers' compensation liability may subject the employer to the penalties provided in Minn. Stat. § 176.181 and 176.183.

4 MCAR § 1.9293 Group self-insurers' fund.

A. Each group self-insurer shall, not less than ten (10) days prior to the proposed effective date of the group, submit evidence that cash premiums equal to not less than twenty percent (20%) of the immediately preceding year's workers' compensation insurance premium for each employer, has been paid into a common claims fund, maintained by the group in a designated depository. The remaining balance of the members' premium shall be paid to the group in a reasonable manner over the remainder of the year. Payments in subsequent years shall be made according to the same schedule. Each group self-insurer shall initiate proceedings against a member when that member becomes more than fifteen (15) days delinquent in any payment of premium to the fund.

B. There shall be no co-mingling of any assets of the group self-insurers' fund with the assets of any individual member employer, or with any other account of the group unrelated to payment of workers' compensation liability incurred by the group.

C. The group self-insurer shall designate a fiscal agent and/or administrator to administer the financial affairs of the fund. Such fiscal agent or administrator shall furnish a fidelity bond with the self-insurer as obligee, in an amount sufficient to protect the fund against the misappropriation or misuse of any monies or securities. Such fiscal agent or administrator shall not be an owner, officer, or employee of the service company or any affiliate of the service company.

D. All funds shall remain in the control of the group self-insurer or its authorized administrator. Provided, however, that a revolving fund for payment of compensation benefits due and other related expenses may be established for the use of the authorized service company. The service company shall furnish a fidelity bond covering its employees, with the self-insurer as obligee, in an amount sufficient to protect all monies placed in such revolving fund. Provided that, should the fidelity bond of the fiscal agent and/or administrator also cover the monies in the revolving fund, the service company shall not be required to furnish a fidelity bond.

E. The accounts and records of the group self-insurers' fund shall be audited annually or at any other time as may be necessary to determine the financial stability of the fund or the adequacy of its monetary reserves. Audits shall be made by Certified Public Accountants with the Commissioner reserving the right to prescribe a uniform accounting system based on generally accepted accounting principles and generally accepted auditing standards to be used by the self-insurers group or service companies, and the type of audits to be made, in order to determine the solvency of the self-insurers fund. All audits required by this rule shall be filed with the commissioner.

F. No director, or fiscal agent or administrator of a group self-insurer shall utilize any of the monies collected as premium for any purpose unrelated to workers' compensation insurance. No director, fiscal agent or administrator shall borrow any money from the self-insurers fund or in the name of the self-insurers fund.

G. Cash assets of the self-insurers fund may be invested as provided in Minn. Stat. § 60A.11 for a casualty insurance company provided that investment in common stock, real estate, or indebtedness from any member company is prohibited. In addition, investment in the following is allowed:

1. Savings accounts or certificates of deposit in a duly chartered commercial bank located within the State of Minnesota and insured through the Federal Deposit Insurance Corporation.

2. Share accounts or savings certificates in a duly char-

tered savings and loan association located within the State of Minnesota and insured through the Federal Savings and Loan Insurance Corporation.

3. Direct obligations of the United States Treasury, such as notes, bonds, or bills.

4. Any bond or security issued by the State of Minnesota and backed by the full faith and credit of the State.

5. Any credit union where the employees of the self-insurer are members, provided that such credit union is located in Minnesota, licensed by the State of Minnesota, and insured through the Federal Deposit Insurance Corporation.

H. Any securities purchased by the group self-insurers' fund shall be in such denominations, and with dates of maturity to insure that securities may be redeemable at sufficient time and in sufficient amounts to meet the fund's current and long-term liabilities.

I. The self-insurer shall report annually, as part of its financial statement, a schedule showing the disposition of all investment income earned during the immediately preceding year.

J. Fifty percent (50%) of any surplus monies for a fund year in excess of 125 percent (125%) of the amount necessary to fulfill all obligations under the Workers' Compensation Act for that fund year may be declared refundable to a member at any time. Date of payment shall be no earlier than eighteen (18) months following the close of such fund year, provided that no more than one (1) refund may be made in any twelve (12) month period. A fund year shall be considered open as long as one or more workers compensation claim from that fund year remains unsettled.

K. The group self-insurer shall give notice to the Commissioner of any refund. Said notice shall be accompanied by a statement from the self-insurer's certified public accountant certifying that the proposed refund is in compliance with subdivision on J above. After January 1, 1983, the loss reserves shall have been determined by an agent of the certified public accountant firm who has passed parts six and seven of the examination for casualty actuary developed by the Casualty Actuaries Society. If compliance with this date cannot be accomplished, then upon application by any group self-insurer the period may be extended by order of the Commissioner to January 1, 1985.

L. In the event of a deficit in any fund year, such deficit shall be paid up immediately, either from surplus from a fund year other than the current fund year, or by assessment of the membership. The Commissioner shall be notified prior to any transfer of surplus funds.

M. If the Commissioner finds that any deficit has not been paid up, he may order an assessment to be levied against the members of a group self-insurer sufficient to make up any deficit.

4 MCAR § 1.9294 Qualification for service companies.

A. Any person or entity desiring to be licensed as a service company shall apply to the Commissioner on forms available from the Commissioner. The license shall designate areas of administrative services which the service company shall be authorized to perform. Any license granted shall be effective for a period of two (2) years unless revoked by order of the Commissioner.

B. In support of application, a service company shall submit:

1. Summary information concerning its organization and staff.

2. Detailed resumes of all employees, or employees of any subcontractor, with administrative or professional capacity. Such resumes shall indicate the areas of administration in which each employee shall work and the qualifications and experience of the employee relating to that area.

3. A description of the administrative services intended to be provided.

C. The application shall be accompanied by a certification that the applicant has employed or has contracted with competent individuals to provide those services intended to be provided to self-insurers.

D. If the service company intends to provide claims adjusting, the service company or its subcontractor shall have supervisory personnel who possess at least three (3) years experience adjusting workers' compensation claims. Further, the service company or subcontractor shall have at least one adjuster who holds a license under Minn. Stat. Ch. 72B and shall be situated within the State of Minnesota.

E. The service company shall have within the State of Minnesota an employee who is able to act as a resident agent, authorized to act in all matters concerning the service company.

F. The service company shall have employed or retained experienced accountants when necessary to the providing of the administrative services to a self-insurer, when the prospective self-insurer does not provide such expertise.

G. The owners of the service company, including all members of a partnership and all officers of a corporation, shall be of good moral character with a reputation for honesty and fair dealing.

H. Any records of a service company relating to any of the services offered or provided to any self-insurer shall be open to inspection by the Commissioner during normal business hours.

I. Each service company may be investigated by the Commissioner upon reasonable belief that the service company is not in compliance with 4 MCAR §§ 1.9283 to 1.9294 or is improperly administering workers' compensation claims pursuant to the Workers' Compensation Act. If the Commissioner determines that the service company is not in compliance with 4 MCAR §§ 1.9283 to 1.9294 or the Workers' Compensation Act the service company shall be liable for the cost of the investigation.

J. Revocation of any service company license shall be pursuant to the contested case procedure in Minn. Stat. ch. 15.

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."

K. The following may be considered good cause for revocation of the license of the service company:

1. Improper claims handling techniques.

2. Material violation of any of the foregoing rules.

3. Material violation of any provision of the Workers' Compensation Act.

4. Committing an unfair or deceptive act or practice as defined in Minn. Stat. § 72A.20, subd. 12.

L. Each service company shall be expected to file, or attempt to ensure that the self-insurers it services file, all required reports relating to those services which they provide by the dates established by statute or by these rules. Such reports shall include, but are not limited to the following: loss information reports required by 4 MCAR § 1.9289, reports required by the WCRA, and any report required by the Minnesota Department of Labor and Industry.

M. Each service company shall report to the Commissioner the termination of any service contract entered into with a self-insurer within ten (10) days of such termination.

N. Any entity which has been found to have processed claims in an unfair or inequitable manner, or in breach of its fiduciary duty in the servicing of workers' compensation or any other employee benefit program, shall be denied a license under this rule.

4 MCAR §§ 1.9295-1.9299 Reserved for future use.

Appendix I

BONDING COMPANY NAME
Bond No.
SURETY BOND

KNOW ALL MEN BY THESE PRESENTS: That we, (entity to be bonded), of (location), (hereinafter called the "Principals"), as Principals, and (bonding company name), a (name of state) corporation, of (location) (hereinafter called the "Surety"), as Surety, are held and firmly bound unto the Commissioner of Insurance of the STATE OF MINNESOTA for the use and benefit of the employees of the Principals and to pay workers' compensation obligations of the Principals in the sum of (dollar amount), for the payment of which well and truly to be made, the Principals bind themselves, their successors and assigns, and the Surety binds itself and its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, in accordance with the provisions of Section 176.181 of the Minnesota Statutes, the Principals have by written order of the Commissioner of Insurance of the State of Minnesota been exempted from insuring its liability for compensation according to the provisions of the Minnesota Workers' Compensation Act and have been permitted by said order to self-insure all liability hereafter arising under the Workers' Compensation Act, including their liability for medical expenses.

NOW, THEREFORE, the condition of this obligation is such that if the said Principals shall, according to the terms, provisions and limitations of the Minnesota Workers' Compensation Act, pay all of their liabilities and obligations under said act, including all benefits as provided by said act, then this obligation shall be null and void, otherwise to remain in full force and effect, subject, however, to the following terms and conditions:

1. The liability of the Surety is limited to the payment of all legal liabilities and obligations, including payment of compensation and medical benefits, provided the Workers' Compensation Act of Minnesota which are payable by said Principals for or on account of personal injuries or occupational diseases sustained during or attributable to the entire period that the Principals are authorized to self-insure in the State of Minnesota, subject to cancellation, as hereinafter provided. In no event shall the total liability of the Surety exceed the amount herein stated, to-wit, the sum of (dollar amount).

2. In the event of any default on the part of the Principals to abide by any award, order or decision of the Workers' Compensation Division of Minnesota directing and awarding payment of such legal liabilities, obligations, or benefits to or on behalf of any employee or the dependents of any deceased employee, the Commissioner of Insurance may, upon ten days notice to the Surety and opportunity to be heard, require the Surety to pay the amount of the same, to be enforced in like manner as an award may be enforced against said Principals.

3. Service on the Surety shall be deemed to be service on the Principals.

4. This bond shall continue in force from year to year unless cancelled as herein provided, but regardless of the number of years this bond remains in force or the number of annual premiums paid or payable the total liability of the Surety hereunder shall not exceed the sum of (dollar amount).

5. This bond may be cancelled at any time by the Surety by giving sixty (60) days notice in writing to the Commissioner of Insurance of the State of Minnesota at its offices in the City of St. Paul, Minnesota, and upon expiration of said sixty (60) days the liability of the Surety hereunder shall cease, except as to liability incurred hereunder prior to the expiration of said sixty (60) days, as set out in paragraph 1.

6. This bond shall become effective at (time of day) (month, day, year).

IN TESTIMONY WHEREOF, said Principals and said Surety have caused this instrument to be signed by their respective duly authorized officers and their corporate seals to be hereunto affixed this (day, month, year).

Signed, sealed and delivered in the presence of:

Corporation Name

_____ By: _____

_____ Bonding Company Name

_____ By: _____

_____

Appendix II

INDEMNITY AGREEMENT

1. Whereas, (name of company) has agreed to be and has been accepted as a member of (name of Group Self-Insurer).

2. Whereas, (name of company) has agreed to be bound by all of the provisions of the Minnesota Workers' Compensation Act and all Rules and Regulations promulgated thereunder.

3. Whereas, that (name of company) has agreed to be bound by the bylaws or plan of operation and all amendments thereto of (name of Group Self-Insurer).

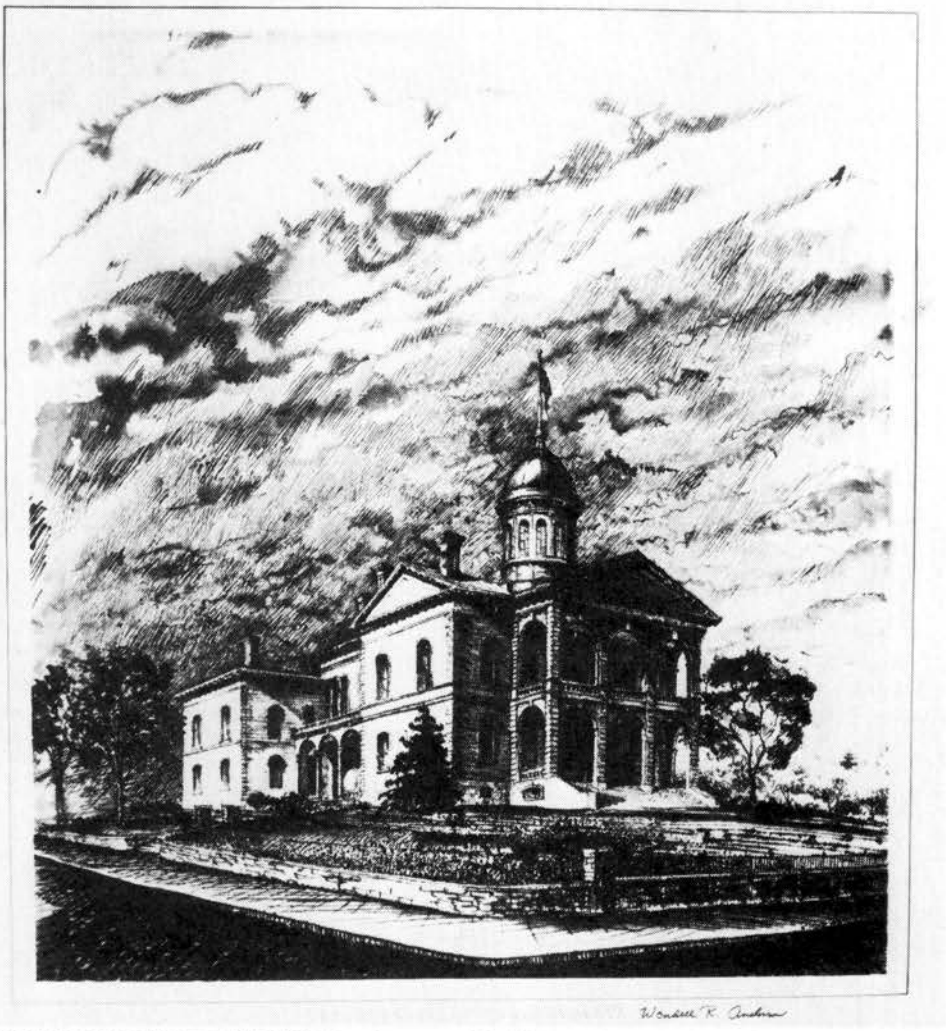
4. Whereas, that (name of company) has agreed to be jointly and severally liable for all claims and expenses of all the members of (name of Group Self-Insurer) arising in any fund year in which (name of company) is a member of the group. Provided that if (name of company) is not a member for the full year it shall be only liable for a pro rata share of that liability.

IN WITNESS WHEREOF, the (name of company) and (name of group self-insurer) have caused this indemnity agreement to be executed by its authorized officers:

GROUP SELF-INSURERS NAME COMPANY NAME

By: _____ By: _____

DATE: _____ DATE: _____



WASHINGTON COUNTY COURTHOUSE as it appeared in 1867 was drawn by former Governor Wendell R. Anderson in 1976. The original drawing belongs to the Minnesota Historical Society's art collection. (Courtesy MHS)

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SUPREME COURT

Decisions Filed Friday, November 30, 1979

Compiled by John McCarthy, Clerk

49422/260 **Harold Henry, Relator, vs. Sears, Roebuck and Company (self-insured). Workers' Compensation Court of Appeals.**

Where the Workers' Compensation Court of Appeals failed to make a clear finding of whether or not an employee continued to be temporarily totally disabled following the employee's hospitalization for an extensive examination of his back injury and where the court of appeals failed to find that the employee intended to retire regardless of the employee's total disability, the court of appeals had no basis for discontinuing temporary total disability benefits.

Remanded. Otis, J. Took no part, Sheran, C. J., Todd, J.

48856/376 **State of Minnesota vs. John Robert Rieck, Appellant. Crow Wing County.**

Evidence of identity in a prosecution for assault, arson, and tampering with a witness, held legally insufficient.

The trial court did not abuse its discretion in denying a motion for a change of venue in these criminal proceedings.

A police officer, in executing a search warrant, did not violate the Fourth Amendment by seizing items not named in the warrant. Accordingly, the trial court did not err in denying a motion to suppress.

Multiple sentences may be imposed in multiple-victim cases if the multiple sentences do not unfairly exaggerate the criminality of the defendant's conduct. Here the trial court properly sentenced defendant for only six offenses. Two other sentences are vacated.

Affirmed in part and reversed in part. Otis, J.

49378/330 **State of Minnesota, Department of Public Safety, petitioner, Appellant, vs. Kermit LeRoy Hauge, Jr. Otter Tail County.**

Where reasonable grounds exist for administering a test for blood alcohol of a driver and the driver's physical or mental condition as a result of alcohol consumption or the effects of injury or treatment for injury preclude him from knowingly, voluntarily, and intelligently exercising his statutory choice to refuse submission to such test, his statutorily implied consent remains continuous.

Reversed. Peterson, J.

49231/194 **The Travelers Insurance Company, Appellant, vs. Genevieve A. Springer. Kanabec County.**

Minn. Stat. § 176.061, subd. 7 (1978), creates an independent cause of action in the employer's workers' compensation carrier for reimbursement from a third-party tortfeasor for medical expenses the carrier has paid to the employee.

The Minnesota no-fault act does not abrogate this cause of action.

Reversed and remanded. Todd, J. Dissenting, Wahl, J., and Sheran, C. J.

49392/316 **State of Minnesota vs. Raymond Wesley Hart, Jr., Appellant. Itasca County.**

The rationale of *State v. Wiehle*, ____ N.W.2d ____ (Minn. 1979), filed herewith, applies to misdemeanor prosecutions as well as implied consent proceedings.

Affirmed. Todd, J.

49408/324 **State of Minnesota, Department of Public Safety, vs. Dennis Earl Wiehle, Appellant. Hennepin County.**

A statutory scheme for securing blood test results is constitutional so long as it does not conflict with the principles of *State v. Oevering*, 268 N.W.2d 68 (Minn. 1978).

The rights of persons involved in implied consent proceedings are to be interpreted so as not to unreasonably interfere with the evidence-gathering purposes of the implied consent statute.

Affirmed. Todd, J.

49636/349 **Edward A. Delgado, et al, Appellants, vs. Douglas William Lohmar, Gordon Allen Daniels, Jr., William Allen Greenwood, David Martini, Bryan Knox. Aitkin County.**

Defendants were not engaged in a joint enterprise as a matter of law where the hunting trip was for recreation, there was no sharing of equipment or expenses, and each defendant had control of his own gun.

When a party of hunters, armed with guns, knowingly enters the property of another without his knowledge or consent, due care requires each hunter to warn his companions of third persons he knows are in the area.

Affirmed in part, reversed in part, and remanded. Wahl, J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, 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.

Department of Administration Information Services Bureau

Notice of Availability of Contract for Back-up Programming Services

The Information Services Bureau of the Department of Administration of the State of Minnesota is requesting a proposal from qualified firms to provide back-up programming services to be used by the Bureau on an as-needed basis. This may involve programming in COBOL, BAL, BASIC, or FORTRAN IV programming languages, with emphasis on COBAL and BAL. This may also involve coding for the report generators ASI-ST and DYLAKORE. These services may also include designing and coding the linkages to the TOTAL data base manager, and designing and coding for the interface to the on-line monitor CICS. This work may be on projects for any of forty-one (41) state agencies. The total amount expended for this activity will not exceed $75,000 for a period of six (6) months (January, 1980 to June, 1980).

The full text of the request for proposal is available on request. Inquiries and responses should be directed to:

Norbert A. Bohn
Information Services Bureau
5th floor Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155
Telephone : (612) 296-8791

Responses must be received by 4:00 p.m., January 4, 1980.

Notice of Availability of Contract for Back-up Systems Analysis Services

The Information Services Bureau of the Department of Administration of the State of Minnesota is requesting a proposal from qualified firms to provide back-up systems analysis services to be used by the Bureau on an as-needed basis. This will involve basic systems analysis using the PRIDE methodology. This may involve assistance to a staff analyst of the Bureau on a specific phase of a project, or taking responsibility for specific phases of a project.

This work may be for any of forty-one (41) state agencies and the projects may vary from fiscal and administrative systems to research, statistical, and modeling systems. The total amount expended for this activity will not exceed $50,000 for a period of six (6) months (January, 1980 to June, 1980).

The full text of the request for proposal is available on request. Inquiries and responses should be directed to:

Norbert A. Bohn
Information Services Bureau
5th floor Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155
Telephone: (612) 296-6326

Responses must be received by 4:00 p.m., January 4, 1980.

Department of Administration Intergovernmental Information Systems Advisory Council

Notice of Request for Proposals for the Feasibility of An Integrated Data Processing System for County and Municipal Governments

The Intergovernmental Information Systems Advisory Council (IISAC) in conjunction with a grant awarded to the Hiawatha Land Computing Consortium (Winona County and the Cities of Winona, St. Charles and Goodview) is assisting in the issuance of a Request for Proposal (RFP) which delineates the requirements of the feasibility study. The purpose of this study is the determination of the joint and unique data processing needs (hardware and software) of the members and the analysis of these needs against the existing automated capabilities of the Local Government Information Systems Association (LOGIS) and those of the Minnesota County Information System (MCIS) to determine the level of match between the established needs and the existing capabilities.

The deadline for receipt of submitted proposals is Decem-

ber 31, 1979. The maximum amount of funds available for this effort is $25,000.00.

The RFP has been sent to all firms known to have an interest in this type of project. Anyone having an interest who has not received the RFP is asked to contact Roger Sell, the Executive Director of IISAC, at 612/297-2172.

Minnesota Educational Computing Consortium

Notice of Availability of Contract for Educational Researcher

The Minnesota Educational Computing Consortium (MECC) requires the services of a knowledgeable and qualified consultant to perform as an educational researcher in the conduct of a science education research project funded by the National Science Foundation.

The consultant shall conduct and complete a research project titled "Computer Awareness and Literacy of Adolescent and Early Adolescent Students in an Empiriral Assessment."

The research tasks as outlined in NSF proposal No. SED-7920087 include:

1) The statistical analysis, using multivariate statistical techniques, of statewide assessment data.

2) The comparison of data and finding with previous research in the field of computer literacy and awareness assessment.

3) The preparation of all required progress and final reports to the National Science Foundation.

4) Dissemination of information and findings of this research and previous computer literacy research to selected organizational meetings and to the educational and scientific audiences via articles, and research reports.

The estimated fee range for this project is $15,000 to $16,000. Individuals named in the proposal are given first consideration.

Individuals desiring consideration should submit a resume and research plan before December 31, 1979.

Ronald L. Barnes
Manager, Administrative Affairs
Minnesota Educational Computing Consortium
2520 Broadway Drive
St. Paul, Minnesota 55113
(612) 376-1126

Department of Natural Resources Minerals Division

Notice of Request for Proposals for a Study of Organic Acids in Minnesota's Peatland Waters

Notice is hereby given that the Department of Natural Resources intends to engage the services of a consultant to 1) determine the range in fulvic and humic acid concentrations in discharge waters from natural and disturbed peatlands and 2) assess the value of using water color as an indicator of the concentration of these organic acids. The project is to be completed by July 1, 1981 and is estimated to cost $10,000. Proposals must be submitted no later than December 31, 1979.

Direct inquiries to:

Department of Natural Resources
Cloquet Forestry Center
175 University Road
Cloquet, Minnesota 55720
ATTN: John C. Clausen
(218) 879-4528

State Planning Agency

Notice of Correction of Submission Date for Proposals for Development and Delivery of Training Programs Regarding UHD Community Development Block Grant Program

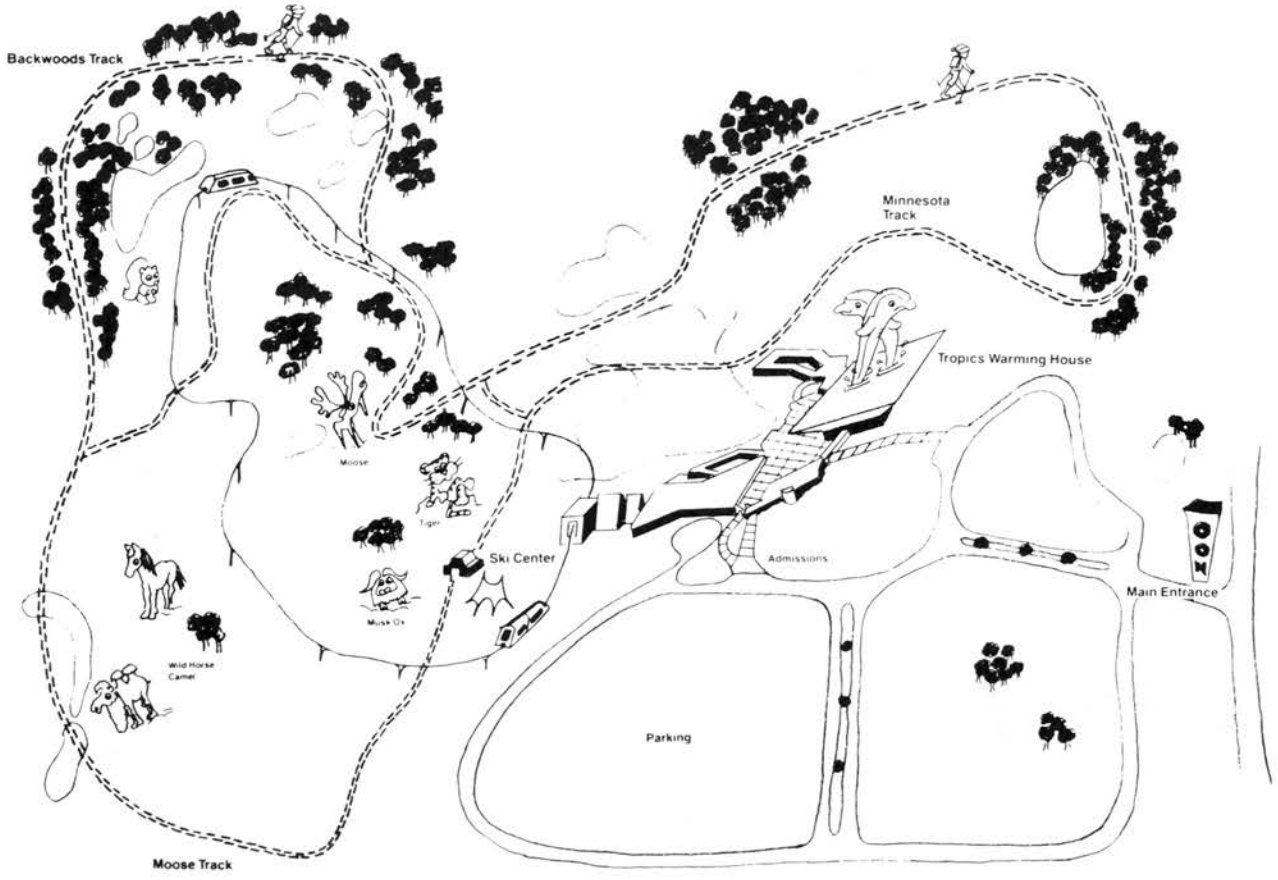
The State Planning Agency published a Notice of Request for Proposals regarding the above-entitled matter at *State Register*, Volume 4, Number 20, November 19, 1979, p. 837.

The final submission date for completed proposals listed in the previous notice was incorrect. **All proposals must be received by Friday, December 14, 1979.**

For more information, call (612) OLUA/SPA, (612) 296-2394.

Cross Country Skiing

MINNESOTA ZOO
OPEN ALL YEAR



Cross Country skiing everyday through the Northern Trail

HOURS: 9am – 5pm

ADMISSION:	Under 6	Free
	Child 6-11	$1.00
	Youth 12-16	$1.50
	Adult 17 & over	$3.00
	Seniors 62 & over	$1.50
PARKING	Family vehicles	$1.00
	Buses	$5.00

THE MONORAIL IS HERE!
Each 20 minute trip is personally guided and will give riders an overview as well as a narrative summary of the plant and animal life of the Northern Trail

MONORAIL FEES:	Adults	$1.00
	Child	$ .50
	Seniors	$ .50

ANIMAL DEMONSTRATIONS
ZOO THEATRE
EDUCATION LAB
RESTAURANT
GIFT STORES
GROUP RATES AVAILABLE

Minnesota Zoological Garden
12101 Johnny Cake Ridge Road
Apple Valley, MN 55124
(612) 432-9000
(612) 432-9010
30 minutes So. of Twin Cities
35W from Minneapolis
Hwy. 3 from St. Paul

CROSS COUNTRY SKIING — Beginning in the winter of 1979-80, cross country skiing will be available at the zoo on three trails of different lengths requiring varying degrees of skill. The three — Moose Track Trail, Backwoods Trail and Minnesota Trail — range from three to nine kilometers and are groomed throughout the season. Interpretive signs help identify the tracks of animals that roam the zoo grounds. Weekend tours with a naturalist are offered to groups no larger than 20. The Children's Center will be a location where visitors can rent skis and where hot drinks and soups will be served. Skiing will be open from 9 a.m. to 5 p.m. Regular admission to the zoological garden will be charged. Call the zoo for more information. (Courtesy Minnesota Zoological Garden)

OFFICIAL NOTICES

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 Commerce Securities Division

Notice of Intent to Solicit Outside Opinions Concerning the Possible Adoption, Amendment, Suspension or Repeal of Rules Relating to Minn. Stat. ch. 80A. (Minnesota Securities Act)

Notice is hereby given that the Securities Division is soliciting opinions and comments pertaining to the adoption, amendment, suspension or repeal of rules promulgated pursuant to and/or authorized by Minn. Stat. § 80A.25.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing and must be received by February 29, 1980. Written statements of information and comment may be addressed to:

Mr. Daniel W. Hardy
Assistant to the Commissioner
Securities Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-5689 and in person at the above address. Any written material received by the above date will become part of the record of any rules hearing which might be held.

The Division would, in particular, like to receive comments relevant to the following rules:
SDiv. 2002(e) (investment adviser — segregation of funds);
SDiv. 2009 (termination notice);
SDiv. 2012(d) (examinations — licensing);
SDiv. 2013 (broker dealer — net capital requirements);
SDiv. 2014 (bonding requirements);
SDiv. 2019 (offering circular required);
SDiv. 2020 (cheap stock — restrictions on transferability);
SDiv. 2021 (escrow of securities — terms and conditions);
SDiv. 2022 (proceeds impoundment — conditions);
SDiv. 2023 (proceeds impoundment — release of funds);
SDiv. 2024 (quarterly reports);
SDiv. 2025 (report of sales);
SDiv. 2027 (annual report — filing requirements);
SDiv. 2029 - 2034 and 2042 (equity securities);
SDiv. 2049 - 2052 and 2054 (investment companies);
SDiv. 2113, 2117, 2119, 2122 (exemptions);
SDiv. 2123 (advertising material);
SDiv. 2124 (required language).

November 29, 1979

Daniel W. Hardy
Securities Division

Department of Commerce Banking Division

Bulletin No. 2148: Maximum Lawful Rate of Interest for Mortgages for the Month of December 1979

Notice is hereby given that the Banking Division, Department of Commerce, State of Minnesota, pursuant to House File No. 564, Chapter 279, 1979 Session Laws, as it amended Section 47.20, Subd. 4, Minnesota Statutes, effective May 31, 1979, hereby determines that the maximum lawful rate of interest for home mortgages for the month of December, 1979, is thirteen and one-half (13.50) percent.

November 27, 1979

Michael J. Pint
Commissioner of Banks

Department of Education Instruction Division

Notice of Opening for a Leadership Development Specialist/Consultant

A Leadership Development Specialist/Consultant is needed by the Elementary/Secondary Section of the Department of Education to provide technical assistance and inservice training to its elementary/secondary specialists.

Starting January 31, 1980, the specialist/consultant will:

1. assess the client network that the Section serves in order to determine how the needs for service have changed during the past 5-6 years;

2. assess Section and Division resources: time, staff, budgets;

3. provide appropriate technical assistance to allow staff to review collected data and to suggest alternative leadership models that are not available to staff at this time;

4. assist the Section in its effort to communicate with Departmental decision makers relative to recommended changes in client assistance and leadership in schools around the State;

5. provide necessary inservice to implement recommendations.

The Specialist/Consultant must have had extensive experience working with elementary and secondary educational institutions in Minnesota. The technical assistance model advocated must be transferable to local education agencies.

The estimated cost of the project will be $3,500, covering 35-40 working days. The person engaged must be able to work well with government professional staff and have skill to enable him/her to cooperate and correlate what is done with the Department's Office of Planning and Evaluation. Interested persons are invited to contact the Department by sending vitae and samples of their work to Dr. Robert Crumpton, Manager, Elementary/Secondary Section, Department of Education, 684 Capitol Square Building, St. Paul, MN. 55101, by December 31, 1979.

Energy Agency
Data and Analysis Division

Northern States Power Company Certificate of Need Application to Increase the Storage Capacity of the Spent Fuel Pool at the Prairie Island Nuclear Generating Facility

Order for Hearing and Notice Thereof

It is hereby ordered and notice is hereby given, that a contested case hearing concerning the above-entitled matter will commence at 7:00 p.m. on February 4, 1980, in the Red Wing Public Library, 225 Broadway, Red Wing, Minnesota. The hearing will continue at 10:00 a.m., 1:00 p.m. and 7:00 p.m. on February 5 and 6, and at 10:00 a.m. and 1:00 p.m. on February 7. The hearing will reconvene at 10:00 and 1:00 p.m. on February 11, 1980, in the Auditorium at the William Mitchell College of Law, 875 Summit Avenue, Saint Paul, Minnesota. The hearing will continue at 10:00 a.m., 1:00 p.m. and 7:00 p.m. on February 12 and at 7:00 p.m. on February 13 at the same place, and at other times and places to be specified by the Hearing Examiner.

This hearing arises from the Application for Certificate of Need to Increase Storage Capacity of the Spent Fuel Pool at the Prairie Island Generating Plant filed by Northern States Power Company ("NSP or Applicant") in September 1979 and accepted by the Agency on November 13, 1979. The Application was submitted, and the Agency is convening the hearing, on the authority of Minn. Stat. § 116H.13 and rule 6 MCAR §§ 2.1101-2.1186.

The contested case hearing will be held before Allan W. Klein, Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8104, an independent hearing examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to represent themselves or to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. §§ 15.0411 through 15.052 and procedural rules 9 MCAR §§ 2.201-2.222 and 6 MCAR §§ 2.0500-2.0520. Where the procedural rules conflict, the Hearing Examiner's Rules, 9 MCAR §§ 2.201-2.222, supersede the Agency's rules, 6 MCAR §§ 2.0500-2.0520. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Dwight S. Wagenius, 720 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota 55101, telephone (612) 296-8278.

The purpose of the hearing is to determine whether NSP has justified the need for the facility expansion proposed in its application. The application is for authority to increase the nuclear spent fuel storage capacity within the Prairie Island Nuclear Generating Plant. The Applicant proposes no physical alteration of the pool itself. Rather, Applicant proposes to replace the current racks which hold the spent fuel rods discharged from the Prairie Island nuclear reactors with new racks containing more spaces for storage of spent fuel rods within the present facility. Applicant asserts the new spent fuel racks more efficiently utilize the existing available space within the spent fuel pool area. Originally, the company planned to ship spent fuel off site to reprocessing plants. Applicant asserts the need to store more spent fuel at Prairie Island is caused by the Federal Government's indefinite deferral of fuel reprocessing, failure to provide interim spent fuel storage, and its slow progress on plans for ultimate disposal of spent fuel and radioactive waste.

Rule 6 MCAR § 2.111 A. provides that the Agency shall not make a decision which could reasonably be expected to result in a forced shutdown of the generating facility served by the spent fuel pool. Within that limitation, the hearing will address whether the probable direct or indirect result of the hearing would adversely affect the future adequacy, reliability, safety, or efficiency of energy supply to the Applicant, Applicant's customers, or to the people of Minnesota and neighboring states considering, among other things, the ability of other current and planned facilities to meet the asserted need. Also considered will be whether a more reasonable and prudent alternative to the proposed expansion can be demonstrated considering size, type, timing, cost, and reliability.

The consequences of the expansion, or a suitable modification thereof, on overall state energy needs and the natural and socioeconomic environments will be considered. In addition, whether the proposed expansion will fail to comply with relevant policies, rules and regulations of other state agencies, federal agencies, and local governments will be considered during the hearing process. The hearing will not consider the need for the plant itself, nor the need for nuclear power. It will not be an inquiry into the wisdom of using nuclear energy for generation of electricity.

There are two different ways in which persons may participate in these hearings. They can participate as members of the public, or they may participate as parties.

If a person elects to participate as a member of the public, he or she will be allowed to offer testimony and present exhibits or other evidence. Such persons will have first priority at the evening sessions to begin at 7:00 p.m. in both Red Wing and Saint Paul. However, if these times are inconvenient, other times can be arranged by contacting the Hearing Examiner.

If a person elects to participate as a party, he or she must file a Petition to Intervene with the Hearing Examiner. The contents of this document are spelled out in rules 9 MCAR § 2.210 and 6 MCAR § 2.0506, copies of which are available as described below. The Petition to Intervene must be received by the Hearing Examiner on or before January 3, 1980. However, early intervention is strongly encouraged. Copies must also be served on the Agency, c/o Dwight S. Wagenius at the address given above, and on known parties at the time of intervention. At the present time, the only known party is the Applicant, NSP, represented by Popham, Schnobrich, Kaufman & Doty, Ltd., 4344 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402 (c/o Raymond A. Haik, Esquire).

If the Petition to Intervene is granted by the Hearing Examiner, the person submitting it becomes a party, with certain rights and obligations not shared by persons who elect to participate as members of the public. Parties must attend prehearing conferences, and must prefile their testimony and exhibits in advance of the hearing. They must file a Notice of Appearance within 20 days after publication of this Order and Notice of Hearing in the *State Register*. They must file proposed findings and conclusions. Parties have the right to advance notice of witnesses and evidence, to cross-examine witnesses, to object to petitions to intervene, to request an order for dispositions, to use other discovery devices and to file comments on and exceptions to proposed findings and recommendations of the Hearing Examiner. These are some, but not all, of the differences between a party and a person participating as a member of the public. Persons desiring additional information are referred to the rules cited above.

A prehearing conference will be held pursuant to rule 9 MCAR § 2.213 A. at 2:00 p.m. on January 11, 1980, at the Red Wing Public Library, 255 Broadway, Red Wing, Minnesota to consider petitions to intervene and other procedural matters. The Applicant shall file its testimony and exhibits with the Hearing Examiner and serve copies on the Agency and known parties at the prehearing conference. Intervenors must attend the prehearing conference and be prepared to present a tentative list of witnesses and an indication of testimony to be presented. Intervenor testimony and exhibits must be filed with the Hearing Examiner and served on the Agency and all parties no later than January 25, 1980. On the date parties file and serve their testimony and exhibits they must also mail a copy of the testimony and exhibits to the libraries listed below. Proof of the mailing must be submitted to the Hearing Examiner. A second prehearing conference will be convened at 2:00 p.m. on February 4, 1980, at the Red Wing Public Library, to consider objections to the foundation for testimony or exhibits and any other necessary or advisable matters.

The Minnesota Energy Agency employee whose duty is to facilitate citizen participation in the hearing process is Arthur Adiarte. He can be reached by mail or telephone — 980 American Center Building, Saint Paul, Minnesota 55101 (612) 296-8279.

All persons are advised that no factual information or evidence which is not part of the hearing record shall be considered by the Hearing Examiner or by the Director in the determiniation of the above-entitled matter. Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

All of the rules cited above are available for review at the Office of Hearing Examiners and at the offices of the Energy Agency. The applicant's application for a Certificate of Need, copies of the parties' prefiled testimony and exhibits, and the substantive rules applicable to this matter, 6 MCAR §§ 2.1101-2.1186, are also available for review at the offices of the Energy Agency and at the following libraries: the Red Wing Public Library; the Minnesota Valley Regional Library, Mankato; the Rochester Public Library; the Legislative Reference Library, State Capitol, Saint Paul; the Great River Regional Library, Saint Cloud; and the Environmental Conservation Library, 300 Nicollet Mall, Minneapolis. Interested persons are urged to read the application and the prefiled testimony and review the exhibits in advance as they will not be restated at the hearing. All rules may be purchased from the Documents Division Department of Administration, 117 University Avenue, Saint Paul, Minnesota, 55155, telephone (612) 296-2874.

If persons have good reason for requesting a delay in the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the Agency and any other parties.

December 3, 1979

Algernon H. Johnson
Director

Ethical Practices Board Notice of Regular Meeting

The next regular meeting of the Ethical Practices Board will be held Wednesday, December 12, 1979, at 9:00 a.m., Room 112, State Capitol, St. Paul, MN.

Agenda

1. Minutes (October 26, 1979)
2. Chairperson's Report
3. Legal Counsel Report
4. Advisory Opinion — Kandiyohi County DFL
5. Executive Director's Report
   a) Financial Statement
   b) Delinquency Reports — Economic Interest/ Lobbyist/Campaign Finance
6. Interviews — Accountant/Auditor Position
7. Public Financing Discussion
8. Other Business

Department of Health Emergency Medical Services Section

Notice of Filing of Application by City of Oakdale for License to Operate Life Support Transportation Service

On November 21, 1979, a complete application for a license to operate a proposed life support transportation service with a base of operation in Oakdale, Minnesota submitted by the City of Oakdale, was received by the Department of Health. This notice is given pursuant to Minn. Stat. § 144.802 (1979), which requires that the Commissioner send notice of the completed application to the Health Systems Agency and each municipality and county in the area in which life support transportation service would be provided by the applicant. Each municipality, county, community health service agency and any other person wishing to comment on this application to the Health Systems Agency (The Metropolitan Health Board), shall do so before the close of business January 8, 1980.

After a public hearing has been held in the municipality in which the service is to be provided, the Health Systems Agency (The Metropolitan Health Board), shall recommend that the Commissioner either grant or deny a license or recommend that a modified license be granted. The Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days after receiving the recommendation, the Commissioner shall grant or deny the license to the applicant.

Any objections to or statements or support for this application pursuant to Minn. Stat. § 144.802 may be made in writing to Carol Sieverson, Metropolitan Health Board, 300 Metro Square Building, 7th and Robert, St. Paul, Minnesota 55101.

Notice of Filing of Application by Stillwater EMS, Inc., for License to Operate A Life Support Transportation Service

On November 21, 1979, a complete application for a license to operate a proposed life support transportation service with a base of operation in Oakdale, Minnesota, submitted by Stillwater EMS, Inc. was received by the Department of Health. This notice is given pursuant to Minn. Stat. § 144.802 (1979), which requires that the Commissioner send notice of the completed application to the Health Systems Agency and each municipality and county in the area in which life support transportation service would be provided by the applicant. Each municipality, county, community health service agency and any other person wishing to comment on this application to the Health Systems Agency (The Metropolitan Health Board), shall do so before the close of business January 8, 1980.

After a public hearing has been held in the municipality in which the service is to be provided, the Health Systems Agency (The Metropolitan Health Board) shall recommend that the Commissioner either grant or deny a license or recommend that a modified license be granted. The Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days after receiving the recommendation, the Commissioner shall grant or deny the license to the applicant.

Any objections to or statements of support for this application pursuant to Minn. Stat. § 144.802 may be made in writing to Carol Sieverson, Metropolitan Health Board, 300 Metro Square Building, 7th and Robert, St. Paul, Minnesota 55101.

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that a vacancy has occurred in a multi-member state agency, pursuant to Minn. Stat. § 15.1597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building. St. Paul, MN 55155; (612) 296-2805. Application deadline is Tuesday, December 25, 1979.

Governor's Council on Minnesota Career Information Service: Established by Executive Order No. 79-35; has 15 vacancies open for members representing the users and pro-

ducers of occupational and career information services. For additional information on the Council, contact Carol Magee, (612) 296-4030.

Board of Residential Utility Consumers: Has 2 vacancies open January, 1980; one vacancy for a resident for the fourth congressional district, one vacancy for a member-at-large. The Board establishes policy guidelines concerning utility related activities of the Commerce Department's consumer services section. The Board reviews and comments on the section's decisions, performance of responsibilities, and budget for utility related activities. Meetings are held monthly. The Governor is the appointing authority; members receive $35 per diem. For specific information, contact Norrine McCarthy, (612) 454-8990

Department of Transportation

Notice of Application and Opportunity for Hearing Regarding Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove the Easterly 800 Feet of ICC Track No. AFE89994, the Easterly 800 Feet of ICC Track No. (unknown), and Crossover Track No. (unknown), All Located at Waterville, MN.

Notice is hereby given that the Chicago and North Western Transportation Company, with Attorneys at 4200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402, has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. §§ 219.741 and 218.041, subd. 3 (10) for authority to retire and remove the easterly 800 feet of ICC Track No. AFE89994, the easterly 800 feet of ICC Track No. (unknown), and Crossover Track No. (unknown), all located at Waterville, Minnesota.

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 January 1, 1980. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

The petition recites among other matters that: "The subject track is no longer needed for rail transportation service, constitutes a continuing and burdensome maintenance expense, and is an unnecessary safety hazard. The track is not used at the present time, and their is no present prospect that the track will be needed in the future. The only shippers, patrons or members of the public who might have any interest in the retention of the tracks or facilities, or who have used the same to any substantial degree within the past several years is Fahning Homes, Inc."

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 desired to become a Party to this matter must submit a timely Petition to Intervene to the Hearing Examiner pursuant to 9 MCAR § 2.210, 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.

December 3, 1979

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102
(612) 296-8239

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Name _____

Attention of: _____

Street _____

City _____ State _____ Zip _____

Telephone _____

Our file # 594

5/6 Sherry Blohm advised need revised Cert. Adopting Resolution + revised order Adopting

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 4/29 DUE DATE 5/19 6/2

Resubmitted and Received 5/23

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved 5/28 Date Sent Back to Agency 5/19

---

1. Rules as Adopted ✓
2. Rules as Proposed ✓ see SR 12.10.79.
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓ 4.16 BD
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓
11. Statement of Need and Evidence ✓ + 5 Attachments
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓
14. Certificate of Board's Resolution Adopting Rules, where applicable _____
15. Order Adopting _____
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable ✓
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓ SR. 2.26.79
20. Petition by Public, where applicable ✓

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Administration
Cable Communications Board

TO : Jerry S. Anderson
Special Assistant
Attorney General

DATE: May 23, 1980

FROM : Sherry L. Blohm
Cable Communications
Specialist

PHONE: 296-0317

SUBJECT: IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA CABLE COMMUNICATIONS BOARD GOVERNING DEFINITIONS, CLASSIFICATION OF SYSTEMS, FRANCHISE STANDARDS, TRANSFER OF OWNERSHIP, INITIAL AND RENEWAL FRANCHISE PROCEDURES, LENGTH OF RENEWAL TERM, AND OTHER NONSUBSTANTIVE CHANGES INCLUDING THE DELETION OF REDUNDANT RULES, THE ADDITION OF CLARIFYING LANGUAGE, AND THE REORDERING AND RENUMBERING OF RULES.

Reference is made to your memo of May 19, 1980. Enclosed are an original and two copies of the Order Adopting and the Adopted Rules.

The requested changes have been made with the exception of # 9. I believe that because the date is sticken in the State Register it can be deleted from the Adopted Rules rather than interlineated.

We have done an exhaustive re-proof of the rules and have corrected all typos. We have also inserted those provisions that were missing from the previously submitted adopted rules.

As I understand the procedures, the Office of the Attorney General has ten days beginning tomorrow, May 24, 1980 in which to act on the rules. I realize the time is somewhat shortened because of the weekend and holiday; the Board would like to submit the adopted rules to the State Register on Monday, June 2nd, contingent on approval from your office. We would appreciate any assistance you can give us in meeting this deadline.

If you have any questions regarding the re-submitted rules, please call me; I'll be glad to help in any way that I can.

SLB/tmk

ENCLOSURE

CERTIFICATE OF BOARD'S
ADOPTING RESOLUTION

I, John Stone, do 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 11th day of April, 1980, that a quorum was present at said meeting; that a majority of those members present voted in favor of the Resolution; that said Resolution is set forth in the minutes of said meeting or is incorporated by reference into said minutes and attached thereto as an addendum and has not been rescinded or modified:

> BE IT RESOLVED, that the rules relating to definitions, classification systems, franchise standards, transfer of ownership, initial and renewal franchise procedures, length of renewal term, and other Non-substantive changes including the deletion of redundant rules, the addition of clarifying language and the reordering and renumbering of rules be and they hereby are approved and adopted pursuant to authority vested in us by Minn. Stat. 238.06, subd. 1, and that John Stone, Chairman of the Cable Communications Board be and hereby is authorized to sign an order adopting those rules.

WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of April, 1980.

John Stone, Chairman

Rochelle Lambert

Attest by one other member

JUL 14 1978
STATE OF MINNESOTA
CABLECOM COMMISSION

RULE-MAKING PETITION TO

MINNESOTA CABLE COMMUNICATIONS BOARD

Petitioner:

Minnesota Cable Communications Association
P.O. Box 1137
117 East Center Street
Rochester, Minnesota 55901

Re: MCCB Rules §4.121(B)(2) and §4.134

Relief Requested

The Minnesota Cable Communications Association initiates this application for rule-making relief pursuant to MCCB Rule §4.063 to amend the above-stated rules regarding the maximum length of renewal allowed for a cable communications franchise. Under the present regulations, a renewal franchise of only ten years is allowed. The Minnesota Cable Communications Association requests that the Minnesota Cable Communications Board modify this rule so that a fifteen-year renewal franchise may be granted by a municipality.

Applicable Law

MCCB Rule §4.134 reads as follows:

> "Franchise Renewal. When any franchise is renewed, the franchisee shall agree to abide by all rules and regulations of the Board. No franchise shall be renewed for a period longer than ten years."

Similarly, MCCB Rule §4.121(B)(2) states that a regular certificate of confirmation will be issued only if the franchise ordinance contains a provision:

> "Providing that any renewal of the franchise shall be for a term of not more than ten years."

Statement of Facts

On March 10, 1978, Hubertus Sarrazin of Cable Communications Systems, Inc. (CCSI), petitioned the Minnesota Cable Communications Board for a variance from the above-stated Rules so that a renewal franchise of fifteen years' duration could be awarded Northland Cable TV, Inc., in Virginia, Minnesota. Petitioner CCSI needed a franchise of more than ten years' duration in order to obtain financing for the purchase of a new system, for improvement of the system, and for installation of an earth station. The Minnesota Cable Communications Board granted that variance, recognizing that a denial of the

variance would "hinder the development and utilization of cable communications in the State of Minnesota." The Board's Findings of Fact, Conclusions of Law and Order adopted April 7, 1978, also stated that "The allowance of a fifteen year franchise would avoid undue hardship on the part of Petitioner."

On June 9, 1978, Teleprompter Corporation of Rochester, Minnesota, applied for a similar variance requesting a renewal franchise of fifteen years. Teleprompter's petition was premised on the MCCB requirement that all cable companies upgrade by 1986 any twelve-channel, one-way systems to twenty-channel systems with capacity for non-voice return communications. Teleprompter stated that because of the satisfactory condition of its present system, a rebuild would not begin for at least several years. Therefore, Teleprompter anticipated having to make substantial expenditures to replace its existing plant by a date which fell only two years before the end of the ten-year franchise allowed by MCCB rules. A fifteen year franchise, on the other hand, would allow seven years of franchise time after the rebuild deadline.

On June 9, 1978, the Minnesota Cable Communications Board voted with one dissenting vote to deny the requested variance. The Minnesota Cable Communications Association therefore makes application herein for permanent amendments to the existing rules which would allow the granting of a fifteen-year franchise.

LEGAL ARGUMENT

Economic Requirements

Petitioner Minnesota Cable Communications Association submits that renewal franchises longer than ten years in duration are frequently necessitated by the cable communications companies in Minnesota. The March 10, 1978, variance application by CCSI, and the June 9, 1978, variance application by Teleprompter Corporation of Rochester, are just two examples during this short span of three months which illustrate the necessity of a permanent rule change.

The very nature of a cable communications company involves large amounts of capital and financing if the system is to be upgraded or new construction commenced. It has already been determined by the Minnesota Cable Communications Board that certain improvements are in the public interest. MCCB Rule §4.121 requires that every cable communications system be upgraded to a twenty-channel system by 1986. It is therefore

reasonable to assume that other improvements, such as installation of an earth station, are also in the public interest. However, all of these large-scale improvements are expensive and considerable financing is necessary.

The existing regulation allowing only a ten-year franchise renewal actually hinders the technological development of cable communications throughout the State of Minnesota. This was clearly recognized by the Board in its April 7, 1978 Order granting a fifteen-year franchise variance to CCSI. CCSI demonstrated that even if a cable operator desires to make an improvement or upgrade his system, he is often held back by his inability to obtain financing when he has a financing period of only ten years. For those cable operators who can obtain the necessary financing, a ten-year renewal franchise still creates a large risk that they will not receive a return on their substantial investment. The possibility is very real that a cable operator may invest substantial expenditures and then not have his franchise renewed in just two or three years. The ever-expanding technology of the cable industry will only be hindered by this inability to move forward.

Furthermore, the ten-year renewal franchise restriction may stagnate the development of the total cable network throughout the State of Minnesota. The purchase of a cable communications system is a costly endeavor, but necessary to save and revitalize certain floundering companies. If a well-established cable communications system wishes to purchase a system and try to rebuild it, the consumers in that area will be unjustly deprived of cable service if the buyer is prohibited from obtaining financing by a short-term renewal lease.

The Minnesota Cable Communications Association therefore submits that MCCB Rule §4.134 is detrimental to one of the main purposes of the Minnesota Cable Communications Board - the promotion of rapid development of a cable communications industry responsive to community and public interest. M.S.A. §238.01. Both geographic development and technological development are hindered by a company's inability to obtain a fifteen-year franchise renewal.

Reputation Established

It is ironic that the initial franchise period allowed by MCCB Rule §4.121(B)(1) is currently five years longer than the ten-year period allowed for franchise renewal. By the time a franchise is renewed, a cable system has operated in the area for fifteen

years. Clearly, the reputation of that company has been long established and renewal of the franchise indicates satisfaction with the service provided. It is inconsistent that a renewal period should be shorter than an initial franchise period after the company has established a solid reputation.

This concept was recognized by the Federal Communications Commission in its promulgation of FCC Rule §76.31. While that rule allows an initial franchise period of fifteen years, the renewal period remains indefinite. The FCC requires only that a renewal period be of "reasonable duration." The MCCB rules are therefore far more restrictive than the FCC rules imposed upon the same cable operator.

The currently existing MCCB rules are not only inconsistent with federal regulations, but have been shown to be inconsistent with the desires of certain municipalities. For example, in the above-stated Teleprompter variance matter, the City Council of Rochester had already approved a fifteen-year renewal franchise when Teleprompter petitioned the Cable Board for variance. Despite the approval of the Rochester governing body, the Board felt it necessary to deny the variance. This denial is inconsistent with the Cable Board's basic purpose to protect the consumer interest in the State of Minnesota. If the consumers' representatives in the City of Rochester determine that the Company will experience undue hardship if not granted a fifteen-year franchise, clearly that determination carries more weight than that of a state agency not privy to the wealth of information available to local officials.

CONCLUSION

The Minnesota Cable Communications Association therefore submits that MCCB Rules §4.121(B)(2) and §4.134 be amended to allow a fifteen-year franchise renewal period. The existing rule is detrimental to the geographic and technological growth of the cable industry in the State of Minnesota and is inconsistent with FCC regulations and the demonstrated intent and desires of local municipalities.

Ember D. Reichgott, for
LARKIN, HOFFMAN, DALY & LINDGREN, Ltd.
Attorneys for Petitioner Minnesota
Cable Communications Association
1500 Northwestern Financial Center
7900 Xerxes Avenue South
Minneapolis, Minnesota 55431
835-3800

VERIFICATION AFFIDAVIT

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

James Daniels, of said County and State, being first duly sworn, upon oath, deposes and says that he is the duly elected president of the Petitioner Association named in the foregoing, within-entitled proceeding, that he has read the hereto attached Petition and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to such matters, he verily believes it to be true.

James Daniels

James Daniels, President
Petitioner Minnesota Cable
Communications Association

Subscribed and sworn to before me this

day of , 1978.

Notary Public



STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

MINNESOTA CABLE COMMUNICATIONS BOARD

500 RICE STREET, SAINT PAUL, MINNESOTA 55103 (612) 296-2545

April 29, 1980

RECEIVED
APR 2 0 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Jerry Anderson
Special Assistant Attorney General
G-25 Administration Building
St. Paul, Minnesota 55155

Dear Mr. Anderson:

Pursuant to Atty. Gen. 302, please find enclosed:

1. An original and 5 copies of Rules as Adopted
2. An original and 2 copies of Rules as Proposed
3. An original and 2 copies of Certificate of Board's Authorizing Resolution
4. An original and 2 copies of Order for Hearing
5. An original and 2 copies of Notice of Hearing
6. An original and 1 copy of Secretary of State's List
7. An original and 2 copies of Certificate of Acquisition of Secretary of State's List
8. An original and 2 copies of Secretary of State's Certification of Delivery of Secretary of State's List to Agency
9. An original and 2 copies of Affidavit of Mailing
10. An original and 2 copies of Publication in State Register
11. An original and 2 copies of Statement of Need and Evidence
12. An original and 2 copies of Hearing Examiner's Report
13. An original and 2 copies of Agency's Findings of Fact
14. An original and 2 copies of Certificate of Board's Resolution Adopting Rules

15. An original and 2 copies of Order Adopting

16. An original and 2 copies of Report of Chief Hearing Examiner

17. An original and 2 copies of Order Approving Incorporation by Reference

18. An original and 2 copies of Certificate of Compliance with Rulemaking Procedures

19. An original and 2 copies of Notice of Intent to Solicit Outside Opinion

20. An original and 2 copies of Petition by Public.

Also enclosed is the Hearing Record. Included are all Agency Exhibits, Industry Exhibits and written comments.

If you have any questions concerning any of these documents, please call me.

Sincerely,

Sherry L. Blohm

Sherry L. Blohm
Cable Communications Specialist

SLB/tmk
Enclosures

OFFICIAL NOTICES

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.

Board of Accountancy

Notice of Certified Public Accountant Examination

The Minnesota State Board of Accountancy will conduct the regular examination May 2, 3 and 4, 1979 at the St. Paul Armory, 600 Cedar, St. Paul, Minnesota. Candidates should file applications 60 days prior thereto.

Forms and information available at Metro Square Bldg., 5th Floor, St. Paul, MN 55101. Telephone: 296-7937.

Cable Communications Board

Notice of Intent to Solicit Outside Opinion Regarding Creation of Classes of Cable Systems for Small Communities Revision of Transfer of Ownership Rules, Franchising Rules and Variance Rules

Notice is hereby given that the Minnesota Cable Communications Board is seeking information or opinions from outside the agency pertaining to creation of classes of cable systems for small communities, revision of transfer of ownership rules, franchising rules and variance rules. The Board seeks to simplify, shorten and clarify the procedures which are set forth in these rules.

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 above-mentioned rules are advised to do so at or prior to the time of the Board's April meeting tentatively scheduled to be held on April 13, 1979.

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:

W. D. Donaldson, Executive Director
State of Minnesota
Cable Communications Board
500 Rice Street
St. Paul, Minnesota 55103
Telephone (612) 296-2545

February 20, 1979

W. D. Donaldson
Executive Director

Energy Agency

Northern Tier Pipeline Company Application for a Certificate of Need for a 40-Inch Crude Oil Pipeline Facility

Order for Rehearing and Notice Thereof

Whereas, Northern Tier Pipeline Company (''Northern Tier'' or ''Applicant'') submitted to the Minnesota Energy Agency (''Agency''), on June 29, 1978, an application for a certificate of need for a large crude oil pipeline facility (''application'') pursuant to Minn. Stat. ch. 116H and Minn. Rules EA 1001-1091; and

Whereas, the above-entitled matter was referred to the Minnesota State Office of Hearing Examiners for public hearing pursuant to Minn. Stat. § 116H.13 and Minn. Rules HE 201-222 and EA 500-520, 1001-1091 by the Agency's Order for Hearing and Notice Thereof dated July 13, 1978; and

Whereas, all the procedural requirements of the statutes and rules cited above were properly met and were completed by issuance on December 7, 1978, of proposed Findings of Fact, Conclusions of Law and Recommendation by Allen W. Klein, duly appointed Hearing Examiner; and

Whereas, the Director of the Agency issued his Findings of Fact, Conclusions and Decision (''Decision'') denying the application on January 10, 1979, basing that Decision on his conclusions that Applicant's forecast of demand for the output of the proposed facility was not accurate, wherefore the Applicant had not justified the need for the projected facility; and

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

MINNESOTA CABLE

COMMUNICATIONS BOARD

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA CABLE COMMUNICATIONS BOARD GOVERNING DEFINITIONS, CLASSIFICATION OF SYSTEMS, FRANCHISE STANDARDS, TRANSFER OF OWNERSHIP, INITIAL AND RENEWAL FRANCHISE PROCEDURES, LENGTH OF RENEWAL TERM, AND OTHER NON-SUBSTANTIVE CHANGES INCLUDING THE DELETION OF REDUNDANT RULES, THE ADDITION OF CLARIFYING LANGUAGE AND THE REORDERING AND RENUMBERING OF RULES

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Joanne E. Hinderaker, do hereby declare that I have examined the above-captioned 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.

Joanne E. Hinderaker

JOANNE E. HINDERAKER
Special Assistant
Attorney General

Dated: 4/29/80

#17

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA CABLE COMMUNICATIONS BOARD

IN THE MATTER OF THE PROPOSED)
AMENDMENT AND ADOPTION OF RULES) ORDER OF THE
OF THE CABLE COMMUNICATIONS) CHIEF HEARING EXAMINER
BOARD.)

incorporation by reference

WHEREAS, on January 16, 1980, the Minnesota Cable Communications Board (hereinafter "Board") submitted a request to the Chief Hearing Examiner for approval of the incorporation by reference of Subpart K of part 76 of the Rules and Regulations of the Federal Communication Commission Relating to Cable Communications Systems;

WHEREAS, pursuant to Minnesota Statutes, 1978, § 15.0412, subdivision 4, agencies may incorporate by reference provisions of federal law or rule or other materials from sources which the Chief Hearing Examiner determines are conveniently available for viewing, copying and acquisition by interested persons; and

WHEREAS, the Chief Hearing Examiner has reviewed Subpart K of part 76 of the Rules and Regulations of the Federal Communication Commission Relating to Cable Communications Systems and has found it to exceed 3,000 words in length and that it is conveniently available for viewing, copying and aquisition by interested persons.

NOW, THEREFORE, IT IS ORDERED that the Board shall have the approval of the Chief Hearing Examiner to incorporate by reference in their proposed rules the above-referenced rule.

Dated this 18th day
of January, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

CCB-80-001-NG

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 definitions, classification of systems, franchise standards, transfer of ownership, initial and renewal franchise procedures, length of renewal term, and other non-substantive changes including the deletion of redundant rules, the addition of clarifying language and the reordering and renumbering of rules.

ORDER OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on January 16, 1980 before Natalie Gaull, 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 March 6, 1980 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 9 MCAR § 2.110; 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 Order, 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 28TH day of
April, 1980.

DUANE R. HARVES
Chief Hearing Examiner

BY: GEORGE A. BECK
Hearing Examiner

APR 28 1980
STATE OF
CABLE COMMUNICATIONS BOARD

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE CABLE COMMUNICATIONS BOARD GOVERNING DEFINITIONS, CLASSIFICATION OF SYSTEMS, FRANCHISE STANDARDS, TRANSFER OF OWNERSHIP, INITIAL AND RENEWAL FRANCHISE PROCEDURES, LENGTH OF RENEWAL TERM, AND OTHER NON- SUBSTANTIVE CHANGES INCLUDING THE DELETION OF REDUNDANT RULES, THE ADDITION OF CLARIFYING LANGUAGE AND THE REORDERING AND RENUMBERING OF RULES

AFFIDAVIT OF MAILING

Michael Perry, being first duly sworn deposes and says:

That on the 13th day of December, 1979, 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.

FURTHER YOUR AFFIANT SAYETH NOT

Michael Perry

Michael Perry
Chief
Central Mailing Section

Subscribed and sworn to before me
this 13 day of December, 1979

Linda M. Lunzer

LINDA M. LUNZER
NOTARY PUBLIC – MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES OCT. 13, 1984

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE CABLE COMMUNICATIONS BOARD GOVERNING DEFINITIONS, CLASSIFICATION OF SYSTEMS, FRANCHISE STANDARDS, TRANSFER OF OWNERSHIP, INITIAL AND RENEWAL FRANCHISE PROCEDURES, LENGTH OF RENEWAL TERM, AND OTHER NON-SUBSTANTIVE CHANGES INCLUDING THE DELETION OF REDUNDANT RULES, THE ADDITION OF CLARIFYING LANGUAGE AND THE REORDERING AND RENUMBERING OF RULES

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

C. GREGORY PETERSON, being duly sworn on oath deposes and says:

1) That he is an employee of the Minnesota Department of Administration and the Administrative Assistant for the Minnesota Cable Communications Board.

2) That on the 30th day of November, 1979, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. § 15.0412.

3) That on the 30th day of November, 1979, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

FURTHER AFFIANT SAYETH NOT.

C. Gregory Peterson

C. Gregory Peterson
Administrative Assistant
Minnesota Cable Communications Board

Subscribed and sworn to before me
this 13th day of December, 1979

Linda M. Lunzer

LINDA M. LUNZER
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES OCT. 13, 1984

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES OF THE CABLE
COMMUNICATIONS BOARD GOVERNING
DEFINITIONS, CLASSIFICATION OF
SYSTEMS, FRANCHISE STANDARDS,
TRANSFER OF OWNERSHIP, INITIAL
AND RENEWAL FRANCHISE PROCEDURES,
LENGTH OF RENEWAL TERM, AND
OTHER NON-SUBSTANTIVE CHANGES
INCLUDING THE DELETION OF
REDUNDANT RULES, THE ADDITION OF
CLARIFYING LANGUAGE AND THE
REORDERING AND RENUMBERING OF RULES

I hereby certify that the attached 331 labels & 4 sheet(s) constitute the complete list of persons, associations, and other interested groups who, as of 1:50 o'clock P.m., this 30th day of November, 1979, have requested, pursuant to Minn. Stat. § 15.0412 subd. 4 (1978), that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Joan Anderson Growe

By Kathy Kjelson

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

CABLE COMMUNICATIONS BOARD

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE CABLE COMMUNICATIONS BOARD GOVERNING DEFINITIONS, CLASSIFICATION OF SYSTEMS, FRANCHISE STANDARDS, TRANSFER OF OWNERSHIP, INITIAL AND RENEWAL FRANCHISE PROCEDURES, LENGTH OF RENEWAL TERM, AND OTHER NON-SUBSTANTIVE CHANGES INCLUDING THE DELETION OF REDUNDANT RULES, THE ADDITION OF CLARIFYING LANGUAGE AND THE REORDERING AND RENUMBERING OF RULES

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the conference room of the Cable Communications Board offices at 500 Rice Street, Saint Paul, Minnesota 55103, on January 16, 1980, commencing at 9:00 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.

W. D. Donaldson
Executive Director

Date: November 7, 1979

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

CABLE COMMUNICATIONS BOARD

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE CABLE COMMUNICATIONS BOARD GOVERNING DEFINITIONS, CLASSIFICATION OF SYSTEMS, FRANCHISE STANDARDS, TRANSFER OF OWNERSHIP, INITIAL AND RENEWAL FRANCHISE PROCEDURES, LENGTH OF RENEWAL TERM, AND OTHER NON-SUBSTANTIVE CHANGES INCLUDING THE DELETION OF REDUNDANT RULES, THE ADDITION OF CLARIFYING LANGUAGE AND THE REORDERING AND RENUMBERING OF RULES

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, in the Conference Room adjacent to Minnesota Cable Communications Board offices at 500 Rice Street, Saint Paul, Minnesota 55103, on January 16, 1980, commencing at 9:00 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/or written materials may be submitted at the hearing or by mail to Natalie Gaull, Office of Hearing Examiners, 1745 University Avenue, Room 300, Saint Paul, Minnesota 55104, (612) 296-8114, either before the hearing, or within 5 working days after the close of the hearing. The Hearing Examiner may extend the time for receipt of written comments for a period not to exceed 20 calendar days.

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

I. Renumbering and Reordering

Upon completion of the Rules Hearing process and adoption of proposed rules, the following renumbering and reordering will be effective. All internal cites have been changed to reflect the proposed renumbering and reordering. For purposes of this Notice, existing cites and chapter titles are stricken; proposed cites and chapter titles are underlined (e.g. Chapter ~~Four teen~~ Six). Those cites and chapter titles that are neither stricken nor underlined will remain in existing form.

Existing Chapter	MCAR Cite	Renumbered to		Chapter Title
1	4.001-4.025			Practice and Procedure General
2	4.026-4.045			Board Meetings
3	4.046-4.060			Rule Making
4	4.061-4.085			Rules for Contested Cases
5	4.086-4.091			Delegations of Authority
		New Chapter	MCAR Cite	
14	4.201-4.210	6	4.092-4.093	Reports to Board
15	4.211-4.220	7	4.094-4.099	Board Billings
11	4.156-4.165	8	4.100-4.104	Ownership and Control
10	4.141-4.147	9	4.105-4.119	Discrimination Prohibited
17	4.237-4.255	10	4.120-4.129	Poles, Ducts and Conduits
16	4.221-4.236	11	4.130-4.139	Cable Service Territories
7	4.111-4.120	12	4.140-4.149	Existing Title: Franchising and Franchise Renewal Procedures Revised Title: Franchising, Franchise Renewal and Franchise Amendment Procedure
9	4.131-4.140	13	4.150-4.159	Existing Title: Transfer of Ownership, Renewal, or Amendment of Franchise Revised Title: Sale or Transfer of a Franchise, Sale or Transfer of Stock
8	4.121-4.130	14	4.200-4.209	Franchise Standards
6	4.096-4.110	15	4.210-4.219	Certificates of Confirmation
12	4.166-4.190	16	4.220-4.229	Interconnection
13	4.191-4.200	17	4.230-4.239	Obscenity and Defamation.

II. Non-substantive Rulemaking Changes

The following non-substantive changes have been approved by the Board for Public Hearing:

4.004 Amend by adding phrase "by law, rule or"

4.005 Amend by adding "referred to a Hearing Examiner pursuant to Chapter Four"

4.006 Amend by making uniform all references to the Administrative Procedures Act (Minn. Stat. Chapter 15)

4.007 Amend by adding phrase "unless otherwise provided for by law or rule"

4.031 Amend by changing 3 days to 5 days to conform with section 4.034

4.046 Amend by adding "and Hearing Examiners rules and regulations"

4.097* Special Certificates of Confirmation - Amend by deleting

4.098* Interim Certificates of Confirmation - Amend by deleting

* All internal references to Interim and Special Certificates have been deleted except those references that still have force and effect on existing special and interim certificates.

III. Substantive Changes

A. Chapter 1 Practices and Procedure General

1. 4.002 E. "Franchise Area" - Amend by adding a definition of franchise area so that all references to the area served by the franchise are uniform.

2. ~~4.002-E.~~ 4.002 F. "Franchising Authority" - Amend by clarifying references to joint powers situations.

3. 4.008 Practice before the Board. Amend by deleting.

4. 4.009 Notice to authorized representatives. Amend by deleting.

5. ~~4.010~~ 4.008 Censure or suspension of persons appearing before the Board. Amend by deleting phrase "as lacking in professional integrity"

6. ~~4.011~~ 4.009 Form of papers filed with the Board. Amend by deleting.

B. Chapter ~~Fourteen~~ Six Reports to Board.

~~4.201~~ 4.092 - Amend by deleting requirement that FCC Form 326 "Cable Television Annual Financial Report" be filed with the Minnesota Cable Communications Board.

C. ~~Chapter Seven Franchising and Franchise Renewal Procedures.~~ Chapter 12 Franchising, Franchise Renewal and Franchise Amendment Procedures.

Amend by deleting 4 MCAR 4.111 and 4.112 of the existing title and retitling. Substantive changes made in existing title detailed

below. Where language has been added to that in the existing title, the cite of the proposed rule wherein that change occurs is listed in parenthesis.

Amend by adding § 4.140. Requiring any municipality served by a cable company, as defined in 4 MCAR 4.002 B., to issue a cable television franchise pursuant to procedures set by the Board. (Proposed § 4.140)

Initial Franchise ~~4.111~~, 4.141

4.111 A. Amend by deleting "except as provided in Minn. Stat. § 238.09, Subd. 3, 4, 5 and 9 (1976), and Rule of this Chapter." Amend by adding language exempting those systems granted franchises pursuant to the alternative initial franchising procedure (4 MCAR 4.113) from following 4 MCAR 4.111. (Proposed 4.140 A. 1.)

4.111 B. Amend by deleting "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." Amend by adding "with 4 MCAR 4.134 before the Needs Assessment is completed and the Invitations for Applications is issued." (Proposed 4.141 B.)

4.111 C. Amend by deleting requirement that franchising authority appoint an advisory body to prepare a needs assessment, requiring that the franchising authority or 2 or more individuals appointed by the franchising authority shall complete a Needs Assessment Report on cable communications for the proposed area to be served within the cable service territory. The individuals compiling the Report shall not be employed by or knowingly have any financial interest in any cable communications company bidding on such franchise, or their subsidiaries, and major equipment or program suppliers. Amend by allowing the Report to be a joint undertaking of two or more municipalities in a joint powers agreement if participation condition is satisfied. (Proposed 4.141 C.)

Amend by deleting requirement that an advisory body make a report to the franchising authority, and deleting all other references to advisory body appearing herein.

4.111 E. 6. Amend by deleting "franchising authority" and adding "area requested to be served in the Invitation for Applications." (Proposed 4.141 D. 4. a.)

4.111 G. Amend by deleting requirement that franchising authority submit franchise within 10 days after the ordinance takes effect.

Amend by adding a provision dealing with issuance of cable franchise(s) pursuant to a joint powers agreement. (Proposed 4.141 F.)

Franchise Renewal ~~4.113~~ 4.143

4.112 A. Amend by adding "Upon renewal of a cable communications franchise, the franchise shall obtain a renewal of its certificate of confirmation pursuant to 4 MCAR § 4.103." (Proposed 4.143 A.)

4.112 B.1. Amend by deleting the requirement that an advisory body appointed by the franchising authority complete a report appraising the company's performance. Amend by allowing the franchising authority to conduct the study as required under this rule as it so chooses. Persons employed by or having a financial interest in any cable communications company presently holding the franchise or bidding on the franchise, or their subsidiaries, and major equipment or program suppliers are prohibited from compiling the report. (Proposed § 4.143 B.)

Amend by exempting those franchisees meeting the criteria set forth in 4 MCAR ~~4.113 F.~~ 4.142 F. (Alternative initial franchising procedure) from the renewal report requirement. Amend by allowing report to be a joint undertaking of two or more municipalities in a joint powers agreement if participation requirement is satisfied. (Proposed 4.143 B. 3.) Amend by deleting 4.112 B. 2.

4.112 C. Amend by requiring that the franchising authority commence re-negotiation at least one year prior to the expiration of the franchise. (Proposed 4.143 C.)

4.112 D. Amend by changing publication requirement from 30 to 15 days prior to hearing. (Proposed 4.143 D.)

4.112 E. Amend by allowing those franchising authorities seeking additional applicants and meeting the eligibility requirements of ~~4.113 F.~~ 4.142 F. to grant the franchise pursuant to the alternative initial franchising procedure of 4 MCAR § ~~4.113~~ 4.142. (Proposed 4.143 E.)

Alternative Initial Franchising ~~4.113~~ 4.142

Amend by adding a provision dealing with issuance of cable franchise(s) pursuant to a joint powers agreement. (Proposed 4.142 I.)

Amend by adding § 4.144 Franchise Amendments. Requires that the franchising authority act pursuant to local law pertaining to ordinance amendment procedures. Requires that the franchising authority file the amendments with the Board (Replaces the franchise amendment procedure in existing 4 MCAR 4.136 and 4.137).

D. ~~Chapter Nine. Transfer of Ownership, Renewal, Amendment of Franchise.~~ Chapter 13. Sale or Transfer of Ownership, Sale or Transfer of Stock.

Amend by deleting existing language. Retitle the Chapter "Sale or Transfer of a Franchise, Sale or Transfer of Stock."

Amend by deleting the concept of "Transfer of an entire legal ownership interest in a cable communications system" and adding the concept of "fundamental corporate change" followed by specific examples of fundamental corporate changes.

Amend by deleting the requirement for a public hearing for any corporate change, and by adding a requirement that the franchising authority be given the discretion of ordering a hearing for fundamental corporate changes.

Amend by deleting the requirement that notice for the hearing be given 30 days before the hearing and be published once each week for two successive weeks. Amend by adding a requirement that the notice for public hearing be published once at least fourteen days before the hearing.

Amend by deleting references to "municipality." Amend by adding the concept of "franchising authority."

Amend by adding the requirement that the franchising authority give written reply to the franchisee within 30 days of receipt of such request. Amend by adding the requirement that the franchising authority conduct a public hearing within 30 days of issuing determination that such hearing is necessary. Amend by deleting the procedure specified for a public hearing.

Amend by referring to local law procedure for scheduling a public hearing, or in cases where there is no applicable local law, specify an alternative procedure.

Amend by adding a procedure to be followed when a transfer of stock occurs that changes the controlling interest.

Amend by deleting 4 MCAR 4.134, Franchise Renewal.

Amend by deleting 4 MCAR 4.135, Appeals to the Board.

Amend by deleting 4 MCAR 4.136, Approval of Franchise Amendments.

E. Chapter ~~Eight~~ Fourteen. Franchise Standards. Amend by deleting existing language, and redrafting. Substantive changes made in the existing title are detailed below with reference to the existing citation. Where language has been added to that found in the existing title, the cite of the proposed rule wherein the change occurs is listed in parenthesis.

4.200-4.201 Adding following classification of systems based on location, population of franchise area, and number of subscribers served, and adding a transition for systems:

§ 4.200 Definitions. As used in these rules, the following classifications shall have the meaning given herein, unless a different meaning clearly appears in the test. (Proposed 4.200)

A. Class A Cable Systems. All systems that are located outside of the Twin City metropolitan area; and are located in a franchise area having a population of 4,000 or less persons and serving fewer than 1,000 subscribers.

B. Class B Cable Systems. All systems except those systems meet the criteria of the Class A system listed above, that are located outside of the Twin City metropolitan area; and are located in a franchise area having a population of less than 15,000 persons and serving fewer than 3,500 subscribers.

C. Class C Cable Systems. All systems that are located in the Twin City metropolitan area; or are located in a franchise area having a population of 15,000 or more persons or serving 3,500 or more subscribers.

§ 4.201 Reclassification of Systems.

A franchise shall be amended by the franchising authority when the number of subscribers served by the cable communications system in the franchise area changes so as to result in reclassification of the system pursuant to 4 MCAR § 4.200. Such amendments shall include provisions consistent with the requirements of that class of cable communications systems. (Proposed 4.201)

4.121 B. 2. Amend by changing the maximum duration of the renewal term from 10 to 15 years. (Proposed 4.202 D.)

4.121 B. 3. Amend by requiring that the renegotiation periods for a cable communications franchise commence at least one year prior to the end of a franchise term. (Proposed 4.202 E.)

4.121 C. Amend by exempting those cable owners conducting telemetering for the purpose of verifying system integrity from receiving written permission to transmit signals from the subscriber terminal. Amend by requiring that the cable company secure written permission to release any information gained about individuals through telemetering, whether or not written permission is required to gather such data under this rule. (Proposed 4.202 W.)

4.121 D. Amend by deleting the requirement that subscriber contracts not exceed 12 months in duration and deleting the word "residential" appearing in the first sentence. (Proposed 4.202 I.)

4.121 F. Amend by allowing the franchisee to provide a collect telephone in lieu of a toll free number for reception of subscriber complaints. Amend by deleting language setting forth a procedure to be used in the servicing of such complaints. (Proposed 4.202 Y.)

4.121 G. 1. Amend by deleting. (The criteria of population, number of subscribers and location determining that a system shall provide a minimum 20 channel capacity are set forth in the definition of a Class C cable system - Proposed 4.200 C.)

4.121 G. 2. Amend by deleting. (The criteria of population, number of subscribers and location determining that a system shall provide a minimum 12 channel capacity are set forth in the definitions Class A and Class B systems - Proposed 4.200 A. and B. above.)

4.121 H. 1. and 4.121 H. 2. Amend by deleting. (Criteria for these systems required to reserve one channel and those systems required to reserve four channels for use by the general public, local government, local educational authorities and commercial or noncommercial users are set forth in the definition of the Class B and C systems respectively - Proposed 4.200 B. and 4.200 C. The only substantive change in the present access provisions is that those systems

meeting the criteria of a Class A, proposed 4.200 A., will be required to reserve one channel for use by only educational authorities and local governments, or leased access users when not being used for governmental or educational purposes. See Proposed 4.202 DD. below.)

4.121 H. 1. a. and 4.121 H. 2. a. Amend by exempting franchisees providing subscribers only alarm system services or only data transmission services from the access requirements of these rules. (Proposed 4.202 DD., 4.203 A. 1., 4.204 A. 1., 4.204 A. 4.)

4.121 I. 1. Amend by deleting. (The criteria for those systems required to provide equipment for production of programming and playback of prerecorded programs pursuant to 4.121 I. a. are set forth in the definition of a Class C cable system, Proposed 4.200 C.)

4.121 I. 2. Amend by deleting. (The criteria for those systems required to provide equipment for playback of prerecorded programs and for recording at remote locations pursuant to 4.121 I. 2. a. are set forth in the definition of a Class B cable system, Proposed 4.200 B.)

4.121 J. Amend by clarifying that when an initial franchise is granted the franchisee shall provide the technical capacity for non-voice return communications. (Proposed 4.202 V.)

4.121 K. Amend by requiring franchisees and franchising authorities to conform to all state laws and rules regarding cable communications no later than one year after they become effective, unless otherwise stated, and to conform to all federal laws as they become effective. (Proposed 4.202 B.)

4.121 L. Amend by deleting. (Technical Standards of operation governed by Federal Communications Commission.)

4.121 N. Amend by granting only those franchising authorities collecting a franchise fee the authority to audit the franchisee's accounting and financial records, to require that the franchisee file with the authority annually reports of gross subscriber revenues. (Proposed 4.202 H.)

4.121 O. Amend by prohibiting the transfer or sale of stock so as to create a new controlling interest except at the approval of the franchising authority. (Proposed 4.202 G.)

4.121 P. Amend by requiring that upon termination of a franchise, the franchisee remove its wires, cables, etc. only upon the request of the franchising authority. (Proposed 4.202 BB.)

4.121 Q. Amend by deleting and replacing with a provision "that when a franchise or a cable system is offered for sale, the franchising authority shall have the right to purchase the system." (Proposed 4.202 CC.)

4.121 R. Amend by deleting 4.121 R. 1. and 4.121 R. 2.

4.121 S. Amend by allowing the franchisee to furnish a certificate of deposit or any other type of instrument approved by the franchising authority in lieu of a performance bond at the approval of the franchising authority. (Proposed 4.202 L.)

4.121 T. Amend by clarifying the construction provision applies only in cases of initial franchises. (Proposed 4.202 P.)

4.121 U., V., W., X., Y., Z. Amend by deleting. Amend by adding provisions that unless otherwise already provided for by local law the franchisee shall obtain a permit, comply with applicable codes, and negotiate a procedure for removal of wires, equipment when the franchising authority undertakes public improvements which affect such equipment. (Proposed 4.202 Q., R., S.)

4.121 BB. Amend by deleting. Amend by adding a provision requiring Class A cable communications systems, as defined in Proposed 4 MCAR 4.200 A. above to provide an access channel for use by local government and educational authorities only. During those hours when the channel is not in use by local government or local educational authorities, the franchisee shall lease time to commercial or non-commercial users on a first come, non-discriminatory basis if the demand for such time arises. The franchisee may also use this channel for local origination when not used for the above purposes. Requires franchisee establish rules pertaining to administration of this channel. (Proposed 4.202 DD.)

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, Saint Paul, Minnesota 55103. The Agency's authority to promulgate the proposed rules is contained in Minn. Stat. § § 238.05 and 238.06, subd. 1 (1978).

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 Hearing Examiners at a minimal charge.

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).

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. A lobbyist is defined in Minn. Stat. Section 10A.01, Subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

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.

Notice: The proposed rules are subject to change as a result of the Rules Hearing Process. The Agency, therefore, strongly urges those who are potentially affected in any manner by the substance of the proposed rules and/or rule amendments to participate in the rules hearing process.

W. D. Donaldson, Executive Director
MINNESOTA CABLE COMMUNICATIONS BOARD

Dated: November 7, 1979

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

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 12th day of October, 1979, 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 authorized, have already been approved for public hearing by the Board and are listed below by chapter and title.

Chapter	Title of Chapter
1	Practice and Procedure General
2	Board Meetings
3	Rulemaking
6	Certificate of Confirmation
7	Franchising and Franchise Renewal Procedures
8	Franchise Standards
9	Transfer of Ownership.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 12th day of October, 1979.

Gertrude Ulrich

Gertrude Ulrich, Chairman

Jerris J. Bagget

Attest by one [illegible]ber