

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Cable Communications Board

Adopted Rule Repealing Certain Restrictions on Interests in or Ownership, Operation, and Control of Cable Communications Systems

Rule as Adopted

4 MCAR S 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:

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

E. [Repealed.]

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Cable Communications Board

Rule Numbers: 4 MCAR S 4.100

Rule Title: Adopted Rule Repealing Certain Restrictions on Interests in or Ownership, Operation, and Control of Cable Communications Systems

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

APPROVED AS TO LEGALITY
Jan 4 1982
WARREN SPANNAUS, ATTORNEY GENERAL
BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

Name: Ann L Bateson
Ann L. Bateson

Title: Deputy Revisor

Phone: 296-1536

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 4 1982
Joan Anderson Growe
Secretary of State

2:50 P.M.

SF-00006-02

File

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : W. D. DONALDSON, Executive Director
Minnesota Cable Communications Board DATE: 1/4/82
ATTENTION: JERRY S. ANDERSON, Special Assistant Attorney General

FROM : TED A. MARTINEZ
Special Assistant
Attorney General PHONE: 296-0315

SUBJECT: ADOPTED RULE REPEALING CERTAIN RESTRICTIONS ON INTERESTS IN OR OWNERSHIP, OPERATION, AND CONTROL OF CABLE COMMUNICATIONS SYSTEMS

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. Please 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 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 to the rules in the approved set.

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

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

Our File No. 761

12/31

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 12-21-81
DATE FOR REVIEW ~~12-30-81~~ 1/2/82
DATE DUE ~~1-11-82~~

Adopted w/a hearing ✓
Adopted w/o hearing
Temporary rule

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved 1/4/82 Disapproved _____ Returned to Agency 1/4/82

Date filed w/Secretary of State 1/4/82 Revisor approved 12/22/81 disapproved

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✓ Rule as Adopted

✓ Rule as Proposed See rule as published & as mailed

✓ Order Adopting 12.11.81 Date

✓ Notice of Intent to Solicit Outside Opinion 7/28/80 — 9/22/80

✓ Order for rulemaking
9.29.81 date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
✓ 8.28.81 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

✓ Publications in State Register
8.17.81 At least 30/~~20~~ days prior to hearing/~~adoption~~
9.7.81 – correction of location of hrg.

✓ Hearing Examiner's Report

NA Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

NA Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

✓ Petition for Adoption of a Rule

_____ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ ~~N/A~~ Notice of Submission to the Attorney General 12/31 Corres. Re Rule Revision was requested to send

Rule as Adopted

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:

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 the newspaper, or~~

OFFICE OF THE REVISOR OF STATUTES
Disapproval of Form of Rules

X The form of the attached rules is not approved. The revisor requests the changes described below before the rules will be approved.

Page 1, lines 5 and 8, delete the last stricken comma and insert a stricken semicolon

Page 1, line 8, after "served" insert "~~by~~"

The same result could be accomplished by preparing a stripped copy of the rule as proposed which notes that E. has been repealed.

Steven C. Cross
Revisor of Statutes

Name: Ann L. Bateson
Ann L. Bateson

Title: Deputy Revisor

Phone: 296-1536

____ The changes requested by the revisor are approved by the agency.

____ The changes requested by the revisor are not approved by the agency

Agency's Representative

____ The attorney general agrees that the changes requested by the revisor are form changes, not substantive changes.

Assistant Attorney General

Rule as Adopted

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:

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 the newspaper; or

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Rule of
the Cable Communications Board Repealing
Certain Restrictions on Interests in or
Ownership, Operation, and Control of
Cable Communications Systems

ORDER ADOPTING
RULE

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson on the 29th day of September, 1981, at 9:00 A.M., in Conference Room D of the Veterans Service Building, Saint Paul, Minnesota, after proper notice required by Minnesota Statutes section 15.0412 was served upon all persons, associations, and other interested groups registered with the Cable Communications Board and the Department of Administration for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rule,

NOW, THEREFORE, IT IS ORDERED that the rule identified as Repealing Certain Restrictions on Interests in or Ownership, Operation and Control of Cable Communications Systems, 4 MCAR § 4.100 E., is adopted this 11th day of December, 1981, pursuant to authority vested in us by Minnesota Statutes section 238.05 and § 238.06.

STATE OF MINNESOTA

Rochelle Lambert

VICE CHAIRMAN OF
CABLE COMMUNICATIONS BOARD

STATE REGISTER

OFFICIAL NOTICES

STATE OF MINNESOTA

July 28, 1980

5 S.R. 131

FILE Petitions
FOLDER MN Broad - Cable Assn.

PETITIONS PERTAINING TO NEWSPAPER AND BROADCASTING STATION CROSS-OWNERSHIP OF CABLE COMMUNICATIONS SYSTEMS

Department of Administration
Cable Communications Board

Notice of Solicitation of Outside Opinion Regarding A Petition from the Minnesota Broadcasters Association for Amendment and Repeal of Rules Governing Broadcast Station Ownership of Cable Communications Systems

Notice is hereby given that outside opinion in the above-entitled matter is being solicited by the Minnesota Cable Communications Board pursuant to 4 MCAR § 4.006 of the board rules.

The board will conduct public hearings concerning the petition during its regular meetings on August 8, 1980 and on September 12, 1980. Both meetings are scheduled to convene at 9 a.m., 500 Rice Street (at University Ave.), St. Paul.

Written comments may be submitted to the board at 500 Rice Street, St. Paul, MN 55103.

All interested or affected persons will have an opportunity to participate.

The Minnesota Broadcasters Association is petitioning the board for amendment of 4 MCAR § 4.100 A. (underlining indicates petitioner's proposed additions to existing rule language, and ~~strike-outs~~ indicate petitioner's proposed deletions from existing rule language):

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~~ which is prohibited from cross-ownership pursuant to the Federal Communications Commission's rules and regulations~~, overlaps in whole or in part the service area within the system is serving subscribers~~); or

and for repeal of 4 MCAR § 4.100 F:

4 MCAR § 4.100 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).~~

Notice of Solicitation of Outside Opinion Regarding a Petition from the Minnesota Newspaper Association for Repeal of Rules Governing Newspaper Ownership of Cable Communications Systems

Notice is hereby given that outside opinion in the above-entitled matter is being solicited by the Minnesota Cable Communications Board pursuant to 4 MCAR § 4.006 of the board rules.

The board will conduct public hearings concerning the petition during its regular meetings on August 8, 1980 and on September 12, 1980. Both meetings are scheduled to convene at 9 a.m., 500 Rice Street (at University Ave.), St. Paul.

Written comments may be submitted to the Board at 500 Rice Street, St. Paul, MN 55103.

All interested or affected persons will have an opportunity to participate.

The Minnesota Newspaper Association is petitioning the board for repeal of 4 MCAR § 4.100 E. (~~strike-outs~~ indicate petitioner's proposed deletions from existing rule language):

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:

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

FOR FURTHER INFORMATION AND COPIES OF THE PETITIONS, contact

Robert Zeller
Cable Communications Board
State of Minnesota
Department of Administration
500 Rice Street
Saint Paul, Minnesota 55103
(612) 296-6619

REPRINT FROM

STATE REGISTER

September 22, 1980

5 SR 470

STATE OF MINNESOTA

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.

Solicitation of Public Comments on Petitions Pertaining to Newspaper and Broadcasting Station Cross-ownership of Cable Communications Systems by October 17, 1980

Department of Administration
Cable Communications Board

Notice of Solicitation of Public Comments Regarding a Petition from the Minnesota Broadcasters Association for Amendment and Repeal of Rules Governing Broadcast Station Ownership of Cable Communications Systems

Notice is hereby given that public comments in the above-entitled matter are being solicited by the Minnesota Cable Communications Board pursuant to 4 MCAR § 4.006 of the board rules.

The board will conduct public hearings concerning the petition during its regular meeting on October 17, 1980. The meeting is scheduled to convene at 9 a.m., 500 Rice Street (at University Avenue), St. Paul.

Written comments may be submitted to the board at 500 Rice Street, St. Paul, Minnesota 55103.

All interested or affected persons will have an opportunity to be heard.

The Minnesota Broadcasters Association is petitioning the board for amendment of 4 MCAR § 4.100 A. (underlining indicates petitioner's proposed additions to existing rule language, and ~~strike outs~~ indicate petitioner's proposed deletions from existing rule language):

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~~ which is prohibited from cross-ownership pursuant to the Federal Communications Commission's rules and regulations~~, overlaps in whole or in part the service area within the system is serving subscribers~~); or

and for repeal of 4 MCAR § 4.100 F:

~~**4 MCAR § 4.100 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).**~~

Notice of Solicitation of Public Comments Regarding a Petition from the Minnesota Newspaper Association for Repeal of Rules Governing Newspaper Ownership of Cable Communications Systems

Notice is hereby given that public comments in the above-entitled matter are being solicited by the Minnesota Cable Communications Board pursuant to 4 MCAR § 4.006 of the board rules.

The board will conduct public hearings concerning the petition during its regular meeting on October 17, 1980. The meeting is scheduled to convene at 9 a.m., 500 Rice Street (at University), St. Paul.

Written comments may be submitted to the Board at 500 Rice Street, St. Paul, Minnesota 55103.

All interested or affected persons will have an opportunity to be heard.

The Minnesota Newspaper Association is petitioning the board for repeal of 4 MCAR § 4.100 E. (~~strike outs~~ indicate petitioner's proposed deletions from existing rule language):

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:

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

FOR FURTHER INFORMATION

AND COPIES OF THE

PETITIONS, contact:

Robert Zeller, Staff
Cable Communications Board
State of Minnesota
Department of Administration
500 Rice Street
St. Paul, Minnesota 55103
(612) 296-6619

Board Ex 2

RECEIVED
SEP 4 1981
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

CABLE COMMUNICATIONS BOARD

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE CABLE COMMUNICATIONS BOARD GOVERNING CROSS-OWNERSHIP OF CABLE COMMUNICATIONS SYSTEMS BY NEWSPAPERS AND BROADCASTING STATIONS

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 office at 500 Rice Street, Saint Paul, Minnesota 55103, on September 29, 1981, 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: July 28, 1981

Board Ex 3

Certificate of Board's

RECEIVED
SEP 4 1981
ADMINISTRATIVE
HEARINGS

AUTHORIZING RESOLUTION

I, Jack W. Carlson, do hereby certify that I am a member of the Minnesota Cable Communications Board, a board duly authorized under the laws of the State of Minnesota, and the Acting Chairman at the meeting of the Board held on the 13th day of February 1981 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 13th day of February, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

PROPOSED RESOLUTION

RESOLVED, that the Executive Director of the Minnesota Cable Communications Board, be and hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board governing the ownership of cable communications systems by newspapers (4 MCAR § 4.100 E) and by radio and television broadcasting stations (4 MCAR § 4.100 F), as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribe my name this 13th, day of March, 1981.

Jack W. Carlson
(Officer of the Board)

Charles A. Green
Attest by one other Board member

~~Board Ex 4~~
Notice As Mailed

The attached notice indicated that this hearing will take place at 500 Rice Street. Due to a scheduling conflict, the public hearing will take place in Conference Room D, Fifth Floor, Veterans Service Building, 20 W. 12th Street at Columbus Avenue in the Saint Paul Capitol Complex. The date and time remain the same: 9:00 a.m. on September 29, 1981 and continuing until all persons have had the opportunity to be heard.

RECEIVED
SEP 1 1981
ADMINISTRATIVE
HEARINGS

Board Ex 5

RECEIVED
SEP 4 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

MINNESOTA CABLE COMMUNICATIONS BOARD

In the Matter of the Proposed Repeal of Rules of the Minnesota Cable Communications Board Governing Cross-Ownership of Cable Communications Systems by Newspapers and Broadcasting Stations

Affidavit of Mailing

STATE OF MINNESOTA)
)SS.
COUNTY OF RAMSEY)

C. Gregory Peterson, Administrative Assistant to the Minnesota Cable Communications Board, being sworn, says:

That on the 28 day of August, 1981, 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 copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Cable Communications Board for the purpose of receiving notice of the proposed adoption of rules by this Board.

C Gregory Peterson

Subscribed and sworn to before me this 28th day of August, 1981.

Margaret M Hansen

Notary Public

MARGARET M. HANSEN
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires April 15, 1985

...IVED
OCT 9 1981
ADMINISTRATIVE
...HINGS

In the Matter of Proposed Rules of the Minnesota Cable Communications Board Repealing Certain Restrictions on Interests in or Ownership, Operation and Control of Cable Communications Systems

AFFIDAVIT

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

C. Gregory Peterson, being first duly sworn deposes and says:

That the list of persons, associations, and other interested groups who had requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the State Cable Communications Board (MCCB) for the purpose of receiving notice of the proposed adoption of rules by this Board was accurate and complete as of 10:00 A.M., ~~this~~ on the 27th day of August, 1981.

C. Gregory Peterson

Subscribed and sworn to before me
this 2 day of Oct, 1981.

Judith V. Wehrwein
Notary Public

JUDITH V. WEHRWEIN
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My commission expires Feb. 24, 1988

Notice as Published with notice of room change
RECEIVED
SEP 4 1981
ADMINISTRATIVE HEARINGS

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

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 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Administration
Cable Communications Board

Proposed Rule Repealing Certain Restrictions on Interests in or Ownership, Operation, and Control of Cable Communications Systems

Notice of Hearing

Notice is hereby given that a public hearing on the above captioned matter will be held at Cable Communications Building, 500 Rice Street, Saint Paul, MN. commencing at 9:00 a.m. on September 29, 1981, and continuing until all persons have had an opportunity to be heard.

One free copy of these proposed rules may be obtained by writing the Cable Communications Board, 500 Rice Street, St. Paul, Minnesota 55103. Additional copies of these proposed rules will be distributed at the September 29th hearing.

The statutory authority of the board to adopt these rules is provided in Minn. Stat. § 238.01 and in Minn. Stat. § 238.05, Subd. 11 (1980).

Notice: The proposed rule amendments may be modified as the result of the hearing process. The board therefore strongly urges those who are potentially affected in any manner by the proposed rule amendments to participate in the hearing process.

All interested or affected persons will have an opportunity to participate concerning the proposed rule amendments appearing below. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearings, written statements or material may be submitted to Hearing Examiner Peter C. Erickson, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearings or within five (5) working days prior to the close of the hearing, unless the Hearing Examiner orders at the hearing that the record will remain open for a longer period not to exceed twenty (20) calendar days. All such statements will be entered into and become part of the record. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, in order to save time and avoid duplication, it is suggested that those persons, organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearings shall be governed by the rules of the Office of Administrative Hearings, Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). Questions relating to procedures may be directed to Hearing Examiner Peter C. Erickson.

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 Administrative Hearings. This Statement of Need and Reasonableness will include a summary

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

of all the evidence and argument which the board anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings 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 board 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 board. 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 board (in the case of the board's submission or resubmission to the Attorney General).

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) 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.

Rochelle Barnhart
Vice-Chairman

Rule as Proposed

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:

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.~~

Energy Agency
Data and Analysis Division

Proposed Rules Relating to Reducing Demand and Increasing Supply of Petroleum Products During an Energy Supply Emergency

Notice of Postponement and Rescheduling of Hearings

Notice is hereby given that the public hearings on the above encaptioned proposed rules which were originally noticed in 5 S.R. 2110 (*State Register*, Monday, June 29, 1981) and scheduled to be held on August 18, 1981, in Grand Rapids, Minnesota, August 20, 1981, in Mankato, Minnesota, and August 24, 1981, in St. Paul, Minnesota, have been postponed and rescheduled. The hearings have been rescheduled and relocated to the following locations on the dates indicated, commencing at the times listed and continuing until all persons representing themselves or associations or other interested groups have had an opportunity to be heard concerning the adoption of the proposed rules.

Room 202 Mullins Hall, Itasca Community College, 1851 East Highway 169, Grand Rapids, Minnesota. September 29, 1981; 2:00 p.m. and 7:00 p.m.

Emergency Operations Center Room, Law Enforcement Center, 710 South Front Street, Mankato, Minnesota; October 1, 1981; 1:00 p.m. and 7:00 p.m.

Room G-15, State Capitol Building, St. Paul, Minnesota; October 5, 1981; 9:30 a.m. and 7:00 p.m.

Board Ex 7-D

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

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 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Administration
Cable Communications Board

Proposed Rule Repealing Certain Restrictions on Interests in or Ownership, Operation, and Control of Cable Communications Systems

Notice of Room Change

A notice appeared in the August 17, 1981 *State Register* on page 185 indicating that the above captioned matter will be held at 500 Rice Street. Due to a scheduling conflict, the public hearing will take place in Conference Room D, Fifth Floor, Veterans Service Building, 20 W. 12th Street at Columbus Avenue in the Saint Paul Capitol Complex. The date and time remain the same: 9:00 a.m. on September 29, 1981 and continuing until all persons have had the opportunity to be heard.

State Board of Education
Department of Education
Instruction Division

Proposed Rules Governing Minimum Clock Hour Requirements for Junior High Science

Notice of Hearing

A public hearing concerning the proposed rule will be held at the Capitol Square Building (Room 716B), 550 Cedar Street, St. Paul, Minnesota 55101 on October 12, 1981, commencing at 9:00 a.m. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing all interested or affected persons will have an opportunity to ask questions and make comments. Statements will be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Richard C. Luis, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8114 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

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 Administrative Hearings. The statement of need and reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

MINNESOTA CABLE
COMMUNICATIONS BOARD

OCT 29 1981

CCB-82-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CABLE COMMUNICATIONS BOARD

In the Matter of Proposed Rules of the Minnesota Cable Communications Board Repealing Certain Restrictions on Interests in or Ownership, Operation and Control of Cable Communications Systems.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Administrative Hearings at 9:00 a.m. on Tuesday, September 29, 1981, in Conference Room D, Fifth Floor, Veterans Service Building, Saint Paul, Minnesota.

Jerry Anderson, Special Assistant Attorney General, appeared as counsel on behalf of the Cable Communications Board. Members of the Board present at the hearing were: W. D. Donaldson, Executive Director; Robert Zeller, Staff Member; and Greg Peterson, Administrative Assistant. The hearing continued until all interested groups or persons had had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4d and 4e (1980), this Report shall be available for review to all affected individuals upon request for at least five working days. Thereafter, the Cable Communications Board shall, if it proposes to adopt the rule as recommended herein, submit the rule, together with the complete hearing record to the Attorney General and shall be responsible for notifying persons who have indicated that they wish to be notified of such filing. If the Cable Communications Board makes changes in the rule other than those recommended herein, it shall submit the rule with the complete hearing record to the Chief Hearing Examiner for a review of the changes prior to submitting it to the Attorney General for review.

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

FINDINGS OF FACT

1. On July 30, 1981, the Cable Communications Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On August 17, 1981, a Notice of Hearing and a copy of the proposed rules were published at 6 State Register 185.

3. On August 28, 1981, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Cable Communications Board for the purpose of receiving such notice.

4. On September 4, 1981, the Board filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Board personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.
(g) An Affidavit of Additional Notice.
(h) All materials received following a Notice of Intent to Solicit Outside Opinion published at 5 State Register 131, July 28, 1980 and 5 State Register 470, September 22, 1980.
(i) The Petition requesting a rule hearing.

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. On September 7, 1981, a Notice of Room Change was published at 6 State Register 344.

6. The record remained open through October 6, 1981, for the receipt of written comments and statements, the period comprising five working days. No one at the hearing requested that the record be left open for a longer period of time after a specific solicitation of such requests by the Hearing Examiner.

7. Statutory authority for the proposed rule amendments is contained in Minn. Stat. §§ 238.01 and 238.05, subd. 4 (1980).

8. The proposed amendment to 4 MCAR § 4.100, CERTAIN OWNERSHIP PROHIBITED, consists of the repeal of sections E and F. The rule currently reads as follows:

> 4 MCAR § 4.100 Certain ownership prohibited. None of the following shall directly or indirectly own, operate, control or have legal or equitable interest in a cable communications system;
>
> E. A publisher and/or owner of a newspaper company within the primary market area, as defined by the Audit Bureau of Circulation, served by the newspaper.
>
> 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 proposed repealer is the result of petitions submitted by the Minnesota Newspaper Association (MNA) and the Minnesota Broadcasters Association (MBA) in May and July of 1980, respectively. Following the submission of these petitions, the Board sought outside opinion and conducted public hearings on August 8, September 12, and October 17, 1980, for the purpose of receiving oral testimony. Copies of the notices of intent to solicit outside opinion were mailed to various parties including all operating cable communication companies in Minnesota potentially interested in commenting on the petitions. The Board received additional written comments including newspaper accounts concerning the petitions from a wide range of sources.

On December 8, 1980, the staff of the Minnesota Cable Communications Board submitted an extensive report with recommendations to the Board. This report,

submitted by Robert Zeller, addressed the proposed repeal of 4 MCAR § 4.100 E. and F. With regard to the MNA's petition for repeal of 4 MCAR § 4.100 E., the staff recommended that the Board deny the petition. This recommendation was based on the expressed findings of the staff that the MNA had failed to meet the burden of proof for establishing compelling reasons for repeal of the existing rule. The staff was unpersuaded by petitioner's claims that the introduction of new cable communications technology into the present mass media markeplace would drain advertisers from local newspapers or that current prohibitions within the present rule violate the First Amendment prohibition against abridgment of free expression.

However, the staff did recommend granting the MBA's petition to repeal 4 MCAR § 4.100 F. The staff found that the present rule, as written, may fail to meet a test of need and reasonableness. The staff recommended rewriting the rule to provide uniformity throughout the state of Minnesota rather than continue discrimination against metropolitan broadcasters.

Following this staff recommendation, the MNA filed a response to the staff report with the Board on December 26, 1980. The staff then filed a counter-response upholding their earlier recommendations on January 3, 1980. The Board, after reviewing all of the testimony, written comments and reports, concluded that the proposed amendments to 4 MCAR § 4.100 E. and F. were both needed and reasonable. The repeal of those sections was then officially proposed by the Board, published in the State Register, and this hearing convened.

9. The MNA and the MBA strongly advocated the proposed repeal of 4 MCAR § 4.100 E. and F., respectively. Private citizens and citizens groups, including the Neighborhood Press Association, the Committee for Open Media, the Minnesota Council of Churches, and the St. Paul League of Women Voters commented in opposition to the proposed amendments.

A. Patricia A. Hirl, registered lobbyist for the MNA, commented in support of repealing 4 MCAR § 4.100 E. as follows:

> It is possible that one voice with community news will be silenced during this generation. It will be the community newspaper. Cable communications are capable of becoming highly competitive for the advertising dollar that keeps newspapers sending reporters to the city council meetings. When newspapers become economically impossible, only the local broadcasters and cable systems will remain. Publishers who wish to continue to invest their capital in the delivery of local news will have been forced to invest in cable systems outside the communities they have come to know so well. A multi-city or multi-national corporation could become the owner of the only information system that covers local news.
>
> In a city that has chosen public ownership of its cable system it is possible that one day the only source of news about city government will be city government.
>
> In any time of technological change, there are bound to be economic dislocations. It is appropriate that government be aware of these dislocations and the impact they will have on local communities. It is not appropriate however, for government to foreclose one industry from rechanneling its resources into new fields without a careful examination of the circumstances of each community and the current state of each industry. To find all publishers "guilty" before such examination is to deny them equal protection of the law

guaranteed them in the constitutions of the State of Minnesota and the United States.

The Minnesota Newspaper Association urges that 4 MCAR § 4.100 E. be repealed and that local communities be allowed to examine all proposals for cable television and then decide which will be in the public interest.

Robert Shaw, Manager of the MNA, and James L. Vance, Publisher of the Worthington Globe, Worthington, Minnesota, stated that repeal of the current rule would increase competition and make new technology available to local newspapers. Mr. Vance stated:

We do not want to be prevented by Board rules from utilizing the technology of cable for producing and distributing our newspaper should facsimile technology ever become economically feasible. Under subparagraph E. of 4 MCAR § 4.100, we are prohibited from having even a minority interest in a cable communications system in the community of Worthington for this purpose. At the same time, there is no prohibition against a giant newspaper chain from coming into Worthington and being awarded the cable franchise for the community.

Is there really significant danger for the publisher of a small daily newspaper buying into the cable system in his own community, particularly when the purpose for that investment is to protect his newspaper's access to new technology in the future?

Is there not far greater danger in the way cable systems now are being developed, usually by huge, distant cable corporations, many of which own cable systems in a large number of cities across the country?

Tomorrow, it could be very important to the Daily Globe and its 42 employees to be able to distribute their product via cable facsimile. These members of the Globe's news, advertising and production staffs have invested their lives in becoming print communications specialists. Should a capricious and unfair bureaucratic rule pose possible jeopardy to their future livelihood? Of course, it shouldn't. The rule should be changed.

Thomas S. Deans, registered lobbyist for the MBA, commented in support of the proposed repeal of 4 MCAR § 4.100 F. as follows:

The present rule is unnecessary as no abuse has been shown.

The present rule is not necessary in terms of the public interest because the co-location issue is already taken care of by the Board's other rules and by the FCC regulations.

The Board's present rule discriminates without reason against metropolitan television stations in favor of outstate television stations.

The present rule, without reason, discriminates against metropolitan television stations in favor of out-of-state television stations.

The present rule goes far beyond the FCC requirements which govern ownership of cable systems in the remainder of the country. This is general discrimination by a Minnesota governmental agency against Minnesota business.

The rule is also discriminatory against radio broadcast stations located within the metropolitan area when no other radio stations in the state or surrounding states are subject to such restrictions on ownership.

B. Beverly McKinnell, President of the St. Paul League of Women Voters, and Milda K. Hedblom, Professor of Media and Politics and Chairperson of the Department of Political Science at Augsburg College, commented in opposition to the repeal of 4 MCAR § 4.100 E. on the ground that it would lead to a concentration of media ownership. Professor Hedblom stated:

> If anything the present trend of development indicates that cable systems may become a significant channel for delivery of local/regional news and public affairs information, especially as a channel for facsimile delivery of newspaper content. In the future it is likely that newspaper owners will increasingly wish to control or own cable systems. Removal of the cross-ownership rule as it applies to a newspaper, would almost certainly produce significant increase media concentration in Minnesota. The rules, as they stand, were intended to foster diversity of ownership, not concentration, and that goal ought to remain central to the MCCB concept of regulations in the public interest. Some have argued that newspaper ownership of cable technology would represent a positive development helping to guarantee the future economic competitiveness and survival of many newspapers in the state, particularly the small newspaper. This argument implies that newspapers larger or smaller, operate closer to the economic margin than their profit and loss sheets indicate. It also implies erroneously we think, that access to cable systems for future newspaper delivery depends upon ownership.

Barry Casselman, Editor and Publisher of Many Corners, a monthly community newspaper, also commented in opposition to the repeal of section E., stating:

> The Neighborhood Press Association is an organization of neighborhood and community newspapers in Minneapolis and St. Paul. There are at present 38 such newspapers within the city limits of the two cities, with a combined readership of probably more than one million readers a month.
>
> The phenomenon of the neighborhood press is national in scope, but I believe that there is no equivalent, in quantity or extent of readership of the Twin Cities neighborhood press elsewhere in the United States.
>
> At its last meeting, the Neighborhood Press Association voted unanimously to oppose the rule changes proposed by the Minnesota Newspaper Association and the Minnesota Broadcasters Association.
>
> The members of the Neighborhood Press Association, in their discussion of this matter, did express sympathy with their anxieties and potential problems. If the Cable Board did revise the rules with care to permit small newspapers in small communities to own cable franchises, I do not think the members of the Neighborhood Press Association would object. I know I would not object. But it would have to be clear and enforceable that no large circulation newspaper could own a cable franchise.
>
> The impact of cable television is only beginning to be felt. It seems to me, to the members of the Neighborhood Press Association and I think to most of the public, that the Minnesota Cable Communications Board is the proper vehicle to protect the public interest in this largely unknown area of communications where future abuse is quite possible. If the Board revoked its present cross-ownership rules, I think the public might reasonably conclude that it was reversing its past good work in order to satisfy special interests.

Ronald L. Price, Coordinator for the Committee for Open Media, stated his opposition to the proposed repeal as follows:

We ask that the MCCB continue to promote the diversity of information sources to communities in Minnesota by retaining the rules at issue. Retention of the rules will protect the public's right to a free and open marketplace of ideas guaranteed by the First Amendment of the United States Constitution.

The First Amendment was not designed to allow private individuals the freedom to amass control over the media of mass communications. It was designed to provide the "widest possible dissemination of information from diverse and antagonistic sources", Associated Press v. United States, 326 U.S. 1 (1945). To allow broadcasters and newspapers to cross-own cable systems would sacrifice the public's right to the diverse and antagonistic sources of information guaranteed by the First Amendment.

Greg Young, Communications Director for the Minnesota Council of Churches, commented that:

We firmly believe that the many diverse special interest groups needing a voice requires a diversity of media sources.

We believe, furthermore, that responsible, unbiased news coverage is only possible through a diverse colage of voices and not eminating from only a few sources.

Cable television needs to be kept local. Cable television enhances local communities only if it keeps in touch with the community and responds to its needs. Cross-ownership in some instances could result in ownership by a large conglomerate totally isolated from the community which it is serving and unaware of its needs.

10. If 4 MCAR § 4.100 F. were repealed, a television station broadcasting from within the Twin Cities metropolitan area would still be prohibited from cross-ownership of a cable system which is serving communities within the metropolitan area and the surrounding area. This would be by virtue of the provisions of 4 MCAR § 4.100 A. and of 47 C.F.R. § 76.501(a)(2). 4 MCAR § 4.100 provides:

4 MCAR § 1.000 [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

47 C.F.R. § 76.501(a)(2) provides in pertinent part:

(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in:

* * *

(2) A television broadcast station whose predicted Grade B contour, computed in accordance with section 73.684 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers);

The Grade B contour of most Twin Cities' television stations, as determined according the federal regulations, is approximately 78 to 80 miles. Thus, the state rule and the federal regulations will continue to prohibit cross-ownership within that service area by a television station whether or not the provisions of 4 MCAR § 4.100 F. are repealed.

11. The Cable Communication Board's assertion that the proposed rule repealers are both needed and reasonable is based primarily on the presentations made by the MNA and the MBA. In addition, the Board believes that the proposed rule amendments are reasonable because:

(a) municipal franchising authorities have direct access to facts pertaining to the merits of franchise applicants, including local newspaper or Twin Cities metropolitan area broadcast station applicants which may compete for a franchise award;

(b) municipal franchising authorities have a beneficial grasp of local needs, and for cable communications services which a local newspaper or a Twin Cities metropolitan area broadcast station may be uniquely in a position to provide;

(c) municipal franchising authorities are competent parties who are able to overcome special advantages in the competitive proceses which local newspapers and the Twin Cities metropolitan area broadcast stations may have by virtue of their positions in the community;

(d) access to cable systems by competing communications media is guaranteed under the Board's rule requiring that access to cable systems be provided to anyone on a lease basis; and

(e) any party having a grievance may appeal to the Board under 4 MCAR § 4.006, Proceedings before the Board, and under 4 MCAR § 4.061, Initiating a Contested Case.

12. The Hearing Examiner finds that the need for and reasonableness of the proposed repeal of 4 MCAR § 4.100 E. and F. has been demonstrated by an affirmative presentation of facts. The standard of reasonableness, or unreasonbleness, is most often equated with whether or not the proposed rule is arbitrary. Hurley v. Chaffe, 43 N.W.2d 281 (Minn. 1950); In re Application of Byron M. Hansen, 275 N.W.2d 790 (Minn. 1978). An arbitrary action is "willful and unreasoning action, without consideration and in disregard of the facts and circumstances of the case". Greenhill v. Bailey, 519 F.2d 5, 10 (8th Cir. 1975). In rule promulgation, an agency must have a reasonable ground or basis for the exercise of its judgment. American Trucking Associations, Inc. v. U.S., 344 U.S. 298 (1953). A rule is not unreasonable simply becuase a more reasonable alternative exists or because the rule could have been better drafted. An agency must act within its statutory authority and its choice of standards must be one that a rational person could have made. Federal Security Administration v. Quaker Oats Co., 318 U.S. 218 (1943).

Many hypotheticals, concerns and fears have been raised by those persons and groups opposing the proposed rule amendments. However, subsequent to the receipt of the petitions by the MNA and the MBA, the Cable Communications Board solicited outside opinion and held several hearings to adequately assess the strengths and weaknesses of the proposals submitted. After an examination of all the information presented, including the staff report and

recommendation, the Board made a policy decision to propose the repeal of the cross-ownership rules at issue herein. Pursuant to Minn. Stat. Ch. 238, the Minnesota Legislature has delegated to the Cable Communications Board authority to make this kind of a policy decision.

Opposition to the proposed repealers has been expressed beginning from the summer of 1980 through the close of the record on this matter. The reasons for opposition are largely subjective in nature and basically are premised upon a "what might happen" approach. The Examiner has found that the evidence presented at hearing support the need for and reasonableness of the proposed repealers. Nothing concrete has been presented which would lead to a different conclusion. As with any policy decision, there are arguments both a pro and a con. The Cable Communications Board has the authority, however, to take both sides into consideration and make the final decision.

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

CONCLUSIONS

1. That the Cable Communications Board gave proper notice of the hearing in this matter.

2. That the Board has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule.

3. That the Board has documented its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4)(i) and (ii) (1980).

4. That the Board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980).

5. That the additions and amendments to the proposed rules which were suggested by the Board after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

7. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

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

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted consistent with the Findings and Conclusions made above.

Dated: October 28, 1981.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

MEMORANDUM

Several persons commented that the notice given for the hearing in this matter was inadequate. These comments were directed to the Examiner after the hearing was held, but before the record had closed. The concerns expressed were that there was not enough time for the public and citizen groups to prepare for the hearing and that hearings should have been held in the evening when more people could participate. Additionally, Ronald Wills stated that news sources, a focal point for this hearing, gave this matter inadequate coverage. The Examiner can only comment that the Cable Communications Board complied with all statutory and rule notice requirements. The Board has been receiving comment on the proposed repealers since the summer of 1980. There should not be any reason why any person or group was unprepared for this hearing or could not have submitted written comments to the Hearing Examiner prior to the close of the record on this matter.

P.C.E.

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Rule of the Cable Communications Board Repealing Certain Restrictions on Interests in or Ownership, Operation, and Control of Cable Communications Systems

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson on the 29th day of September, 1981, at 9:00 A.M. in Conference Room D of the Veterans Service Building, Saint Paul, Minnesota, after proper notice required by Minnesota Statutes § 15.0412 was served upon all persons, associations, and other interested groups registered with the Cable Communications Board and the Department of Administration 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 upon the records, file, and proceedings herein, the Board finds the following:

That the Findings of Fact and Conclusions of the Hearing Examiner relating to the repeal of 4 MCAR § 4.100 E., as included in his Report, dated October 28, 1981, are hereby adopted by the Cable Communications Board.

STATE OF MINNESOTA

Rochelle Barnhart

VICE CHAIRMAN OF
CABLE COMMUNICATIONS BOARD

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULE

I, Rochelle Barnhart, do hereby certify that I am a member and the Vice Chairman of the Cable Communications Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Cable Communications Board, duly and properly called and held on the 11th day of December, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rule identified as Repealing Certain Restrictions on Interests in or Ownership, Operation, and Control of Cable Communications Systems, 4 MCAR § 4.100 E., be and it hereby is approved and adopted, pursuant to authority vested in us by Minnesota Statutes 238.05 and 238.06, and that Rochelle Barnhart of the Cable Communications Board, be and hereby is authorized to perform the necessary acts to provide that this rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of December, 1981.

Rochelle Barnhart

VICE CHAIRMAN OF
CABLE COMMUNICATIONS BOARD

Jack W. Carlson

Attested by

STATE OF MINNESOTA

CABLE COMMUNICATIONS BOARD

In the Matter of Proposed Rules of the Minnesota Cable Communications Board Repealing Certain Restrictions on Interests in or Ownership, Operation and Control of Cable Communications Systems

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking proceeding is proposed amendment to existing rules of the Minnesota Cable Communications Board (Board), 4 MCAR § § 4.100-4.104, Ownership and Control of A Cable Communications System. Specifically, the Board proposes to amend 4 MCAR § § 4.100 E and 4.100 F, repealing restrictions on interests in or ownership, operation, and control of a cable communications system by a newspaper publisher and/or owner of a newspaper company and the newspaper company within the primary market area served by the newspaper, and by a radio or television broadcast station broadcasting from within the Twin Cities metropolitan area.

The proposed amendment to 4 MCAR § 4.100 E, if adopted, would allow a newspaper publisher and/or owner of a newspaper company or a newspaper company to own, operate, control or have a legal or equitable interest in a cable system within the newspaper's primary market area.

The proposed amendment to 4 MCAR § 4.100 F, if adopted, would allow a radio or television broadcast station broadcasting from within the Twin Cities metropolitan area to own, operate, control or have a legal or equitable interest in a cable system anywhere in the state of Minnesota, except that television broadcast stations will continue to be restricted from owning, operating, controlling or having a legal or equitable interest in cable systems if the television broadcast station's Grade B contour overlaps the service areas of the cable system, as provided in 4 MCAR § 4.100 A and in Federal Communications Commission rules and regulations.

Rule as proposed

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:

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.~~

II. EXHIBITS

The following exhibits were submitted to the Board in support of the need for and reasonableness of the proposed amendments and are available for inspection at the Board offices:

1. Petition from the Minnesota Newspaper Association for repeal of 4 MCAR § 4.100 E, received May 16, 1980.

2. Final Comments of Petitioner, the Minnesota Newspaper Association, received November 13, 1980.

3. Response to Staff Report from the Minnesota Newspaper Association, received December 26, 1980.

4. Letter from James L. Vance, publisher, the Worthington Daily Globe, dated October 1, 1980.

5. Petition from the Minnesota Broadcasters Association for Repeal of 4 MCAR § 4.100 F, received July 7, 1980.

6. Presentation to the Minnesota Cable Communications Board by the Minnesota Broadcasters Association, August 8, 1980.

7. Presentation to the Minnesota Cable Communications Board by the Minnesota Broadcasters Association, October 17, 1980.

III. NEED FOR THE PROPOSED AMENDMENTS

The existing rules governing interest in and ownership, operation and control of cable communications systems were adopted by the Board on November 22, 1974.

On May 16, 1980, the Board received a petition (see exhibit 1) from the Minnesota Newspaper Association (MNA) for repeal of 4 MCAR § 4.100 E, a restriction on interests in or ownership, operation and control of a cable system by a newspaper publisher and/or owner of a newspaper company and the newspaper company within the primary market area served by the newspaper. The Board received supplementary pleadings on November 13, 1980 (see exhibit 2) and on December 26, 1980 (see exhibit 3). On October 2, 1980, the Board also received a letter (see exhibit 4) from James L. Vance, publisher, the Worthington Daily Globe, submitted in support of the repeal petition.

On July 7, 1980, the Board received a petition (see exhibit 5) from the Minnesota Broadcasters Association (MBA) for repeal of 4 MCAR § 4.100 F, a restriction on interests in or ownership, operation and control of a cable system by broadcast stations broadcasting from within the Twin Cities metropolitan area. The Board received supplementary pleadings from the MBA on August 9, 1980 (see exhibit 6) and on October 17, 1980 (see exhibit 7).

The Board considered oral and written outside opinion concerning the proposed rule amendments during the fall of 1980 after publishing notices of solicitation of comments in the Minnesota State Register.

The Board subsequently found and concluded that there are needs for more cable communication franchise applicants in rural and urban communities, and for increased competition in the franchising process which local newspapers and broadcast stations located within the Twin Cities metropolitan area might stimulate if the interest, ownership, operation and control restrictions on them were to be repealed.

IV. REASONABLENESS OF THE PROPOSED AMENDMENTS

The Board believes that the proposed rule amendments are reasonable because

(a) municipal franchising authorities have direct access to facts pertaining to the merits of franchise applicants, including local newspaper or Twin Cities metropolitan area broadcast station applicants which may compete for a franchise award;

(b) municipal franchising authorities have a beneficial grasp of local needs, and for cable communications services which a local newspaper or a Twin Cities metropolitan area broadcast station may be uniquely in a position to provide;

(c) municipal franchising authorities are competent parties who are able to overcome special advantages in the competitive process which local newspapers and the Twin Cities metropolitan area broadcast stations may have by virtue of their positions in the community;

(d) access to cable systems by competing communications media is guaranteed under the Board's rule requiring that access to cable systems be provided to anyone on a lease basis; and

(e) any party having a grievance may appeal to the Board under 4 MCAR § 4.006, Proceedings before the Board, and under 4 MCAR § 4.061, Initiating a Contested Case.

V. CONCLUSION

Based on the foregoing, the proposed amendments to 4 MCAR § § 4.100 E and 4.100 F are both needed and reasonable.

W. D. DONALDSON
Executive Director

Dated: September 7, 1981

POSED RULE
AMENDMENT

MINNESOTA DEPARTMENT OF

(OFFICIAL USE ONLY)

DATE RECEIVED
DATE RESPONDED TO
ACTION TAKEN
DATE

NAME Robert Shaw, Manager

GROUP REPRESENTED OR TITLE Minnesota Newspaper Association

ADDRESS 84 South Sixth Street, Minneapolis, Minn. 55408

	ADD	–	~~JBS~~
–	BLF	–	~~PSL~~
–	~~KMS~~	–	RZ
	RMK		~~SCA~~
Please Attend			
RETURN TO			WDD
	FOX COPIES		
	FILE		

I hereby request that the Department named above:

(Check one)

___ Adopt a new rule governing _____.

___ Suspend Rule _____.

/ Repeal Rule _____.

Insert here the new rule or rule change, with the exact wording proposed. Present wording of the rule is to be shown, with all wording that is to be deleted to be shown with a line drawn through the words. All proposed new wording is to be underscored.

4 MCAR § 4.156 (E)

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;~~

(Use additional pages if necessary)

State here in as much detail and as completely as possible the reasons for your request, as the department will use as part of the basis for its decision the explanation or reasons given for your request.

See Attached.

(Statement to the Cable Commissions Board, Jan. 11, 1980, by Robert M. Shaw, Manager, Minnesota Newspaper Association.)

There is growing concern among many thoughtful people in newspaper work about the future of the printed word, published and disseminated to the general public to bring news of the day or week. My remarks reflect, I believe, two of these concerns.

I will start out by admitting that there is a lot of confusion about electronic communication in the minds of many newspaper people I know. I'm somewhat confused about it myself. Electronic journalism, after all, just isn't our bag. Most of us don't really have a clear idea how it works. We're so busy putting out our newspapers—doing it pretty much the same as we have for the past 200 years, that is, printing words on paper and distributing it by hand to our readers—that we have simply ignored what's going on in the world of electronic communications.

But we do understand what it is to be free of governmental control, and that's what I want to talk to you about this morning. Newspaper people don't agree on very many things. But there is one thread, one strong tradition which does bind us together and, if I may say so, makes us different from other communications media: our strong desire to stay free of governmental control, particularly with respect to what, when and how we publish news and opinion.

I want to address two concerns: a proximate one and a more distant, philosophical concern.

You have a rule, which you promulgated, which prohibits a newspaper, as well as other media, from substantial ownership of a cable system in it's own market area. I am told by our national organization that Minnesota apparently is unique in this respect; no other state, they say, has such a rule.

I know the intent of the rule. It is diversity of opinion. I personally subscribe to the "many voices" school of thought and have spoken out against the trend toward fewer independent voices in the newspaper press due to consolidation of newspaper ownership.

But there are a lot of well-informed people around these days who say that it's just a matter of time before some electronic way will be found to deliver papers into homes; or to give consumers the means to order groceries by flipping a switch or punching buttons on their TV set; or do their banking in the same way; or participate in polls (they're doing this now in Columbus, Ohio) by operating switches, or auctions, by means of the same two-way capability; or select what information they want, perhaps from public libraries, for instant delivery.

There are some in our industry who pooh-pooh these developments. They are the same sort of people who pooh-poohed television when it was just getting started. TV has grown astonishingly to the point where it commands much more attentive time, now, than do newspapers; it has also taken away almost all of what we call "national" advertising—at least from the smaller newspapers.

Newspapers of some sort will probably be around for a long time. Of course, I hope they will. But at the same time we have to prepare for what to us seems to be "the worst" exigency, and the worst thing that could happen to small newspapers would be the development of a capability to deliver commercial messages into many homes in a form which would be preferred to the form in which we're doing it now.

Let me try to make this more clear.

Suppose it were possible by the means of numbered buttons on your TV set, to "order" certain food items, a list of which remained on the screen for a long period of time. Suppose that housewives all knew the time of day, perhaps two hours every morning, when large food ads would be displayed on the screen. Assume the cost to the food dealer was competitive to the cost of advertising in the local newspaper. I am told these are reasonable assumptions.

Such a system would have a tremendous effect on the newspaper industry. I would guess that if one were to remove food advertising--just food advertising by itself--from every newspaper in this state, it would be the automatic death of about half of them. They depend, and they depend absolutely on those large food ads for their survival.

I am not worried about economic competition. The more competition, the better. But I do feel that preventing newspapers from entering this new technology in their own market areas is unfair, prevents them from competing on the same basis. It is roughly equivalent to telling harness-makers that they may not own a gas station, tire shop or auto factory in their own community.

I know the rule allows us to go somewhere else and own a cable system. For large newspapers, perhaps, this is possible. For small ones it is not. There is very little chance that many of Minnesota's 350 community newspaper publishers have the capital, staff or time to establish and operate a cable system outside their communities. Most community newspaper people have deep roots in their own places; they don't WANT to go elsewhere. I think your present rule is too strict and should be modified.

Some of us have watched with horror the growth and development of the FCC and its impact on the minds of those who broadcast news to the general public.

That's the longer-range concern I want to address now.

I have discussed this many times with colleagues in radio and TV work. Many of them in private will freely admit that the mere existence, the presence of a licensing body in the background, as well as many of the FCC's regulations themselves, do have an inhibiting effect on electronic journalists' freedom of speech. (Note that I say "speech": I assume that freedom of the press is the same sort of thing as freedom of speech--one is simply a different manifestation of the other.)

Put in newspaper terms, it looks something like this: All of a sudden, my state government decides there shall be one and ONLY one printing press in my town, and every other town. This single, government press, my state government decides, shall publish every general interest publication there is to publish--all newspapers, shoppers, handbills, various bulletins. My city government, then, calls for bids to award this printing franchise; goes ahead and awards it to the low bidder (who is probably connected with a tremendously wealthy and important out-of-town firm); and the new, single, government-franchised press starts to roll. It's left pretty much up to the owner of the press to decide who gets his paper printed and who does not, the length of leases, and the cost for getting one's paper printed. City government may make broad hints that certain kinds of newspapers or publications ought to be published. The franchised printer goes back regularly to the city council and gets permission to continue in business. Printing customers return at regular intervals, too, to renegotiate contracts with the franchiser. Everybody is doing business at the permission of others, and the person at the top--who may or may not extend the franchise, or may give it to somebody else--is government itself.

I may be a bit off, but as I try to think this through, that's the analogy I come up with.

If my analogy is right, then such a system is bound to be an invasion of First Amendment guarantees of a free press.

The First Amendment doesn't say that government should do anything in the way of public communication. It tells government to keep its hands OFF the press. The First Amendment doesn't command government to see to it that all factions of opinion are equally and fairly represented. It tells government, in words as clear as the language will allow, to stay OUT. But what is being constructed here in Minnesota, this system of locally franchised information systems with a super-imposed Cable Communications Commission, puts government squarely INTO communications.

The basic flaw, it seems to me, is to regard public information in the same way we regard electricity, gas or telephone service. If you accept the common carrier principle, you need a public body. Public bodies do what comes naturally: they license. Licensing anywhere in public communications results in a chilling effect in the minds of people who do the work of covering the news, particularly covering the news of government.

It's the framework itself, I believe, which ought to be re-examined. The question should be asked: The actual functioning, the actual working-out of the actions and decisions of the Cable Communications Commission, do they or do they not inhibit free speech? I daresay they do.

Sure: This new technology lends itself easily to the common carrier concept. Sure: Government is eager to get this new authority over public information. But anything which puts a burden on free speech has to violate our First Amendment, and THAT should come before economics, before technology, before any other consideration.

I eagerly await your views on these two points, and thank you for the chance to give them to you this morning.

STATE OF MINNESOTA

CABLE COMMUNICATIONS BOARD

NOV 13 1980

In Re Petition of Minnesota Newspaper Association to Repeal 4 MCAR § 4.100 (E)

Final Comments of Petitioner

A petition by the Minnesota Newspaper Association was submitted to the Cable Communications Board on May 16th, 1980 asking that the Board repeal its rule forbidding the crossownership of cable communications systems by newspaper publishers and/or owners, 4 MCAR § 4.100 (E). The Board acknowledged receipt of the petition on June 13th, 1980, and began a series of hearings on the MNA petition and a similar petition by the Minnesota Broadcasters Association. The following comments are submitted by MNA in support of their petition.

I. INTRODUCTION

During 1978 and 1979, cable television finally became the "hot item" that its supporters had been promising for several years. Many Minnesota communities began to consider the benefits of cable. Investors began to put together the capital that would be necessary in order to set up cable systems. Although the capital necessary to purchase cable hardware was (and still is) enormous, many people believe that the return on an investment in cable will be better than many other current opportunities.

As many small cable companies began to form throughout the state, one

group of investors found that they had been foreclosed from investing in cable in their communities. Newspaper publishers found they could not own as much as 1% of the stock in a local cable company. They also found that their competitors at the local radio station could participate financially in a local cable system.

At about the same time newspaper publishers began to read in industry trade journals that new communication technology threatened the very existance of the community newspaper. This threat comes not from a cable system's ability to bring better quality of news, but because such a system will drain off the newspaper's most important source of revenue: advertising. Recent demonstrations of COMPUSERVE (at two-way interactive method of home shopping), TELIDON (a one-way system of in-home advertising that can be up-dated hourly) and Electronic Yellow Pages have convinced even some of the most skeptical publishers that new technology will be very attractive to their advertisers. In many small communities, the loss of grocery and classified advertising would mean the end of the newspaper, according to the testimony of Robert Shaw, Manager of the Minnesota Newspaper Association. The new technology offers a number of advantages over a weekly newspaper when the item or service being advertised is time sensitive, i.e., the price or availability can change rapidly.

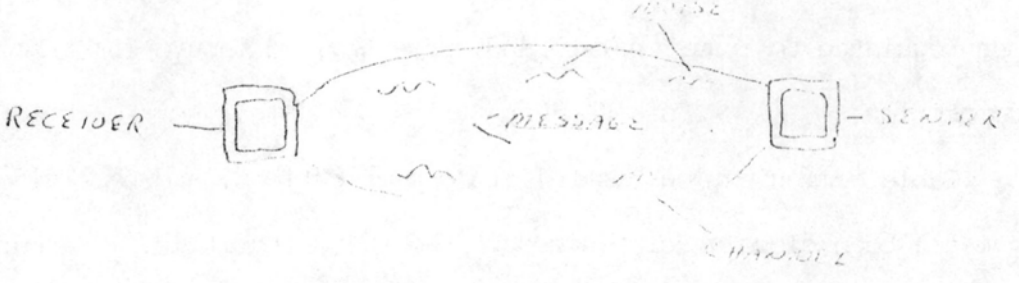
The changes in the communications industry can no longer be regarded as some "Buck Rodgers" fantasy. Both the hardware and the software necessary to force small and medium-sized newspapers out of business are already in place in several American and Canadian cities. In Winnipeg, the "Tribune" has folded. It is ironic then that Minnesota has told its publishers that they cannot invest in cable communications because newspapers are too powerful.

II. REGULATION OF COMMUNICATION

During the course of the hearings before the Cable Communications Board many groups and individuals have cited the need for "many voices" in a democracy. They insist that government must encourage a multitude of voices under the mandate of the First Amendment. The newspapers of Minnesota have always been (and hope to remain) the most ardent supporters of the rights guaranteed by that Amendment. In fact, due to the development of photo-offset printing, there has been a steady increase in the number of small newspapers in Minnesota. These "new voices" have been encouraged and supported by MNA. However, since many of these new papers operate "at the margin" they will probably be the first to fold in the event of major economic dislocation.

The MNA position regarding the First Amendment has remained unchanged: government can make no law abridging the right of free expression. They remain committed to the idea that the "content" or "message" part of the communication process should never be regulated by any government authority (no matter how benign the motive) and that other elements of the process should be regulated only when necessary for the operation of the process.

It is helpful to consider a model of the communication process in order to understand the elements involved.



This model illustrates one elementary communication transaction. A sender has formulated a message and put that message into the channel. The

channel also contains noise (things that might impede the message). A receiver will get the message. This model might illustrate one person talking to another. Jones would formulate a message and speak it into the air (a channel for sound waves) noise in the room may impede the message before it reaches Smith. Similarly, a radio announcer may speak into a microphone which then relays the message to a tower where the message is sent out to all people who have a device to interpret the radio signal. While the message is in the channel (the atmosphere) it may be impeded or distorted by atmospheric conditions, the topography of the area (e.g., tall buildings could block the transmision) or other radio waves could interfere with the signal. In the case of cable communications, the senders are people who program the many "channels" available. The ultimate channel to the receiver is the cable that enters each subscriber's home or business. The receiver is the subscriber. Of course, complex communication transactions involve several layers of senders and receivers, but the elements remain the same.

Government already regulates many of the complex channels of communication. For example, radio frequencies are allocated in order to insure that "noise" or interference by other signals is reduced. In these cases regulation is necessary to reduce "noise" or to insure the existance (and sometimes the safety) of the channel. Sending and receiving devices have been regulated to insure safety and, recently, to insure (or discourage) competition.

Cable communications, satellite communications, and home video devices have all been closely scrutinized by federal authorities. The current trend however, is to lessen government involvement in the marketing and use of devices for sending and/or receiving messages. For example, the F.C.C. has declined to regulate home satellite receivers and has ruled that home-

owners may purchase their own telephone equipment.

The message itself remained nearly untouched by government (except libel and obscenity) until the 1960's when the F.C.C. and the courts OK'd bans on certain kinds of advertising. Similar regulation of "messages" is currently being considered in regard to children's programming on television. Government has begun to tell us what is "good for us". This regulation of the message or "content regulation" is seen by many as undesirable and even frightening.

The rule at issue in the current petition is, on its face, a regulation of senders. It attempts to determine the people who will be owners of cable systems on the theory that owners control, directly or indirectly, the content of the message sent. It is a form of message regulation.

III. THE PROBLEM OF "ACCESS"

Social scientists tell us that we have left the industrial age and are embarking upon the information age. In this new age, information (gathering, storing, processing, disseminating) will become the major part of our gross national product. Access to information will be an important element of economic and political power. Indeed, the word "access" has taken on many new meanings and has even become a verb (e.g., to "access" a computer data bank). It is important to be clear about the meaning of this word because it plays several parts in the drama of new communications technology.

One can "get into" a communications transaction as either a sender or a receiver. It is important, therefore, to separate the two issues of access as a sender and access as a receiver

Sooner or later, we must decide how large a roll government should play

in assuring access as a sender to the channels of communication. For example, should the government guaranty every person the right to speak on a soapbox in the park? To speak on the telephone? To speak on television and radio? Obviously, as the capacity of the channel becomes smaller, it is impossible to guarantee that everyone will be able to send their message through a particular channel. Like all other scarce resources in a free enterprise system, the channel is allocated by market forces. These forces can be altered by government intervention. For example, in some communities a "public access" channel is allocated artificially by government regulation. All citizens are thereby guaranteed access regardless of their ability to pay the "going rate". Since that channel is limited by the 24 hours available for programming in each day, it is foreseeable that some allocation among competing senders may someday be necessary.

Access as receiver presents different public policy considerations. Just like senders, receivers gain access to modern communications channels of information only if they have the appropriate device (e.g., telephone, television set). These devices have usually been allocated by the market on an ability to pay basis. In the future, government may find that access to the new communications devices is so important that it will subsidize those not able to pay.

The current debate however, does not deal with access to the channels or devices of communication. The arguments presented by those who oppose repeal of the rule deal with what they perceive as a right to "access" or receive particular messages.

Opponents have little cause to fear that the "voices" presenting information about national affairs will decrease with the advent of cable communi-

cations. Indeed, many more voices will be brought in from around the country. Information about state-wide affairs will undoubtedly continue to be presented by several news outlets located in the state. The concern appears to be about local political information and opinion. They assume that any ownership of a cable system by the same person or people who own the local newspaper will automatically limit the number of different messages available in that community. They have decided that these men and women (who have served their communities for years) will, in all cases, act against the public interest.

To assume that all publishers have the same ideals, goals, intent, and economic or political power is clearly absurd as well as unconstitutional. To call all publishers a monopoly threat in an age when they face ever-increasing competition from other media is to ignore the facts. To presume that all publishers will act in detriment to the First Amendment is to disregard a number of lifetimes devoted to that cause.

IV CONCLUSION

It is possible that one voice with community news will be silenced during this generation. It will be the community newspaper. Cable communications are currently capable of becoming highly competitive for the advertising dollar that keeps newspapers sending reporters to the city council meeting. When newspapers become economically impossible, only the local broadcasters and cable system will remain. Publishers who wish to continue to invest their capital in the delivery of local news will have been forced to invest in cable systems outside of the communities they have come to know so well. A multi-city or multi-national corporation could become the owner of the only information system that covers local news. In a city that

has chosen public ownership of its cable system it is possible that one day the only source of news about city government will be city government.

In any time of technological change, there are bound to be economic dislocations. It is appropriate that government be aware of these dislocations and the impact they will have on local communities. It is not appropriate, however, for government to foreclose one industry from reOchannelling its resources into new fields without a careful examination of the circumstances of each community and the current state of each industry. To find all publishers "guilty" before such examination is to deny them the equal protection of law guaranteed them in the constitutions of the State of Minnesota and the United States.

The Minnesota Newspaper Association urges that 4 MCAR § 4.00 (E) be repealed and that local communities be allowed to examine all proposals for cable television and then decide which will be in the public interest.

Respectively submitted:

Dated: November 13, 1980

Patricia A. Hirl (a Limerggi)

Patricia A. Hirl

STATE OF MINNESOTA

CABLE COMMUNICATIONS BOARD

In Re Petition of Minnesota Newspaper Association to Repeal 4 MCAR § 4.100 (E)

MNA Response to Staff Report

As per motion of the Board at its December 12th, 1980 meeting, the Minnesota Newspaper Association submits the following response to the staff report dated December 8th, 1980.

INTRODUCTION:

This document is submitted in order to clarify the MNA position and supply the "support" identified by the staff report as necessary to a favorable determination of the MNA petition. MNA presents here further discussion of the three arguments set out in the staff report. Several articles are appended that will show that the MNA position is not merely "authoritative speculation" by the petitioners, but the opinion of some of the top experts in the country.

MNA ARGUMENT I: NEW COMMUNICATIONS TECHNOLOGY THREATENS THE EXISTENCE OF THE COMMUNITY NEWSPAPER.

Attempting to prove that something will or will not happen at sometime in the future is always difficult if not impossible. This is especially true where the forces at work on the future event are social and economic. On the question of what will happen to the newspaper industry in the next decade there are as many answers as people asked. This is probably due to the fact that the "industry" is not monolithic and is made up of newspapers from every conceivable political, social and economic circumstance. An economic or political decision that would not affect the New York Times may well have a critical impact on the Worthington Globe

or the Granite Falls Tribune.

The statements of publishers set out in Appendix A indicate that at least some newspapers will survive the emergence of the new technology. They also indicate, however, that the newspaper industry will definitely be changed in the coming decade and publishers must make some decisions about how they will become a part of the new media mix. In Appendix B, a publisher who has gotten involved in cable tells his colleagues that "... if they don't get involved they sure as hell will look up one day and see that a competitor is in the drivers seat." (Appendix B, page 137, statement of Gerald G. Moriarity.)

It is impossible for MNA to prove that a certain number of newspapers will go out of business if the rule under consideration is not repealed. All we can do is point out that most experts believe that cable T.V. and other new technologies will change the "mix" of the communications media. If, as many experts believe, cable T.V. will drain off advertising revenues from current media then some of the media currently operating at the margin are likely to fail unless they find some way to reallocate their resources. This relocation is not disputed by the opponents of the petition, the MCCB staff, or any of the experts opinion that MNA has been able to discover.

The rule that is under consideration here mandates that the reallocation that will eventually become necessary must be done <u>outside</u> of the communities that publishers have come to know and serve. They must <u>reallocate</u> by <u>relocating</u> their resources and, presumably, themselves.

There was much discussion in the testimony of some opponents to the MNA petition about the recent trend towards concentration of media ownership in the hands of media "chains." MNA has been active and vocal in its opposition to this trend and believes the current rule can only accelerate it. If current news operations are prohibited from reallocating within their communities, the door is thrown open for the media chains to buy up small franchises. Their very size and the amount of resources they can muster would make them a stiff competitor in a case where, for

the Worthington Globe and Warner Communications were fighting for the franchise in Granite Falls. On the other hand, the Worthington Globe has a substantial edge over Warner for a Worthington franchise because they have already developed a news gathering system in that community. It is ironic that the rule designed to prevent concentration of ownership may be the vehicle that insures the end that so many sought to avoid.

Again, it must be admitted that it is impossible to prove in 1980 what the communications industry will look like in 1990 or 2000. We can only analyze current trends, available technology, and market forces in order to make educated guesses about the future. This area is so new that very little "hard" market analysis has been done. All we can say with certainty is that things are going to change. MNA believes that by prohibiting newspaper publishers from reallocating their resources into the industry and communities that they know will not be in the public interest because it will not accomplish a real reduction in the concentration of media ownership, but will cause added hardship to an industry that is about to undergo tremendous change. Any government regulation that is unnecessary and perhaps even counterproductive should not remain on the books in Minnesota.

MNA ARGUMENT II: MNA ASSERTS THAT GOVERNMENT INTERFERENCE WITH THE OPERATION OF THE NEWS MEDIA IS ALWAYS INCOMPATABLE WITH THE PRECEPTS OF THE FIRST AMENDMENT AND THAT SUCH INTERFERENCE SHOULD NEVER BE ALLOWED EXCEPT WHERE NECESSARY FOR THE OPERATION OF A MEDIUM.

To say that the current newspaper crossownership rule violates the First Amendment would be difficult to support with case law because the courts have not yet had an opportunity to examine many of the issues raised by the introduction of new communications technology. Certainly the founding fathers had no conception of satellites or fiber optics. It is probably fair to say that most judges and government officials today don't know very much more about them than Thomas Jefferson. But the idea that government should not restrict the press is as important (and controversial) today as it was then. In the "Final Comments" submitted by MNA, an

attempt was made to construct a theoretical model for the purpose of analyzing when government regulation in the communication process is appropriate. As the mode of communication changes it is important to have some theoretical framework that applies to all current and future systems.

The MNA suggested that regulators think of communication on its most elementary level and use this model to consider various regulatory issues. It was suggested that the "message" part of the transaction has always been treated by the courts with the highest deference and least regulation, i.e., government should never regulate the content of communication unless the communication presents a "clear and present danger". See Schenek v. U.S. 249 U.S. 47 (1919). The courts have, however, upheld reasonable regulation of the "time, place and manner" of communication. See Grayned v. City of Rockford 408 U.S. 104 (1972). Thus, regulation of the message part of communication must pass the most stringent constitutional muster and regulation of the sender, receiver, channel and noise will be permitted if they are a reasonable means to further a legitimate state interest.

When this theoretical framework is applied to the regulation at issue here, it appears to be a regulation of channels in order to control senders. One class of people (senders) have been prohibited from owning cable (channel) because it is believed that this will encourage more diversification in the messages sent in the various channels that are or may be available to receivers. It is thus a regulation of channel in order to affect the messages sent for the benefit of receivers.

To the extent that this is a regulation of message, MNA asserts that it does not pass constitution muster because it does not meet the "clear and present danger" test. To the extent that it is a regulation of channel MNA asserts that although encouragement of "many voices" is a legitimate government interest the current regulation is not a reasonable means toward that end because 1) it actually encourages "chain" ownership when local information providers are kept out of the market,

2) less restrictive means are available to accomplish this purpose, e.g., mandates that public access must be granted by the owner, 3) The regulation denies a right to an entire class when a mechanism exists that would allow each potential owner to be judged on the basis of all relevent factors, i.e., allowing local communities to examine the crossownership aspects of any cable franchise proposal and then make its decision based on all the factors they believe to be in the public interest in their particular community. It is important to treat each community separately because the "media mix" is different in each, as is the economic strengths of each medium.

Even if the regulation does not directly violate the free press and equal protection provisions of the U.S. and Minnesota Constitutions, these considerations can and should be dealt with by regulatory agencies. It is not irrelevant to ask when it is unfair to treat one class of people differently than others. It is not irrelevant to ask an agency to proceed with caution when reviewing rules that may affect the very existence of one news medium.

MNA ARGUMENT III: TO ASSUME THAT ALL PUBLISHERS HAVE THE CAME IDEALS, GOALS, INTENT, AND ECONOMIC OR POLITICAL POWER WOULD BE ABSURD AS WELL AS UNCONSTITUTIONAL.

The idea that no class of persons should be discriminated against by law is well settled in American jurisprudence. See Morey v. Doud 354 U.S. 457 (1957). Limitations of rights based on classification are permissible only when there is a rational basis for that classification. See, for example Levy v. Louisiana, 391 U.S. 68 (1968).

The staff report of December 8th, 1980 agrees with MNA's claim that this classification does not have a rational basis:

> Staff is inclined to concur in the petitioner's contention that assuming that all publishers have the same ideals, goals, intent, and economic or political power would be absurd.
>
> - Dec. 8 Staff Report at Page 14

The Staff Report then goes on to state that no one has ever said that all

publishers "have the same intents or power, or that any publisher is in any sense 'guilty'"(Dec. 8 Staff Report at page 14) It should be pointed out that the regulation itself makes an assumption that no publisher could possibly own a cable system in his service area and serve the public interest. The regulation classifies all publishers as not fit to have any ownership in their local cable system.

For the reasons discussed in arguments I and II above, the MNA asserts that there is no rational basis for this classification, that it violates the Equal Protection Clause of the United States Constitution, and that it should be repealed.

Dated: _____ Respectfully submitted:

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Attorney for Minnesota Newspaper Association
459 Rice Street
St. Paul, Minnesota 55103

225-6548

A

THE VIEW FROM THE TOP:

How will newspapers be affected by CATV?

By Milton Rocksmore

HOWARD M. ANDERSON

"Do you realize," Western Union executives asked when Alexander Graham Bell offered to sell them his new invention, "that the logical conclusion of what you propose would mean the wiring of every home and business in America?" They showed him the door.

America is about to be rewired again. This time for broad band communications. Will it be newspapers this time that are caught with their wires down? Let's look at the systems in question:

Provides a broad range of information and entertainment to user: Newspapers, excellent. Television, modest. Cable, good. Two-Way Cable (interactive), excellent.

Built-in storage: Newspapers, excellent. All others, non-existent.

Portability: Newspapers, excellent. All others, non-existent.

Integrating printing and visual content: All, excellent.

Allows user self-pacing and searching: Newspapers, excellent. Television, poor. Cable, poor. Two-Way Cable, moderate.

Hard copy: Newspapers, excellent. All others, non-existent.

Updates entire data base every 24 hours: Newspapers, excellent. Television, good. Cable, better. Two-Way Cable, excellent.

Random access: Newspapers, excellent. Television, poor. Cable, fair to poor. Two-Way Cable, good.

Economy: Newspapers, good. Television, excellent. Cable, fair. Two-Way Cable, fair.

This tells me newspapers are not a pushover. They can stand on their own.

Moreover, I disagree with conventional marketing wisdom that holds the market is only of such a size that cable must grow at the expense of newspapers. Cable, in my opinion, will increase the size of the total market as alternate technologies frequently do. For instance, when instant photography burgeoned, all photography burgeoned.

Newspapers will continue to do well, but—and it's an important but—will readers be spending less time with them resulting in linear growth. Remember, as the pie gets larger and your share gets smaller, you can still keep beating last year's figures—for a time, anyway.

Visualize for a moment, a series of concentric circles with the word *Me* in the center. The closer things are to me, the more time I will spend with them. With potentials of 100 channels of carrying capacity about eight or nine years away, and with a two-way option, there can be a channel for left-handed Corvette owners who repair their own cars, for instance. If I'm one of them, I won't read a newspaper column that tells me, let's say, how to fix Mazdas. Remember, the closer something gets to *Me*, the more time I will spend with it.

By 1990 we estimate there will be 35 to 45 million homes hooked into cable with a total of 88 million television homes. There are presently 73 million television homes with 14.8 million on cable.

As I see it, a newspaper publisher looking toward the future has three options. 1) Don't worry. "We've got the data base, the reputation, the savvy, and they will be the determining factors." 2) Worry like hell. "Let's try to acquire some cable companies while we still can." 3) Use newspapers as "cash cows". Milk them for all they are worth and reallocate the resources.

JOE M. DEALEY

For the indeterminate future I believe newspaper readers will want to hold hard copy in their hands. The time is a long

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way off before they will rely on the tube for all the news.

Now, if somewhere down the road, say 20 or 25 years from now, I'm proved wrong, newspapers which are in the business of collecting and disseminating news will still continue to collect it although they might distribute it in a different way.

We recognize the opportunities for expanding our news-gathering and distributing functions. CATV proliferates. And it is precisely for that reason that the ANPA Task Force on Broadcast and CATV Ownership was organized. A primary aim is to obtain ready access for newspapers into the field of the electronic transfer of information and entertainment. After all, our information handling skills have been sharpened by decades, yes, centuries, of experience.

High on our list of priorities are efforts to dissuade the FCC and other government agencies from prohibiting cross-ownership of CATV facilities by newspaper publishers. If newspapers are not allowed to own or use CATV, I would then view electronic journalism as a threat to publishing.

Throughout history, newspapers have demonstrated that they are innovative, flexible and adaptable to changing conditions. They will retain these characteristics of survival as I continue to grow and develop in the face of CATV or any other system. And I don't agree with those who say newspaper circulations will suffer when CATV comes into more general use. Readers will still want the full story and expanded treatments possible only in newspapers.

But there is an unpredictable element in the mix. Newspapers measure their performance by numbers: How much advertising linage? How much circulation? Getting these numbers to grow takes large quantities of costly newsprint and energy. As prices for these rise, circulation and advertising rates must increase.

The question is: At what point do these higher prices result in circulation and advertising cut-backs that mandate more compact dimensions for newspapers?

But there are hopeful signs on the horizon. Experiments in Arizona and elsewhere to produce newsprint from kenaf, a fibrous plant, look very promising, indeed. And then, as I've said, newspapers have always proved adaptable—they will continue to grow in any changing terrain.

GUSTAVE M. HAUSER

We've seen it happen before. The development of any alternate technology does not necessarily replace an existing one. Beware of new television, movies, billboard-like advertising systems in their time. Today, they are living happily side by side, and I'm certain newspapers and CATV will also find love and contentment together.

Newspapers newsgathering function is vital to the electronic medium. No one CATV, in my opinion, delivers the same quantity of information in a format as acceptable or useful as are printed ones. So, as I see it, what we will wind up with is an electronic system delivering what newspapers market but in a limited form and not in any way displacing the print product.

When a new medium of reaching the public appears on the scene, it generally brings with it increased competition for advertising dollars. But such new developments also create business advertisers who eventually expand into other media. And that's what I think CATV will do: it will make new advertisers for newspapers.

Nothing we have seen indicates CATV affects newspaper readership. We have looked at markets where 90% or more of television homes are on cable and there has been no impact on circulation as far as we can tell.

By 1985 we expect about 25 million homes in America will be wired to CATV systems. Our Qube system which enables viewers to signal back to a central computer has 40,000 subscribers in Columbus, Ohio where it was first introduced about two years ago. We are now in the process of expanding it to Houston, Pittsburgh, Cincinnati and other cities.

Yes, there have been discussions with major retailers like Sears for using the Qube system as a catalog adjunct. It would be technically possible to present merchandise in word and picture and have the viewer send back an ordering signal.

Although many things are possible with CATV, I believe it will complement newspapers. When all is said and done, there is only so much information you can display on a television screen.

TED TURNER

From where I sit it looks like the Cable News Network will compete directly

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with newspapers.

The basic problem with newspapers is they use trees—lots of them. And it takes lots of energy to keep the trees moving to the finished product and the product to the customer. Besides, not everyone who buys a newspaper reads the classified ads, or the stock market reports, or the real estate section, but read them or not, everyone pays for them.

With cable, if you want the baseball scores, classified ads, a stock quotation, or anything else, you'll be able to punch up just what you're looking for. And all for a fraction of the cost it takes to deliver it in print.

Many of the inherent advantages of newspapers will be eroded by CATV. One of the greatest advantages of print is its availability on demand. You can pick it up whenever you want, whereas you have to wait for the news to come on television. Our 24 hour news service will diminish this advantage; it will be possible to see news, live, in color and in the making, not as history, all through the day.

Depth of coverage, another newspaper advantage, will also be neutralized by a voice reading 200, or more, word editorials and story details.

I believe newspapers can learn a great deal by checking the recent history of magazines. The general circulation magazines like *Life*, *Look*, *The Saturday Evening Post* and others were losing their business because they were trying to be all things to all people. When magazines became targeted and segmented for specialized audiences, they entered a new era of prosperity. I think there are important lessons here for newspapers.

CATV income will come from three different sources: 1) Subscribers to the service, 2) Advertising and 3) Pay TV, first run movies, special events, etc. As the subscriber base grows and we can quantify it for advertisers, the real breakthrough will occur.

Will the growth of CATV further lower our national reading and writing aptitudes? That's a good question. Reading and writing happened so we could pass information through time and distance.

If we can send information through space and time on film, instead of by book or letter, is there really as strong a need for reading and writing as we think there is?

JOHN J. O'CONNOR

...

For 10 years I've been hearing that CATV is going to create a revolution of communications. Every year it's 10 years later, and they're still around for five more years. This leaves me a bit skeptical of just when the revolution is going to be.

However, we must not overlook the impact of television news on print publishing in the last quarter century. A lot of papers, including major ones, went down the drain. Although many reasons were involved, one that I'm sure played an important part was the public's readiness to accept capsulized electronic news.

When you see Carter, Begin and Sadat, live and in color, emerging from Camp David, it's hard to beat that. And that's why the purpose of the newspaper has to be something different. It has to veer more towards analysis and interpretation than just simple reporting. On the whole, the print press has faced this challenge very well. Even the good, old Gray Lady has changed her wardrobe.

In fact, in total numbers, I believe there are more newspapers today than there were 20 years ago because of the growth of local suburban papers, specialized publications, that kind of stuff.

I'm not quite sure what the competitive impact will be when CATV colors start to flow. But I'm sure newspapers, which have shown how resilient and adaptive they can be when confronting television, will continue to adjust and compete.

I've seen machines which can deliver newspapers—facsimile—into homes electronically. Perhaps in the not too distant future newspapers will add another conduit for delivery.

MICHAEL DEXNER

...

I don't expect CATV to create disruptions for newspapers as we have computers that will grind out hard copy. And that, in my opinion, is at least two decades down the road.

Fast text is a tool that newspapers, in the meantime, might have to fight harder for their share of the advertising dollar. In fact, they're already doing it. Retailers as well as other traditional newspaper advertisers have been testing fast text to test the broadcast waters at a time with cautious dollars will simply become the newest server after the budget buck.

No one has yet come up with a way to beat a computer. If the information industry will be hard to beat the durability of newspapers during the pre-printout era.

The coming of 24 hour cable news, I believe, will affect the composition of newspapers. Many papers have already instituted more features and special sections, i.e., Lifestyle, Food, Home, Living, Business, Sports and others. We will continue to see more of this with even still greater emphasis being placed on features. To further emphasize the difference that sets them apart from cable, newspapers will, I believe, cover hard news in greater depth. The quick treatment or capsule synopsis will go to cable by default.

I see the emergence of CATV as commanding a greater degree of open-mindedness on the part of publishers. Newspaper publishing fosters independence and many publishers tend to feel they are the final judges of what their readers should get. Only by giving readers what they want, not what someone thinks they should have, will newspapers continue to meet the new challenges.

One of the greatest problems with newspapers that you can't get two publishers to agree on anything. I would suggest they try to understand other media better; they don't exist in a vacuum. With a clearer view of their place in the total media mix, they would have a better understanding of their own uniqueness.

They might be more responsive to size and format dissatisfaction. They might resolve the local vs. national rate issue. And while there have been some good attempts to try to understand what national advertisers are looking for, they have been slow in developing them.

(Milton Rockmore writes the nationally syndicated newspaper column The View From The Top and How To Make Extra Money. The Rockmore Company, 32 Orchard Hill Lane, Greenwich, Conn. 06830. (203) 661-1113).

B

Newspapers channel interest in cable TV

By Margaret Genovese
presstime staff writer

A "gold rush" is underway in the cable television industry. A number of newspapers already have staked a claim to a cable system or channel, and others are considering whether to proceed in this rapidly expanding field.

"We are a coming industry," says Andrew L. Lipsky, spokesman for the National Cable Television Association, who suggests the "gold rush" analogy. "People are running around looking for franchises and to get the cable systems they hold franchises for into operation."

This explosion of activity has made cable television a leading candidate to be a major vehicle for electronic transfer of information in the 1980s and beyond.

The rush is on

Although its proponents long have sung the praises of cable television and the wonders it promises for the future, only recently have their songs begun to sing true.

The upsurge in cable interest can be traced back to 1972, when Time Inc.'s Home Box Office—the first pay-TV service to use a communications satellite to relay feature-length movies to cable systems around the country—began some restrictive FCC regulations—a process which is continuing—to change the environment for cable's future growth.

Of late, cable television has provided [illegible] to travel [illegible] of some of the U.S. [illegible] of Representatives' seventeen-channel home viewing [illegible] programming for [illegible] and [illegible] exclusive [illegible] The [illegible] is [illegible] monthly. Cable [illegible] daily [illegible] shows [illegible] of [illegible] will [illegible] operation.

To accommodate this [illegible] of diverse, so-called "narrowcast" [illegible] posed to "broadcast" programming and what the cable industry says is [illegible] consumer demand [illegible] existing standard 12-channel cable systems a [illegible] result [illegible] Systems with 35 and [illegible] of [illegible] are [illegible] over the country. A 76-channel system will be [illegible] in Pittsburgh, and a 52-[illegible] has been [illegible] for Queens, N.Y., to the cable [illegible] more than 100 channels. Clearly, cable [illegible] —is [illegible]

Cable [illegible] now a $1.6 billion a year [illegible] [illegible] [illegible]

The possibilities

In the [illegible] cable television industry [illegible] looking [illegible] cable [illegible] your home [illegible] electronic [illegible] and even figuring out your tax return.

Some of these applications count on cable's [illegible] two-way information transfer.

People would [illegible] back to their television set[illegible]—and talking back, too.

"We were all part of the blue sky yonder crew . . . We saw cable coming into the home . . . with all kinds of potential for bringing all kinds of basic electronic services into the home . . . There is only one thing wrong with that; we looked at cable from the technological, not from the market, point of view."

[illegible] Colorado Springs and Irving, Texas, where Warner Cable Corp. and Dow Jones & Co. Inc., respectively, have interactive cable systems in operation. Because of [illegible] available digitally, ANPA's [illegible] Computer Spreadtime Retrieval [illegible] and many newspapers [illegible].

Joe M. [illegible], president of The Dallas Morning News and chairman of the ANPA Task Force on [illegible] cautioned [illegible] executives that newspaper—traditionally the information collectors and disseminators of their communities—could become [illegible] from which

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...ewer. "The world of cable televi...television someday will be pre... home or office from break... ...your heating and lighting ...substituting for mail order cata... even figuring out your tax

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...a, Ohio, and Irving, Texas, ...ner Cable Corp. and Dow ..., respectively, have in... ...cable systems in operation. ...cable's two-way capability. ...Communications Committee ...February, page 53) and many ...are giving it a close look.

...ley, president of The Dallas ...and chairman of the ANPA ...Broadcast and CATV Com... ...ers that newspapers—tradi... ...information collectors and ...s in their communities—...e data banks from which their readers could withdraw selected information via cable.

Dealey believes newspapers "should be well-advised to do all those things they can do to make a cable channel available to themselves."

Present applications

But what are newspapers doing today with channels they already have? The answer covers the spectrum.

John M. McClelland Jr., publisher of The Daily News in Longview, Wash., owns five systems in Cowlitz County where the newspaper has an 85-percent rate of penetration. But he is using none of them for local news and advertising programming. McClelland declares, "I'm not deliberately going to start in direct competition with the newspaper. We are not going to do it until there is some public demand for it. When there is, we will have to fill the demand, or someone else will."

Robert M. White II, publisher of the Mexico (Mo.) Ledger, does make limited use of one of 12 channels on that city's cable system which he owns. The newspaper's ad salesmen sell some commercials for the local-programming channel, and its reporters occasionally double as television newsmen for the airing of major stories. The newspaper also sponsors extensive election-night telecasts.

Then there is Gerald G. Moriarty, publisher of the Mason City (Iowa) Globe-Gazette. Two years ago, when he was publisher of another Iowa daily, the Ottumwa Courier, Moriarty leased a cable channel and began using it 24 hours a day as a local news and advertising supplement to the newspaper. He intends to establish a similar service over the two channels at Mason City.

"A lot of newspaper people feel you are selling your soul in getting involved with cable television," notes Moriarty, a pioneer in the field. "I warn them that if they don't try to get in, cable's future will look up one day and see that a competitor is in the driver's seat."

Publicity about his innovative work with cable brought so many inquiries that he has developed a handbook for newspapers on establishing local cable systems.

Courier Cable News provides informa-

tion in textual—or "alpha numeric"—form and continually refers the viewer to the newspaper. News and advertising copy are entered into the system at the Courier office via a keyboard device called a "character generator," which is similar in appearance to a typewriter keyboard.

Several newspapers that consulted with Moriarty are following his lead. The Murray (Ky.) Ledger and Times and the Mayfield (Ky.) Messenger each based a cable channel in front of computers and began transmitting news via cable last November. Another small paper, the Troy (Ohio) Daily News, is in the process of negotiating a lease for three channels.

The Yuma (Ariz.) Daily Sun will be using four channels when its Yuma Sun Cable News on April 4. One channel will be devoted to local news, weather, sports and display advertising, a second will provide classified advertising on a pre-announced, scheduled basis, a third will carry the Associated Press Newscable service, and the fourth will feature Reuters' financial and sports cable package. (UPI has two cable news services, one alpha numeric, the other with voice and still pictures.) Publisher Dumas M. Solinsky says the newspaper doesn't intend to "scoop itself" and will not run major local stories from the cable until the Daily Sun is on the street.

Some newspapers, such as The Columbian of Vancouver, Wash., are seeking to enter the cable business but are being formally competed with when their newspaper contracts. John McClellan also plans to bid on the Vancouver franchise, and two other newspaper-linked firms are known to be scrutinizing the market.

Cross-ownership

The last time newspapers showed an interest in cable television, the FCC initiated a proceeding largely which sought, among other things, information on cross ownership of newspapers and cable systems in the same market.

As part of its response to that inquiry, ANPA commissioned Faultless Research Inc. to conduct a study of daily newspapers and cable television.

That study revealed very few instances of combined newspaper-cable system

combinations. Of the approximately 3,100 cable television systems in operation as of April 1974, only 2 percent are related systems owned by newspapers in the same market. Less than 8 percent had any degree of newspaper cross-ownership.

When it concluded its active inquiry in 1975, the FCC did not place any restrictions on newspaper ownership of cable systems.

William H. Johnson, chief of the Policy Review and Development Division of the FCC's Cable Television Bureau—in testimony last month before the House Small Business General Oversight Subcommittee—explained why. The commission, he said, "found very little of that kind of ownership existed. And there didn't seem to be any trend toward it increasing . . ."

He went on to say that there was—and is—the unresolved question of whether the FCC had jurisdiction in the cable-newspaper, cross-ownership area. And, he said, where cable systems and newspapers are commonly owned in the same market, "there may be some beneficial aspects."

But at the same time, he assured subcommittee members who are looking into media concentration that the FCC's proceeding in this area "remains open."

Chairman Doble, of the ANPA Task Force on Broadcast and CATV Ownership, says his group is working "to dissuade the FCC and other governmental bodies from . . . promulgating cross ownership."

Recently, state governments have gotten into the game. There has been cross-ownership related action in three states already this year, apparently reflecting the rising interest.

- In Massachusetts, the state statute that excludes "newspaper, media (sic) and theatre companies . . ." as cable television licensees "in their major circulation areas" currently is being reviewed by the state's cable television commission.

Publisher Richard Devany of The Sun-Chronicle in Attleboro, Mass., called for its clarification after a cable television subsidiary of The Providence (R.I.) Journal Co. applied for franchises in Attleboro and several surrounding communities.

Devany says that if it weren't for the law as he reads it, the Sun-Chronicle would be interested in applying for the franchise. He does not want it to be denied to a corporation for competitive interest. "If we can't have the franchise ourselves, they certainly shouldn't have it, he argues.

- In Connecticut, the Division of Public Utilities Control, a state body, in January ordered the Times Mirror Co. to divest either The Hartford Courant or its cable systems in Stamford and Meriden when it found, according to the panel's chairman, "there is inherently harm to the public interest in cross-ownership." The state ruling followed protests by four independent Connecticut dailies, including The Morning Record and Journal of Meriden.

Later that month, when it approved the sale of a New Haven cable system, the state regulatory agency specifically prohibited the new franchisee from buying a controlling interest in any newspaper or other media in the franchise area.

- In Minnesota, the state's newspaper association is acting to overturn a state regulation that restricts newspaper ownership of cable systems in the same market.

"We think that, particularly for smaller newspapers, if you say to them 'You cannot own a cable system in your own town, but you can go somewhere else to own one,' it is highly unlikely that they would do that. They don't have the staff, they don't have the money, they don't have the expertise," says Robert Shaw, manager of the Minnesota Newspaper Association. The result, he notes, is to "prevent the smaller newspapers from sharing in new technology."

He pointed out in recent testimony before the Minnesota Cable Communications Board that "it is roughly equivalent to levying harness makers that they may not own a gas station, the shop of auto factory in their own community."

Divided regulatory authority

While the issue of regulating newspapers' ownership of cable systems remains an unsettled one, there is no question that cable television itself is subject to regulation and a crazy quilt set of regulators.

The FCC retains some authority, although it has lost ground as a result of re-

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...C retains some authority, al... ...as lost ground as a result of re... cent Supreme Court actions. New York, as well as Minnesota and Massachusetts, have independent cable commissions. Alaska, Delaware, New Jersey, Nevada, Rhode Island and Vermont join Connecticut in regulating cable through their public utility commissions. And in Hawaii, cable television is regulated through a separate cable division of the Department of Regulatory Agencies.

For the most part, though, cable is regulated by local governments through individually fashioned franchise agreements, documents that often measure inches thick. These agreements are subject to revocation if contractual obligations aren't met, and they must be renewed periodically. This is a source of concern for some, including Minnesota Newspaper Association Manager Shaw, who says:

"What is gradually unfolding is a system that is franchised, licensed, controlled from top to bottom by government, and if that is not unconstitutional as far as the press is concerned, then I don't know what is."

The FCC suggests that franchises be awarded for periods no greater than 15 years.

Localities are well-compensated in the regulatory scheme of things, although the FCC normally limits communities to assessments of 3 percent of a franchise's gross revenues.

The FCC has proposed an end to the ceiling on franchise fees. Whether this would lead to the uncapping of an "oil well," as cable has been termed, remains to be seen.

What does it cost?

Depending on the individual circumstances of the franchise area (big city, hilly small town, etc.), it can take anywhere from three to five years for a cable system to realize a positive cash flow—although as little as one year is not unheard of, according to Stephen B. Effros, executive director of the Community Antenna Television Association, the primary representative of smaller, independent cable system operators.

Establishment of a cable system is "highly capital intensive," he reports.

In a suburban area, where there are sufficient utility poles, the cost of installing the cable averages $10,000 a mile, he says. In an urban area, where the cable may have to be buried underground, it could escalate to $12,000 to $15,000 a mile. And in New York City it could cost up to $150,000 a mile.

Other start-up costs include the antenna for pulling in nearby channels and a satellite dish for receiving distant signals; copyright fees; maintenance vehicles; rental of utility poles or conduit space; and the coaxial cable itself.

According to Effros, acquiring an existing system can cost as much as $500 to $700 per subscriber (depending on the age of equipment, whether added revenue from pay cable is available and whether the market is stable or growing). (Some newspapers recently have been sold for nearly $1,000 per daily subscriber.)

It is not as easy to put a price tag on channel leasing, Effros says, "because it is a new experience for the cable industry."

"Some are giving it away to fill the channel and have more programming," he reports. Others charge a monthly rental fee based on the relationship of the channel to the total cost of the system. Still others charge a percentage of the income derived from the channel.

The Bay Resident, a weekly in Oceo Bay, Ore., has leased a cable channel for five years and been in the cable news business since November.

According to Publisher Bill Grannell, the cable system operator provided the newspaper with a character generator and amortized its cost over the five-year period. In addition, the newspaper estimated its potential cable advertising revenue and agreed to pay a percentage to the system operator based on those projections. Grannell says he now be-

> 'What is gradually unfolding is a system franchised, licensed, controlled . . . by government, and if that is not unconstitutional as far as the press is concerned, then I don't know what is . . .'

lieves it would be advisable, especially for smaller newspapers, if agreements were based on a percentage of actual revenues.

The Times-Republican of Marshalltown, Iowa, has a five-year contract to share one channel with the local cable company. It agreed to pay one-half the purchase price of the $15,000 character generator which sits in the Times-Republican newsroom and which is used to present news headlines, $2-a-line birthday and anniversary greetings and classified advertisements, reports Publisher David U. Norris.

The News-Times of Danbury, Conn., has leased a channel on two cable systems for five years on a cost-per-subscriber basis. (See story, page 8.)

The Recorder in Amsterdam, N.Y., has leased a channel on the cable system in that community for 10 years at a flat rate regardless of household increase, with an option for another 10 years at a rate already negotiated.

"The bottom line," Recorder Publisher Charles H. Miller says, "is that we have positioned ourselves for whatever is coming along regarding a tie-in between the newspaper and the electronic media. That's really what it's all about." □

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The New Media: Challenges and Opportunities in the 80's

By Richard E. Wiley

Partner, Kirkland & Ellis, Washington, D.C.

Before the American Newspaper Publishers Association

Honolulu, Hawaii

April 22, 1980

It is a privilege for me to address this Annual Convention of the ANPA. I am especially pleased to appear before an audience which has such a significant commitment to the future of the press in this country, print and electronic.

I want to comment today on some of the major technological and regulatory issues which, in my opinion, your industry will face during the decade of the 1980's. In doing so, I intend to place considerable emphasis on the electronic media -- not only because it is an area with which I have some familiarity but also because I am convinced that coming developments in this field will have a considerable impact on the newspaper industry. The subject with which I want to deal is so broad, the regulatory and legislative issues so varied and complex, the technology so dynamic, that I cannot possibly do justice to all of its many facets. Accordingly, I will simply try to highlight today what I see as the most interesting and important

trends and developments -- and, then, leave time for your inquiries on the specific subjects which interest you most.

While technology will have a decided effect on your businesses in the decade ahead, let me say at the outset that I expect newspapers to be alive, well, and well worth reading in 1990. Indeed, I predict that the basic newspaper of this country will remain -- despite all of the technological innovations of the future -- in much the same form as we know it today. Because my law firm has been communications counsel to the ANPA for many years, you may wish to regard this comment as just a Washington "lawyerism". However, in all sincerity, I believe that it will prove to be true.

This is not to suggest -- technology aside -- that your medium is without problems. As you know, some observers foresee only minor growth in overall newspaper and magazine circulation during the next decade. Accordingly, newspapers may need to extend their market area -- to identify and reach smaller target audiences with specialized editions. Audiences and advertisers may have to be differentiated by their location, urban or suburban, or demographically by income, social or purchasing characteristics. Finally, as you recognize better than I,

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improvements in production methods (such as lighter-weight newsprint, photocomposition, electronic editing, computerized make-up processing, plateless and laser processes, etc.) may prove to be even more important in allowing newspapers and magazines to expand their universe of readers and advertisers at reasonable costs. This, however, is not my field of expertise.

Other problems for you -- ones with which I am more conversant -- may develop in the area of increased competition for the attention of your readers. Changing technology will permit many new sources of information to be delivered directly into the American home. I believe that it is incumbent on you -- the newspaper publishing industry -- to be involved with, and to take advantage of, a variety of new methods of electronic information transfer and delivery.

The decade of the 80's clearly will be a watershed in many respects with respect to the use of electronic technology by newspapers and others. Already, we can observe the growing importance of electronic communications technology to newspapers, a trend which I believe will continue. This is because I regard the newspaper business not as a manufacturing industry, based on newsprint and printing presses, but essentially as an information

medium: one whose success depends on gathering a wide range of data and communicating it, in an efficient, interesting and useful form, to the American public.

Among the new electronic communications applications of significance to newspapers are varied means by which news and other information -- such as shopping guides, "yellow page" print-outs, restaurant menus, etc. -- can be delivered directly into the home, often by means of satellite transmissions which can be received by small, inexpensive building-top receivers.

You have all read, for instance, about the numerous special program services (such as sports, religion, foreign language, etc.) which are now becoming available at modest costs to CATV systems in addition to the local and distant television signals which they traditionally have carried. In addition, so-called teletext-type operations permit many kinds of information to be broadcast between the tiny lines which make up the television screen and decode it by a simple attachment to the television receiver. Similarly, viewdata-type systems, by connecting the ordinary telephone line to your television receiver and an adapter, make possible the two-way dial up and receipt in the home of information collected and stored in vast data bases.

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And there are now available relatively inexpensive home computers which can provide access to all kinds of information previously unavailable, as a practical matter, to individual newspaper readers.

The ability of an established newspaper to serve its present business interests and to make use of these new technologies is likely to be greatly influenced by public policy decisions made by government bodies, particularly my former agency, the FCC. In this regard, let me mention some of the most significant regulatory trends in the communications field that you should consider in making your business plans.

I do not intend, incidentally, to deal with the likely developments in the entertainment field, developments in which your radio-television and cable TV counterparts obviously would be interested. Suffice it to say that, happily and to the current FCC's credit, the primary emphasis will continue to be on deregulation (as it was when I was Chairman). Unhappily, that deregulatory trend does not seem to extend to first amendment areas. The proposals which I made during my tenure -- the abolition of the Fairness Doctrine for cable, the experimental suspension of the Fairness Doctrine for major market radio,

and the outright repeal of the Equal Time law -- unfortunately are still not ideas whose time has come at the FCC and on Capitol Hill.

While I believe in communications deregulation wherever feasible, I do want to caution you that there are areas in which some government intervention may be in the public interest. For example, the very nature of radio transmission -- with the inevitable potential of electromagnetic interference -- requires FCC oversight to insure that the most productive use of scarce spectrum space can be made. Moreover, the enormous economic resources which are concentrated in a single telecommunications company - AT&T - may require some governmental oversight to insure that viable competition can be maintained.

Let me illustrate how certain of these public policy considerations have come into play with regard to a technological development in which this audience may have a real interest: the communications satellite. Just as the recent and very unfortunate loss of RCA's third satellite demonstrates that all of the technical concerns have not been resolved, so also does the regulation of this technology still present problems. Some of you may

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be aware of the FCC's recent action deregulating satellite communications to the extent possible. Commendable as it is in principle, this decision may not produce all of the practical benefits which many communications users would seek.

For example, a great amount of interest has been generated within your industry in the establishment of satellite receiving stations at each newspaper in order to implement a national advertising distribution system, and also to reduce the costs of wire services. The FCC's deregulation order says that any newspaper can build a satellite receiving station, if it so chooses, without an FCC license. This would appear to be a considerable advance over the previous requirement that all stations be licensed, but a closer look suggests that the amount of progress made is open to question.

In the first place, an FCC license for one of these stations is relatively simple and inexpensive to obtain. Secondly, unlicensed stations are not protected from interference by other radio stations, interference which, in some cases, can completely destroy reception. Thus, as a practical matter, many stations which have an important business-related function may still want to be licensed

in order to obtain insurance against future interference. Finally, and most importantly, a program such as national advertising cannot operate unless one or more transmitting earth stations are available to get the commercial copy up to the satellite in the first place.

The transmitting function is still closely regulated by the FCC, primarily on technical grounds because of the delicate balance which must be maintained between each of the many satellites to avoid interference problems. Commission regulation, however, is not confined to technical matters. The FCC also regulates who may provide satellite service, what specific services each carrier may offer, and what they are allowed to charge for this service.

Recently, the FCC even indicated that it could, if necessary, allocate satellite service among users, just as the FERC allocates gasoline supplies. This notion, considered with the RCA disaster, makes it clear that satellite communications are not an infinitely expandable resource and that, in the future, capacity probably will be allocated -- either by the marketplace (as I would hope) or by government intervention. My advice to you, if you are interested in using satellites, is to move ahead with

your plans as rapidly as feasible. This is because the present allocation system is on a "first-come-first-served" basis, and capacity is going fast. Moreover, you will be competing for that capacity with an ever-growing list of other businesses.

A second major area which I believe important to your business plans is the market structure and regulation which ultimately will be applicable to electronic information distribution. This is important because I am convinced that newspapers must expand into the electronic distribution of some of their information product, or lose readership and revenues to other information providers.

For example, Teletext and Viewdata systems enable the home television set to display textual material such as classified ads, movie and television schedules, stock tables, sports results, headlines and even complete news stories. These operations can easily store as much or more information than is contained in a newspaper, and update it instantly. The viewer can selectively request display of the ads, listings, or news of interest. Such systems represent either a dire threat or a major opportunity for newspaper publishers. For many reasons, I am an avowed member of the latter school of thought.

The market structure and government policy applicable to electronic information systems will be vastly different from that with which you are familiar in the newspaper business. One striking difference is that newspapers generally own the basic means of distributing their information -- the presses and delivery systems. (Even when delivery is independent, it is usually by distributors who depend exclusively, or in large part, on newspapers). By contrast, the nation's most important electronic distribution system is owned by the Bell System and the other telephone companies. Other electronic systems which may be used for home information systems, such as CATV or television, tend to be independent of newspapers because of business judgments and government policy. And, of course, the home television set is privately owned.

Accordingly, a newspaper which contemplates use of electronic distribution techniques is faced at the outset with a decision on whether to acquire ownership of facilities or act only as an information source (i.e., a software supplier) and leave the hardware to someone else. Additionally, the newspaper would want to know who are its likely competitors. Unfortunately, there is not yet a stable and predictable regulatory framework within which to make all of these decisions.

Perhaps the greatest area of certainty is in the ownership relation of newspapers and the broadcast medium. The FCC's Rules make it clear that a newspaper cannot acquire control of new broadcast properties in its community but, except in a monopoly situation, can retain control of previously owned stations. This clarity, however, does not extend to the question of whether broadcast stations will be allowed to carry teletext-type services on a regular basis and, if so, whether they can and will offer capacity to newspapers or purchase information from them.

Moreover, and of great significance to you, the FCC has yet to come to grips with the difficult question of how the traditional First Amendment rights of the print media are to be protected and preserved where newspaper publishers deliver information or advertising material electronically, either by the broadcast mode, by use of telephone company or other common-carrier lines, or otherwise. As publishers, you have always enjoyed total freedom from government regulation of the content of your newspapers, but broadcasters and CATV owners are still encumbered with a number of program content and carriage restrictions which would be unthinkable and unconstitutional if applied to newspapers. As I see it,

government regulation of content is neither necessary nor appropriate with regard to new services such as Teletext. And I respectfully suggest that this audience, perhaps above all others, should be active in seeing that this view becomes clear federal policy.

With regard to cable, let me point out that, once again, the rules relative to ownership are currently clear: local newspaper-cable cross ownership is permitted (although the possibility of a future ban should not be ignored). Additionally, there is relatively little regulation of cable at present which would inhibit its use as an information dissemination facility. Given this atmosphere, and the rapidly growing CATV penetration into major markets, I would think that cable presents a very attractive synergistic investment for newspapers at the present time. By the same token, it must be kept in mind that cable operations are strong potential competitors of newspaper-affiliated electronic information systems which do not use CATV.

Finally, it should be recognized that the facilities of the telephone company are also well-suited to electronic information systems. Market penetration is almost universal, and two-way capacity is available for efficient

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selective viewing of large data bases. Contrary to the impression that some may have, there are at present no significant regulatory barriers to newspaper use of the telephone system in conjunction with television sets for a home information system as Viewdata. Information processors and suppliers simply are not regulated, and telephone companies are required to permit information systems to connect to the telephone network. Recently, the FCC has even taken steps to make it easier and less expensive to manufacture the devices used to connect the telephone to the TV set.

Incidentally, telephone companies represent one of your more likely competitors in the information processing and distribution fields. For many years, AT&T (but not other telephone companies) has been prohibited from supplying data processing services, or serving as an information supplier itself, under the terms of a 1956 antitrust consent decree. However, the Bell System is in the midst of an intense campaign before Congress and the FCC to eliminate the effect of the Decree. In essence, AT&T wants to gain more participation in the information services market (created by the marriage of computers and communications) in order to compensate for the competitive incursions into "pure" communications services.

Very recently, Bell has achieved some measure of success in this regard. The FCC, in a well-publicized "Computer II" decision, adopted new rules to govern communications carriers which (like Bell) also offer data processing or other computer-enhanced services. In deregulating these services, the Commission held that AT&T could provide them through a separate subsidiary. This ruling will give Bell greatly increased marketing flexibility although it remains uncertain just how far the company will be permitted to penetrate into the information processing and distribution market. While the courts (or perhaps Congress) undoubtedly will have the last word on AT&T's activity in unregulated businesses, it is clear that the deregulatory trend now flowing in government is proving to be favorable to Bell.

In addition to the economic consequences of the FCC's action, I believe that your industry must focus on other possible impacts. For example, what would be the impact on First Amendment values if AT&T were able to both control electronic transmission and to be one of the information providers? What would this mean for the freedom of other press entities which use AT&T lines, but are viewed as competitors of Bell's information

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services? It seems to me that these questions deserve careful attention as you determine the future of your newspapers in the electronic media arena.

Whatever success that Bell ultimately achieves in its effort to move beyond the provision of telephone service into other endeavors, I believe that it is essential that the company not be permitted to cross-subsidize its information services from monopoly communications revenues. Any such predatory action would make the already difficult job of competing with this corporate giant impossible. This is an issue in which your industry has a vital stake because, clearly, any newspaper strategy based on press ownership of data processing and/or communications facilities must take into account the probability of very challenging competition from the telephone industry.

ANPA, incidentally, has been mindful of the possible problems presented to newspaper publishers by changes in the regulatory climate. I urge you to be aware of, and to support, the efforts of the ANPA Telecommunications Committee on these matters. ANPA has urged both the FCC, in conjunction with a variety of proceedings, and Congress, in testimony on proposed revisions to the Communications Act, to avoid regulating any electronic information

processing or distribution activities carried out by newspapers as evolutionary developments from the traditional newspaper business. Additionally, AMPA has urged these same government bodies to confine AT&T to the communications business, or to allow it to provide data processing and information services only through a separate corporate entity not funded by or operated in connection with the telephone business.

To sum up my views on the regulatory process, I personally feel that if all of the complex technical, economic and organizational problems of developing new informational systems can be resolved, government issues should not prove to be insuperable barriers to business growth. Before we know whether my confidence is misplaced, however, a number of important questions will have to be answered by the FCC, the Congress, and the federal courts. Let me just list a few of these regulatory headaches for you.

Should electronic delivery of newspapers be regulated by the FCC, or by any other government entity? If the answer is yes, how can such regulation be reconciled with the established First Amendment rights of newspapers? Should the federal government be permitted to compete with

private business in providing electronic information services (such as the Postal Service's proposed electronic mail offering or the Department of Agriculture's commodity price and weather services). And, as previously discussed, to what extent should AT&T, the world's largest corporation, be permitted to compete in offering data processing services and other kinds of activities from which it has heretofore been barred? And who should own and maintain the terminal equipment, decoders, and mini-computers which will be required to make electronic home delivery of information a reality throughout the country?

Ladies and gentlemen, my time is more than up. Let me close with the view that -- although we now have the technology to provide electronic home delivery of most of the contents of daily newspapers -- I personally do not believe that your industry will be adversely affected by such a development during the decade of the 1980's.

First of all, advertising provides most of the revenues necessary to support newspaper publishing. While advertising could be provided on electronic delivery systems, it is questionable in my mind as to whether home viewers would accept teletext type news and information delivered with commercials.

Second, leaving aside the question of advertising dollars, it remains to be seen whether a home information center could deliver the articles in today's newspapers on an economic basis. Finally, and most significantly, ownership of the basic product gives newspapers the opportunity to exploit it regardless of the delivery or distribution system employed. What has value to the consumer is the news, information and entertainment materials published in newspapers and magazines. Accordingly, I believe that your industry -- which gathers, prepares and has title to these materials -- is in the best position to take advantage of the new delivery systems which we have discussed. And, in the final analysis, the most successful newspapers should be those which are able to meet their customer needs by distributing information and entertainment products not only by existing means of distribution but through these new systems as well.

Ladies and gentlemen, I have enjoyed the opportunity to discuss coming developments in the world of telecommunications and the regulatory issues they present. I look forward to exchanging views with you during the question and answer sessions to follow.

Thank you.

WORTHINGTON DAILY GLOBE

box 631 — 300 11th street — worthington, minnesota 56187 — telephone (507) 376-4121

October 1, 1980

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STATE OF MINN...

The Minnesota Cable Communications Board
500 Rice Street
Saint Paul, Minnesota 55103

Members of the Board:

I have been advised that the Cable Communications Board will be taking written testimony through October 17, 1980, concerning possible changes to your Board's Rule 4.156, Certain Ownership Prohibited. This letter contains my testimony and the testimony of the Worthington Daily Globe, Inc., as to why we feel that this rule should be rescinded as it applies to newspapers and/or publishers and owners of newspaper companies.

Our arguments against this rule are as follows:

1. We do not want to be prevented by Board rules from utilizing the technology of cable for producing and distributing our newspaper should facsimile technology ever become economically feasible. Under subparagraph E. of Rule 4.156, we are prohibited from having even a minority interest in a cable communications system in the community of Worthington for this purpose. At the same time, there is no prohibition against a giant newspaper chain from coming into Worthington and being awarded the cable franchise for the community.

During the past two decades, it has become vitally important for all newspapers to keep pace with changing technology for producing and distributing their product. The Daily Globe was the first daily newspaper outside of Texas to go to web offset printing in 1961. It was the first daily newspaper in the nation to employ electronic phototypesetting to produce 100% of its product in 1967. More recently, in 1976, the Daily Globe was an early innovator in installing front-end-system computers to speed its editing and typesetting processes. Today, we are making plans to receive our Associated Press and New York Times News Service wires by satellite to improve the timeliness of our wire news reports. Tomorrow, it could be very important to the Daily Globe and its 42 fulltime employees to be able to distribute their product via cable facsimile. These members of the Globe's news, advertising and production staffs have invested their lives in becoming print communications specialists. Should a capricious and unfair bureaucratic rule pose possible jeopardy to their future livelihood? Of course, it shouldn't. The rule should be changed.

2. The Board's rule is discriminatory and is in conflict with the equal protection provisions of the First Amendment to the Constitution. Restrictions are made against any kind of

newspaper involvement in the ownership in a cable communications system in its own community in the outstate area, but no restrictions are placed on their radio station competitors in the same outstate area. Ironically, it is newspapers, not radio broadcasters which might have genuine need to utilize cable technology for facsimile transmission of their product.

On this one point alone, the Board's rule probably would not stand up in court. We hope, however, that a legal test will not be necessary. A court test would be expensive, both for the Board itself and for the concerned newspapers.

3. The Daily Globe, now in its 108th year of publication, has always been a locally-owned newspaper. Majority ownership of the common stock (51 percent) is held by myself. My partners in ownership are Paul D. Gruchow, managing editor, and Owen D. Van Essen, business manager, each owning 24.5 percent. All three of us are residents of Worthington and all three each day are actively involved in the production and management of the newspaper. I am interested, should the Board's rule be changed, in becoming a 10 percent owner in Worthington Cablevision, Inc., should this company be a successful bidder for the Worthington cable franchise. Other ownership of Worthington Cablevision, Inc., would be James Wycor, manager of KWOA-AM and KWOA-FM, Worthington's locally-owned radio station, 10 percent, and Dowden Communications, Atlanta, Georgia, 80 percent. Dowden, in return for my investment participation, has promised to reserve one cable channel for use by the Daily Globe for facsimile purposes should that technology come of age and should they win the Worthington franchise.

Is there really significant danger for the publisher of a small daily newspaper buying into the cable system in his own community, particularly when the purpose for that investment is to protect his newspaper's access to new technology in the future?

Is there not far greater danger in the way cable systems now are being developed, usually by huge, distant cable corporations, many of which own cable systems in a large number of cities across the country?

These are our reasons for wanting to see the Board's Rule 4.156 changed. If the Board should take any further oral testimony on this rule, we would like to participate.

James L. Vance

James L. Vance
Publisher
Worthington Daily Globe

PROPOSED RULE AMENDMENT

ADMINISTRATION, CABLE COMMUNICATIONS BOARD

DATE RESPONDED TO
ACTION TAKEN
DATE

STATE OF MINNESOTA
CABLECO

NAME Ray Foslid, Executive Director

GROUP REPRESENTED OR TITLE Minnesota Broadcasters Assoc.

ADDRESS 421 East First Avenue, Shakopee, Minn. 55379

I hereby request that the Department named above:

(Check one)

_____ Adopt a new rule governing _____.

_____ Suspend Rule _____.

X Repeal Rule 4 MCAR Sec. 4.156(F) _____.

X Amend Rule 4 MCAR Sec. 4.156(A) _____.

Insert here the new rule or rule change, with the exact wording proposed. Present wording of the rule is to be shown, with all wording that is to be deleted to be shown with a line drawn through the words. All proposed new wording is to be underscored.

See Attachment A

(Use additional pages if necessary)

State here in as much detail and as completely as possible the reasons for your request, as the department will use as part of the basis for its decision the explanation or reasons given for your request.

See Attachment B

4 MCAR Sec. 4.156(A)

A. A television broadcasting station ~~whose predicted Grade B contour, computed in accordance with section 73.684 of~~ which is prohibited from cross-ownership pursuant to 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 the system is serving subscribers)~~; or

4 MCAR Sec. 4.156(F)

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).~~

ATTACHMENT A

STATE OF

STATEMENT OF REASONS

I.

The proposed amendments to 4 MCAR Sec. 4.156(A) are not at this time substantive in nature. The provisions of the present rule basically repeat the statutory prohibition set forth at 47 CFR Sec. 76.501(a)(2). That provision states in pertinent part:

> "(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in:
>
> * * *
>
> (2) A television broadcast station whose predicted Grade B contour, computed in accordance with section 73.684 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers);".

The amendment as proposed would maintain the present prohibition as contained in the present rule and in the present FCC regulation. However, it would allow greater flexibility at the state level as FCC regulations change in the future. For instance, if the FCC regulation, which will control in this matter in any case, were to be changed at some date in the future, the state would at that point be required to amend its rule to bring it into compliance or would have a harsher state standard. The proposed amendment to the rule would allow the state rule to incorporate all future changes in federal regulations.

It is clear that the proposed amendment to paragraph A will allow greater flexibility and will provide greater administrative economy as changes in federal regulations require amendments to the Board's rules.

II.

The second proposed amendment basically repeals the provisions of 4 MCAR Sec. 4.156(F). That rule at the present time prohibits cross-ownership of a cable communications system by a radio or television broadcast station broadcasting from within the Twin Cities metropolitan area.

There has been a debate occurring for some period of time relative to concentration of ownership and control of the

various media. It is clear that at some level, absolute concentration of ownership may well have a limiting effect upon free speech, free press, or free broadcast journalism. When that point is reached, there may in fact be a violation of the public interest. But, it appears that there is a large burden upon those who wish to restrict ownership to prove the point at which this violation of the public interest occurs. This, of course, is pointed out in the Cable Communications Board's enabling legislation in M.S. 238.01, which provides that the objectives of the Board should discourage concentration of control and ownership only "when not in the public interest". We submit that the foreclosure of cross-ownership by any radio or television broadcast station located within the metropolitan area goes well beyond the stated objectives of the Board and creates a denial of rights which is unnecessarily absolute in nature.

The present rule certainly goes well beyond any present FCC restrictions on cross-ownership. The federal restrictions are limited to those enumerated in paragraphs (A), (B) and (C) of this rule. They do not deal with radio broadcast stations at all. It is ridiculous and unwarranted for the Cable Board to discriminate against radio and television stations located in one part of the state as opposed to those located outside the metropolitan area. Moreover, it is unwarranted for the state of Minnesota in general to adopt a harsher rule than the Federal Communications Commission, which deals with this issue throughout the entire country. While the Board is required to establish standards pertaining to ownership and control of cable communications companies, we believe that the present rule is unreasonable, inequitable, discriminatory and unfair to those broadcast stations located within the metropolitan area.

We are aware that the Minnesota Newspaper Association has applied to the Board for a repeal of paragraph (E), which prohibits ownership by a publisher or owner of a newspaper company. We agree with the remarks made by Mr. Shaw on January 11, 1980, relative to repeal of that rule. We suggest repeal of paragraph (F) for the same reasons enumerated therein. Moreover, we feel that if the ownership requirement as to newspaper publishers is to be repealed, the same should certainly apply to radio and television broadcast stations within the metropolitan area. This is a matter of fairness and equity between the various forms of media, which should be treated similarly in this matter. As stated above, the cross-ownership question only arises when the public interest is endangered by such ownership. That has not been shown to be the case as applied solely to radio or television broadcast stations located within the metropolitan area or to newspapers. The rights of free speech, free press, and ownership of property are far more important in this instance than control over cross-ownership when no danger or abuse has been shown to exist.

III.

CONCLUSION

1. 4 MCAR Sec. 4.156(A) should be amended as proposed to grant greater flexibility without making any substantive change in the present law.

2. 4 MCAR Sec. 4.156(F) should be repealed. It is a discriminatory provision which goes beyond the restrictions of the FCC or other states in this area and which has not been shown to be necessary as in the best interests of the public.

PRESENTATION TO THE

MINNESOTA CABLE COMMUNICATIONS BOARD

by

THE MINNESOTA BROADCASTERS ASSOCIATION

AUG 8 1980
STATE OF MINNESOTA
CABLECOM COMMISSION

August 8, 1980

Thomas S. Deans
Legislative Counsel

Mr. Chairman, members of the Board. My name is Tom Deans and the law firm of which I am a member, Peterson, Popovich, Knutson & Flynn, represents the Minnesota Broadcasters Association. Mr. Peter Popovich and I serve as legislative counsel to that organization and are registered lobbyists on its behalf. Mr. Popovich was unable to be here today because he is participating in a trial in U. S. District Court in Minneapolis. Mr. Ray Foslid of Station KSMM in Shakopee, who is the Executive Director of the Minnesota Broadcasters Association, is also here today and he and I will be available for any questions that the members of the Board may have.

As you are aware, the Minnesota Broadcasters Association has petitioned the Board for an amendment of its rule pertaining to television broadcast station cross-ownership of co-located cable communications systems and for repeal of its rule pertaining to cable system ownership by radio and television stations broadcasting from within the Twin Cities metropolitan area. As related to each rule, there are separate issues involved and I would like to basically review our reasoning behind requesting the changes in each case.

I.

Our first request is for an amendment to 4 MCAR 4.100A. As we see it, this proposed rule change is not substantive in nature. The provisions of the rule basically repeat the statutory prohibitions which are set forth in the regulations of the FCC at 47 CFR Sec. 76.501(a)(2). That provision is cited in full as part of our petition. Basically, both prohibit ownership of a cable communications system by a television

broadcasting system whose predicted Grade B Contour overlaps in whole or in part the service area of the cable system. We are not here today to argue the validity of the FCC rule. It is the law at the present time and as far as we know will continue to remain the law. Instead, what we are proposing is that the Cable Communications Board's rules be amended so as to cross-reference and incorporate the FCC rules and regulations. As I said, the same cross-ownership is prohibited in each instance so that this will not make a change in the present rule. However, it will allow flexibility in the future as the FCC's rules change so that those changes are automatically picked up by the Cable Board's rules. We wish to remind the Board that broadcasters are totally regulated by the FCC. We see no reason in this instance for dual regulation concerning the same matters. This can only lead to uncertainty and to future legal conflicts between the state and federal law.

We feel that this change will also be to the benefit of the Board. If one is to assume that the Board will wish to keep its rules on the same track as the FCC regulations, this proposed rule change will forestall the necessity of continuing rule changes by the Board in the future to keep up with changes in those FCC regulations. It is thus a matter of administrative convenience for the Board which we feel will save it time and money in the future, time and money which would undoubtedly be better spent on the pressing matters before the Board at that time.

We are obviously not certain that we will agree with all future FCC regulations and it may not always seem to be to

our advantage to be tied to those federal dictates. However, as I stated earlier, we are governed by them in any regard. This change will only guarantee that we do not have to attempt to comply with different or contradictory rules on the same subject. We are talking about large investments of capital in the ownership of a cable system and there should be the maximum certainty possible as to the state of the law.

In summary, this proposed amendment to the Cable Board's rule does not make a substantive change but merely cross-references the Board's rules to the FCC rules and regulations which are in effect at any given time. It will avoid problems of conflicting or dual regulation and will be an administrative convenience which will save the Board time and money in the future.

II.

Our second proposal may invoke more discussion than the first, but we submit to you that it is also not of a controversial nature. We are requesting the repeal of the provisions of 4 MCAR Sec. 4.100F. That rule at the present time prohibits cross-ownership of a cable communications system by a radio or television broadcast station broadcasting from within the Twin Cities metropolitan area.

We should first point out what this rule does and does not do. If the rule were repealed, a television station broadcasting from within the Twin Cities metropolitan area would still be prohibited from cross-ownership of a cable system which was serving communities within the metropolitan area and the surrounding area. This would be by virtue of

the earlier rule which we have proposed to amend. As we understand it, the Grade B Contour of most Twin Cities' television stations is approximately 78 or 80 miles. The first rule that we discussed already prohibits cross-ownership within that service area. Repeal of this rule would not change that fact for television stations.

Under the present rule, however, the ownership of a cable system operating in the far reaches of the state, say Kittson County in the far northwestern corner or Cook County in the far northeastern corner or Rock County in the far southwestern corner of the state, would be prohibited. The rule provides an absolute prohibition. There is no co-location question, there is no public interest question. It is just a flat prohibition. This goes well beyond any prohibitions in the federal regulations or by the FCC, as will be discussed in a moment.

The present Board rule also prohibits cross-ownership of a cable system in out-state Minnesota by a radio station broadcasting from within the Twin Cities metropolitan area. There is no such prohibition anywhere in the federal law or federal regulations regarding such cross-ownership by radio stations.

We realize that there is an ongoing debate relative to concentration of ownership and control of the various forms of the media. It may be that at some level, absolute concentration of ownership could have a limiting affect upon free speech, free press, or free broadcast journalism. If that should happen, it may well be construed to be a violation of

the public interest. That issue has most often arisen when there is co-location. By that I mean where a television station within the metropolitan area would wish to buy or operate a cable system within the metropolitan area. As we have said, that is already prohibited by both the federal regulations and by the Cable Board rules. That is not what we are talking about in reference to this rule, however. It prohibits ownership by that television station regardless of co-location, regardless of overlap of service area. If one feels that the provision of cable service to all areas of the state is in fact a good thing, we think that it may be against the public interest to prohibit ownership by those who may have the experience, the know-how, and the desire to provide that service.

Moreover, we should point out that the present rule disallows cable system ownership by radio and television stations located in the metropolitan area as opposed to those located in all other parts of the state. This is clear discrimination against these metropolitan stations. And it is discrimination without a reason since the public interest question is already governed by the Board's other rule prohibiting cross-ownership within the Grade B Contour, as discussed earlier.

As we have stated before, and undoubtedly will state again in this and in other forums, the radio and television broadcasting industry is one of the most closely regulated industries in the country. The FCC regulations already regulate cross-ownership of radio broadcast stations and co-located

newspapers, of television broadcast stations and co-located newspapers, and of television broadcast stations and co-located cable systems. We see no reason for the Cable Communications Board of the State of Minnesota to have a harsher rule than that of the FCC which must deal with this issue throughout the entire country. While we will readily admit that the State of Minnesota is certainly different in many respects from the rest of the country, we do not feel that there has been any pattern of abuse of the public interest in Minnesota which would warrant the continuance of a harsher rule than that imposed by the federal government on broadcasters in the remainder of the states.

Let me give an example of the two types of discrimination against metropolitan stations which are involved in this rule. First, let's assume that the distance between St. Paul and Duluth is approximately 150 miles and that it is the same distance between Hudson, Wisconsin and Duluth. A television station broadcasting from St. Paul would not be allowed to own a cable system in the City of Duluth. A television station broadcasting from Hudson, Wisconsin, right next to St. Paul, would be allowed to own that system. Conversely, a television station broadcasting from Duluth would be able to own a cable system in the City of St. Paul or in the City of Hudson. This is clearly unwarranted discrimination which does not serve any real purpose.

In summary, therefore, let me reiterate the following points:

1. The present rule is unnecessary as no abuse has been shown.

2. The present rule is not necessary in terms of the public interest because the co-location issue is already taken care of by the Board's other rules and by the FCC regulations.

3. The Board's present rule discriminates without reason against metropolitan television stations in favor of out-state television stations.

4. The present rule, without reason, discriminates against metropolitan television stations in favor of out of state television stations.

5. The present rule goes far beyond the FCC requirements which govern ownership of cable systems in the remainder of the country. This is general discrimination by a Minnesota governmental agency against Minnesota business.

6. The rule is also discriminatory against radio broadcast stations located within the metropolitan area when no other radio stations in the state or surrounding states are subject to such restrictions on ownership.

In conclusion, for the reasons stated above, we respectfully request that the Board amend the provisions of 4 MCAR Sec. 4.100A and repeal the provisions of 4 MCAR Sec. 4.100F in the manner set forth in our petition. I will certainly be glad to respond to any questions at this time or at any point in the future.

OCT 17 1980
STATE OF MINNESOTA
CABLECOM COMMISSION

PRESENTATION TO THE

MINNESOTA CABLE COMMUNICATIONS BOARD

BY

THE MINNESOTA BROADCASTERS ASSOCIATION

October 17, 1980

Thomas S. Deans

Legislative Counsel

Mr. Chairman, members of the Board. For the record, my name is Tom Deans and I represent the Minnesota Broadcasters Association.

Today I would like to briefly respond to some of the issues raised by those individuals speaking in regard to our petition and then would like to review the reasoning behind our petitioning the Board for the requested changes.

First, let me reiterate that the radio and television broadcasting industry is very closely regulated by the Federal Communications Commission. Contrary to some of what has been said during the course of the past few hearings, broadcasters may not do as they please without oversight by and accountability to that federal agency. It has been postulated that the FCC is preparing to or may at some time in the future abandon the public interest. That, of course, is the grossest sort of speculation with no basis in fact. And if it were to happen, which is not likely, the Board could certainly react in an appropriate manner at that time when it had the actual facts in hand. We would expect it to so act if it perceived that there was a danger to the public because of an FCC action.

The Board must realize several points. It obviously does not have the power to control the broadcast industry in this state for that is beyond its jurisdiction. If radio or television ownership of cable systems is seen by some as generally inappropriate or not proper, that should be dealt with on a federal level. Under the present rules, outstate or out of state radio stations can own cable systems anywhere in the

state. The prohibition in your rules against radio station cross-ownership only applies to radio stations located within the metropolitan area.

Under the present rules, a television station located within the metropolitan area would be absolutely prohibited from cross-ownership anywhere in the state. However, a station located just outside the metro area has free rein as to cable ownership so long as the cross-owned cable system is not located within its Grade B contours. Television stations from Duluth could own systems in the metro area but stations from Minneapolis could not own in Duluth. Moreover, stations from Hudson, Wisconsin or from anywhere in any other state could own in Minnesota while St. Paul stations could not. It is clear that total ownership is not prevented under either the federal law or the Board's rules. Thus, many of the arguments which are raised are really specious because they only apply to the metropolitan area and not to the rest of the state or the country. While the issue has been raised in certain quarters, we are not certain that the members of the Board are prepared to argue that all evil is located within the Twin Cities metropolitan area. Seriously, though, the discrimination in question is very unfair and this Board should act to remedy the inequities of the present rule.

The point has also been raised that there is no shortage of potential cable owners, so why open the pool? I don't wish to dwell on this concept, but it appears that that type of argument could also be used to limit ownership by those of a

certain race or a certain sex or by those with certain handicaps. We are talking about discrimination and denial of equal protection. If diversity is the issue, where is it written that a cable system whose owners also own a television station cannot provide that diversity? If the Board wishes to guarantee access by certain groups, it can deal with this through its basic access rules. We submit that ownership restrictions are inappropriate to accomplish this purpose.

Let us again briefly review our basic positions. We have requested that the Board amend 4 MCAR Sec. 4.100A to cross-reference and incorporate the FCC's regulations. We feel that this would be beneficial in that it would avoid the possibility of conflicting state and federal provisions. We will be bound by the federal law regardless of what the agency does. Thus, as the FCC rules change, there probably will be pressure on the Board to change its rules accordingly. A change at this time would be administratively convenient for the Board and would avoid the necessity for future hearings. We want to emphasize that this change is not a matter of the utmost importance to our Association. It may save us some fees in the future and would certainly save the taxpayers by avoiding unnecessary hearings and allowing the Board to concentrate on more pressing matters. However, if the Board feels that there is some danger in this provision, it should act accordingly while bearing in mind that amendment of this rule in this matter at this time would not tie the Board's hands or affect its ability to react to situations in the future.

Our second proposal requests the repeal of 4 MCAR Sec. 4.100F. That rule at the present time prohibits ownership of a cable system by a radio or television broadcast station located within the metropolitan area. This provision goes beyond any provision in the federal law and is unique to Minnesota. As we have stated earlier, it has the effect of discriminating against those stations located in the metro area and in favor of outstate and out of state interests. Cable system ownership by radio and television stations generally is not prohibited, only ownership by metropolitan stations.

Again, we submit the following:

1. There has been no abuse or history of abuse in Minnesota which necessitates the continuation of this discriminatory rule.

2. The public interest question is already dealt with by the FCC!s co-location rule which prohibits a television station from owning a cable system within its Grade B contours. We do not feel that a case has been made that radio station ownership represents a danger even when co-located, a fact recognized by the FCC.

3. The present rule does not generally prohibit cable system ownership by radio or television stations and no pattern of abuse has been shown which would encourage such a prohibition. Thus, the rule, without reason, discriminates against metropolitan stations and in favor of outstate and out of state stations.

4. The present rule goes beyond FCC requirements governing the rest of the country and exemplifies discrimination against Minnesota business by Minnesota agency regulation.

We would further request as you review in your minds the arguments made by those who have spoken in opposition to these petitions that you separate those arguments which apply solely to the newspapers and those which apply to the broadcasters.

Thank you. We shall certainly be available for questions.

POSED RULE
MENDMENT

MINNESOTA DEPARTMENT OF

(OFFICIAL USE ONLY)

DATE RECEIVED
DATE RESPONDED TO
ACTION TAKEN
DATE

NAME Robert Shaw, Manager

GROUP REPRESENTED OR TITLE Minnesota Newspaper Association

ADDRESS 84 South Sixth Street, Minneapolis, Minn. 55408

	ADD	–	~~YES~~
	RLF	–	~~YES~~
–	~~ALL~~	–	RZ
	TMK		~~2nd~~
Please Attend			
Return To			WDD
	FOX COPIES		
	FILE		

I hereby request that the Department named above:

(Check one)

___ Adopt a new rule governing _____.

___ Suspend Rule _____.

_/_ Repeal Rule _____.

Insert here the new rule or rule change, with the exact wording proposed. Present wording of the rule is to be shown, with all wording that is to be deleted to be shown with a line drawn through the words. All proposed new wording is to be underscored.

4 MCAR § 4.156 (E)

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;~~

(Use additional pages if necessary)

State here in as much detail and as completely as possible the reasons for your request, as the department will use as part of the basis for its decision the explanation or reasons given for your request.

See Attached.

(Statement to the Cable Commissions Board, Jan. 11, 1980, by Robert M. Shaw, Manager, Minnesota Newspaper Association.)

There is growing concern among many thoughtful people in newspaper work about the future of the printed word, published and disseminated to the general public to bring news of the day or week. My remarks reflect, I believe, two of these concerns.

I will start out by admitting that there is a lot of confusion about electronic communication in the minds of many newspaper people I know. I'm somewhat confused about it myself. Electronic journalism, after all, just isn't our bag. Most of us don't really have a clear idea how it works. We're so busy putting out our newspapers--doing it pretty much the same as we have for the past 200 years, that is, printing words on paper and distributing it by hand to our readers--that we have simply ignored what's going on in the world of electronic communications.

But we do understand what it is to be free of governmental control, and that's what I want to talk to you about this morning. Newspaper people don't agree on very many things. But there is one thread, one strong tradition which does bind us together and, if I may say so, makes us different from other communications media: our strong desire to stay free of governmental control, particularly with respect to what, when and how we publish news and opinion.

I want to address two concerns: a proximate one and a more distant, philosophical concern.

You have a rule, which you promulgated, which prohibits a newspaper, as well as other media, from substantial ownership of a cable system in it's own market area. I am told by our national organization that Minnesota apparently is unique in this respect; no other state, they say, has such a rule.

I know the intent of the rule. It is diversity of opinion. I personally subscribe to the "many voices" school of thought and have spoken out against the trend toward fewer independent voices in the newspaper press due to consolidation of newspaper ownership.

But there are a lot of well-informed people around these days who say that it's just a matter of time before some electronic way will be found to deliver papers into homes; or to give consumers the means to order groceries by flipping a switch or punching buttons on their TV set; or do their banking in the same way; or participate in polls (they're doing this now in Columbus, Ohio) by operating switches, or auctions, by means of the same two-way capability; or select what information they want, perhaps from public libraries, for instant delivery.

There are some in our industry who pooh-pooh these developments. They are the same sort of people who pooh-poohed television when it was just getting started. TV has grown astonishingly to the point where it commands much more attentive time, now, than do newspapers; it has also taken away almost all of what we call "national" advertising--at least from the smaller newspapers.

Newspapers of some sort will probably be around for a long time. Of course, I hope they will. But at the same time we have to prepare for what to us seems to be "the worst" exigency, and the worst thing that could happen to small newspapers would be the development of a capability to deliver commercial messages into many homes in a form which would be preferred to the form in which we're doing it now.

Let me try to make this more clear.

Suppose it were possible by the means of numbered buttons on your TV set, to "order" certain food items, a list of which remained on the screen for a long period of time. Suppose that housewives all knew the time of day, perhaps two hours every morning, when large food ads would be displayed on the screen. Assume the cost to the food dealer was competitive to the cost of advertising in the local newspaper. I am told these are reasonable assumptions.

Such a system would have a tremendous effect on the newspaper industry. I would guess that if one were to remove food advertising--just food advertising by itself--from every newspaper in this state, it would be the automatic death of about half of them. They depend, and they depend absolutely on those large food ads for their survival.

I am not worried about economic competition. The more competition, the better. But I do feel that preventing newspapers from entering this new technology in their own market areas is unfair, prevents them from competing on the same basis. It is roughly equivalent to telling harness-makers that they may not own a gas station, tire shop or auto factory in their own community.

I know the rule allows us to go somewhere else and own a cable system. For large newspapers, perhaps, this is possible. For small ones it is not. There is very little chance that many of Minnesota's 350 community newspaper publishers have the capital, staff or time to establish and operate a cable system outside their communities. Most community newspaper people have deep roots in their own places; they don't WANT to go elsewhere. I think your present rule is too strict and should be modified.

Some of us have watched with horror the growth and development of the FCC and its impact on the minds of those who broadcast news to the general public.

That's the longer-range concern I want to address now.

I have discussed this many times with colleagues in radio and TV work. Many of them in private will freely admit that the mere existence, the presence of a licensing body in the background, as well as many of the FCC's regulations themselves, do have an inhibiting effect on electronic journalists' freedom of speech. (Note that I say "speech": I assume that freedom of the press is the same sort of thing as freedom of speech--one is simply a different manifestation of the other.)

Put in newspaper terms, it looks something like this: All of a sudden, my state government decides there shall be one and ONLY one printing press in my town, and every other town. This single, government press, my state government decides, shall publish every general interest publication there is to publish--all newspapers, shoppers, handbills, various bulletins. My city government, then, calls for bids to award this printing franchise; goes ahead and awards it to the low bidder (who is probably connected with a tremendously wealthy and important out-of-town firm); and the new, single, government-franchised press starts to roll. It's left pretty much up to the owner of the press to decide who gets his paper printed and who does not, the length of leases, and the cost for getting one's paper printed. City government may make broad hints that certain kinds of newspapers or publications ought to be published. The franchised printer goes back regularly to the city council and gets permission to continue in business. Printing customers return at regular intervals, too, to renegotiate contracts with the franchiser. Everybody is doing business at the permission of others, and the person at the top--who may or may not extend the franchise, or may give it to somebody else--is government itself.

I may be a bit off, but as I try to think this through, that's the analogy I come up with.

If my analogy is right, then such a system is bound to be an invasion of First Amendment guarantees of a free press.

The First Amendment doesn't say that government should do anything in the way of public communication. It tells government to keep its hands OFF the press. The First Amendment doesn't command government to see to it that all factions of opinion are equally and fairly represented. It tells government, in words as clear as the language will allow, to stay OUT. But what is being constructed here in Minnesota, this system of locally franchised information systems with a super-imposed Cable Communications Commission, puts government squarely INTO communications.

The basic flaw, it seems to me, is to regard public information in the same way we regard electricity, gas or telephone service. If you accept the common carrier principle, you need a public body. Public bodies do what comes naturally: they license. Licensing anywhere in public communications results in a chilling effect in the minds of people who do the work of covering the news, particularly covering the news of government.

It's the framework itself, I believe, which ought to be re-examined. The question should be asked: The actual functioning, the actual working-out of the actions and decisions of the Cable Communications Commission, do they or do they not inhibit free speech? I daresay they do.

Sure: This new technology lends itself easily to the common carrier concept. Sure: Government is eager to get this new authority over public information. But anything which puts a burden on free speech has to violate our First Amendment, and THAT should come before economics, before technology, before any other consideration.

I eagerly await your views on these two points, and thank you for the chance to give them to you this morning.

In the Matter of the Proposed Rule
of the Cable Communications Board
Repealing Certain Restrictions on
Interests in or Ownership, Operation,
and Control of Cable Communications
Systems

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Special Assistant Attorney General Jerry Anderson, do hereby declare that I have examined the rule, 4 MCAR § 4.100 E., and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

Special Assistant
Attorney General

Dated: 12/21/81

In the Matter of the Proposed Rule of the Cable Communications Board Repealing Certain Restrictions on Interests in or Ownership, Operation, and Control of Cable Communications Systems

AFFIVAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

C. Gregory Peterson, being first duly sworn, deposes and says:

That on the 21st day of December, 1981, in the City of Saint Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing at said City of Saint Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons who attended the hearing or otherwise requests said notice that the rule in the above-entitled matter has been submitted to the Attorney General.

C. Gregory Peterson

Subsribed and sworn to before me
this 21 day of Dec., 1981.

Judith V. Wehrwein

JUDITH V. WEHRWEIN
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My commission expires Feb. 24, 1988

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Rule of the Cable Communications Board Repealing Certain Restrictions on Interests in or Ownership, Operation, and Control of Cable Communications Systems

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rule, 4 MCAR § 4.100 E., has been submitted to the Office of the Attorney General on this date, December 21, 1981 for review as to legality and form to the extent that it relates to legality. Pursuant to 1 MCAR § 1.206 B., the Attorney General will not approve the rule for at least 10 calendar days after receipt to allow any person or association time to comment on the legality of the rule, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rule, you should direct your comments to the Office of the Attorney General, 530 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rule after the hearing and before submission to the Attorney General, you may contact W. D. Donaldson, (612) 296-2545.

C. Gregory Peterson