

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT: Administration
Cable Communications Board

TO : Craig E. Lindeke, Assistant Revisor
J. Michael Miles, Assistant Attorney General

DATE: January 17, 1983

FROM : C. Gregory Peterson, Administrative Assistant

PHONE: 296-0316

SUBJECT: **RULES GOVERNING CABLE COMMUNICATIONS SYSTEMS**

The attached copy of rules governing cable communications systems, represents action taken by the Cable Communications Board on Friday, January 14, 1983.

The addition of 4 MCAR § 4.002 C. 1. is the only modification made following Board approval on November 12, 1982.

CGP/dmr

RECEIVED
JAN 17 1983
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : TED A. MARTINEZ
Special Assistant
Attorney General

DATE: 12/6/82

FROM : J. MICHAEL MILES
Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of of the Adoption of Rules of the State Cable Communications Board Governing Cable Communications Systems

Information has been brought to the attention of the Cable Communications Board which requires reconsideration of the above-referenced rules. Therefore, pursuant to our conversation today, the Board is temporarily removing from your consideration the rules as adopted.

Your prompt resumption of review of these rules upon their resubmission to your office will be greatly appreciated.

JMM:drw

Our File No. 804

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 11-~~15~~22-82
DATE FOR REVIEW ~~11-24-82~~ 12.1.82
DATE DUE ~~11-29-82~~ 12.6.82

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

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted 1-17-83 Due 1-27-83
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 11/18/82
disapproved _____

✓✓ Rule as Adopted

✓ Rule as Proposed See SR.

✓ Order Adopting 11.12.82 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

✓ Publication in State Register
9.13.82 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

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

✓ Agency's Findings of Fact no changes except Revisor's as noted in Cert.

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules, after amendmt

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

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

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO ROCHELLE BARNHARD, Chairman

Attn: J. MICHAEL MILES
Assistant Attorney General

DATE: 1/28/83

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State Cable Communications Baord Governing 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;

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.

TAM/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

MINNESOTA CABLE
COMMUNICATIONS BOARD
JAN 14 1983

Department of Administration
Cable Communications Board

Adopted Rules Governing Cable Communications Systems

Rules as Adopted

4 MCAR S 4.001 Policy. Rules 4 MCAR SS 4.001-4.250 shall be liberally construed to effectuate the purposes and provisions of Minnesota Statutes, sections 238.01 to 238.17.

4 MCAR S 4.002 Definitions.

A. Scope. As used in 4 MCAR SS 4.001-4.250 the words and phrases defined in this rule have the meanings given them unless a different meaning clearly appears in the text.

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

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

1. a system which serves fewer than 50 subscribers <u>or a system which serves more than 50 but fewer than 1,000 subscribers if the governing bodies of all political subdivisions served by the system, vote, by resolution, to remove the system from the provisions of Minnesota Statutes, chapter 238. Any system which serves more than 50 but fewer than 1,000 subscribers that has been removed from the provisions of Minnesota Statutes, chapter 238 shall be returned to the provisions of Minnesota Statutes, chapter 238 if the governing bodies of 50 percent or more of the political subdivisions</u>

served by the system vote, by resolution in favor of the return,

2. a master antenna television system,

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

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

D. Board. "Board" means the cable communications board created by Minnesota Statutes, section 238.04.

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

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

G. Franchising authority. "Franchising authority" means a municipality with the authority to issue a cable communications franchise, or a group of municipalities acting in concert pursuant to a joint powers agreement, that issues a franchise pursuant to a joint powers agreement.

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

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

security viewing services.

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

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

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

M. State. "State" means the state of Minnesota.

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

O. Twin Cities metropolitan area. "Twin Cities metropolitan area" means Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties with the exception of the city of Northfield in Dakota County and the city of New Prague in Scott County.

P. VHF Spectrum. "VHF spectrum" means standard VHF channels 2 to 13.

4 MCAR S 4.016 Time.

A. Computation. The computation of a period of time prescribed or allowed by 4 MCAR SS 4.001-4.250 shall be done in the manner prescribed in Minnesota Statutes, section 645.15. For any time period of ten days or less, Saturdays, Sundays, or legal holidays shall not be included in computing the period of time.

B. [Unchanged.]

4 MCAR S 4.046 Rule-making proceedings. The board shall adopt, amend, suspend, or repeal its rules in accordance with the procedures set forth in Minnesota Statutes, chapter 15 and in the rules of the State Office of Administrative Hearings.

4 MCAR S 4.061 Initiating a contested case.

A. [Unchanged.]

B. Request for action by complaint. Any person authorized

by law to submit to the board a complaint that his rights are being abridged, that his privileges are being denied, or that duties owed him are being defaulted upon may request initiation of a contested case by filing a complaint. A complaint must contain:

1. [Unchanged.]

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

3. The relief sought and the grounds for relief; and

4. The signature of the complainant or the complainant's attorney.

C. [Unchanged.]

4 MCAR S 4.062 Commencement of contested case. The board may initiate a contested case within ten days following receipt of a complaint or application or the adoption of an order by the board initiating a contested case. If it initiates a contested case the board shall proceed in accordance with the rules of the State Office of Administrative Hearings.

4 MCAR S 4.066 Fees. In every contested case, the plaintiff, petitioner, or other moving party shall pay a fee of $15 to the State Office of Administrative Hearings when the first paper on his part is filed or the first appearance is entered. The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay a fee of $10 to the State Office of Administrative Hearings when the first paper on his or their part is filed, or the first appearance is entered. The State Office of Administrative Hearings shall pay the fees into the general fund in the state treasury. Whenever the board is a party in a contested case it is exempt from the fee requirements in this rule.

4 MCAR S 4.092 Operator required to file reports with board. The board requires an annual report of cable system data from each system operator. The board may require additional information and supporting documentation to be filed at an appropriate time and in an appropriate form.

4 MCAR S 4.100 Ownership and control of system.

A. Certain ownership prohibited. None of the persons in 1.-4. may directly or indirectly own, operate, control, or have a legal or equitable interest in a cable communications system.

1. 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);

2. A national television network;

3. A television translator station licensed to the municipality of that system; or

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

B. Definitions. The word "control" as used in this rule is not limited to majority stock ownership, but includes actual working control in whatever manner it is exercised.

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

C. Stockholders in large corporations. In applying this rule to the stockholders of a corporation which has more than 50 stockholders:

1.-3. [Unchanged.]

4 MCAR S 4.133 Change of approved cable service territories. The board shall approve or disapprove of a change in an approved cable service territory. A change is subject to the procedures provided for in 4 MCAR SS 4.130-4.135.

4 MCAR S 4.134 Board procedures.

A. Notice of proposal. Pursuant to the requirements of 4 MCAR S 4.140 B. a cable service territory or a change in a cable service territory may be proposed to the board by a municipality, a group of municipalities in a joint powers

agreement, a cable communications company, or any party who has announced an intention to form a cable communications company. The party proposing the cable service territory or the change in a cable service territory shall deliver written notice of its proposal to the governing body of each municipality which is within or contiguous to the proposed cable service territory and to the appropriate regional development commission or the Metropolitan Council. At substantially the same time as written notice is delivered, the party proposing the cable service territory or the change in a cable service territory shall publish a notice of its proposal in a newspaper of general circulation in the proposed territory. The written and published notices must include at least the following information:

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

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

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

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

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

B. Contents of proposal. All proposals must be submitted to the board at substantially the same time as notice is provided pursuant to A. and must be in the form of a written application containing at least the following information:

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

2. the population and the number of dwelling units in the

total service territory and in the area in which service is expected to be initially provided;

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

4. proof that the written notice required by A. has been given, which may be in the form of copies of the written notices, an affidavit, or a certificate of service; and

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

C. Copy of proposal to interested person. A copy of the proposal must be made available upon request to any interested party. If all or a part of the proposed cable service territory or change in a cable service territory is within the seven county metropolitan area, a copy of the proposal must be submitted to the Metropolitan Council and to each included or contiguous municipality at the same time as the proposal is submitted to the board.

D. Comment period. Before considering a proposal, the board shall allow a comment period of at least 20 days from the date of compliance with the notice requirements set forth in A. or submission of the proposal to the board, whichever occurs last. The appropriate regional development commission, an affected municipality or cable communications company or any other party having a clear interest shall be allowed 30 additional days for comment if the party gives a good reason. If all or a part of the proposed boundaries are within the seven county metropolitan area, the Metropolitan Council shall be allowed 45 days from the date a copy of the proposal is submitted to it to review and comment on the proposed boundaries.

E. Action on proposal. The board shall accept written and oral comment and approve or reject a proposed cable service territory or a proposed change in a cable service territory at

its first regularly scheduled meeting after expiration of the applicable comment period. The board may, upon good cause shown by an interested party, postpone action on a cable service territory proposal until its next regularly scheduled meeting.

F. Reasons for rejection. If the board determines not to approve a proposal, it shall specify its reasons for rejection in a written statement within 30 days of rejecting the proposal or at its first regularly scheduled meeting after the end of the 30-day period.

G. Modified proposals. A proposal rejected by the board may be introduced with appropriate modifications at any time after the rejection. All reintroduced proposals are subject to the same procedures as the original proposal.

4 MCAR S 4.135 Factors and criteria to be considered. In approving or rejecting a proposal for establishment or a change in a cable service territory the board shall consider the following: the impact on prospects for development of cable communications service in areas which are within and contiguous to the proposed cable service territory; whether the proposed boundaries encompass any areas which would be more appropriately included in another cable service territory; the impact of the proposed territory on any related policies or plans adopted by the Metropolitan Council or the appropriate regional development commission; the economic viability of the proposed cable service territory or the change in an existing cable service territory; and any other factors the board or the applicant deems relevant.

4 MCAR S 4.140 Initial franchise.

A.-B. [Unchanged.]

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

1.-2. [Unchanged.]

3. The report must include an assessment of the

communications needs of the persons residing within the proposed area to be served within the cable service territory and recommendations on the means to satisfy those needs.

4. [Unchanged.]

D. Request for proposals.

1. After approval of the Cable Service Territory by the Minnesota Cable Communications Board, and consideration of the recommendations of the Needs Assessment Report, the franchising authority shall determine the advisability of continuing the franchising process. If the franchising authority determines that the franchising process should continue, then the franchising authority shall officially adopt in a public hearing, affording reasonable notice and a reasonable opportunity to be heard, the Request for Proposals for a cable communications franchise, which shall include but not necessarily be limited to, the following items:

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

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

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

(1)-(2) [Unchanged.]

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

d. A list of the information required to be contained in each submitted proposal, as set forth in 5.

2.-3. [Unchanged.]

4. The franchising authority shall give public notice of the availability of the request for proposals for a cable communications franchise at least 45 days before the public hearing awarding the franchise. The notice must be published at least once in a newspaper of general circulation within the

boundaries of the franchising authority. A copy of the notice must be provided to the board on the date of initial publication, together with proof of publication. The notice must also be published at least once in at least two publications contained in a list approved by the board and on file with the executive director of the board. The published notice must contain, at a minimum, the following information:

a.-d. [Unchanged.]

e. A statement that applicant proposals for a cable communications franchise must be submitted taking into account the system design and services outlined by the franchising authority in its request for proposals for a cable communications franchise.

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

a.-b. [Unchanged.]

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

(1) The general area for location of antennae and the head end, if known;

(2)-(4) [Unchanged.]

d.-k. [Unchanged.]

l. Substantive amendments may not be made in a proposal after a proposal has been submitted to the franchising authority and before a certificate of confirmation has been granted.

E. Award of franchise.

1. Any public hearing before the franchising authority affording reasonable notice and a reasonable opportunity to be heard with respect to all proposals for the franchise must be completed at least 27 days prior to the introduction of the franchise ordinance in the proceedings of the franchising authority. At the hearing the franchising authority must consider the franchisee's technical ability, financial

condition, and legal qualifications as required in 4 MCAR S 4.202 N.

2. Franchises may be granted only by ordinance. The board shall review the validity of each franchise ordinance and the franchising authority's compliance with the criteria and priorities contained in the request for proposals. No franchise is effective until the board has confirmed the franchise pursuant to Minnesota Statutes, section 238.09 and the franchisee has obtained a certificate of confirmation.

3. Rules 4 MCAR SS 4.140-4.143 do not prohibit a franchising authority from recovering the reasonable and necessary costs of the entire process of awarding, renewing, and amending the cable communications franchise from the successful applicant.

4. The board may not by rule prohibit a franchising authority from franchising a nonprofit or municipally operated system provided that it is granted pursuant to Minnesota Statutes, sections 238.09 to 238.16.

F. [Unchanged.]

4 MCAR S 4.141 Alternative initial franchising procedures.

A.-B. [Unchanged.]

C. Copies of notice. In addition to the published notice, the franchising authority shall mail copies of the notice of intent to franchise to any person it has identified as being a potential candidate for the franchise. A copy of the notice must be provided to the board on the date of initial publication together with proof of publication.

1.-2. [Unchanged.]

D. Award of the franchise. Franchises may be awarded only by ordinance.

E. Costs of awarding franchise. Nothing in 4 MCAR SS 4.140-4.143 prohibits a franchising authority from recovering from a successful applicant the reasonable and necessary costs of the entire process of awarding the cable communications franchise.

F. Eligibility. The procedures described in this rule may

be used if at least one municipality within the cable service territory has a population of less than 4,000 and:

1. No one municipality within the cable service territory has a population over 4,000, except in a change in an already approved cable service territory; and

2. The aggregate population of all municipalities within the cable service territory does not exceed 9,000 except in the expansion of an already approved cable service territory.

G.-I. [Unchanged.]

4 MCAR S 4.202 Required contents of franchises. Where a cable communications franchise is awarded or renewed after April 1, 1973, except as provided in Minnesota Statutes, section 238.09, subdivions 3, 4, 5, and 9, a regular or renewal of a certificate of confirmation will be issued only if the franchise ordinance contains recitations and provisions consistent with the following requirements. The following requirements apply to all classes of systems (A, B, and C,) unless hereafter provided otherwise.

A.-H. [Unchanged.]

I. Provisions specifying:

1. all current subscriber charges or that the current charges are available for public inspection in the municipality;

2. the length and terms of residential subscriber contracts, if they exist, or that the current length and terms of residential subscriber contracts are available for public inspection in the municipality; and

3. the procedure by which all subscriber charges are established, unless such a provision is contrary to state or federal law.

J.-M. [Unchanged.]

N. Approval by franchising authority. A provision that the franchisee's technical ability, financial condition, and legal qualification were considered and approved by the franchising authority in a full public proceeding pursuant to 4 MCAR S 4.140 E.1. which afforded reasonable notice and a reasonable opportunity to be heard.

O. [Unchanged.]

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

1. That for franchise areas which will be served by a system proposed to have fewer than 100 plant miles of cable:

a.-c. [Unchanged.]

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

a.-d. [Unchanged.]

Q.-V. [Unchanged.]

W. Use of signals. A provision stating that no signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewed at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revokable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV cable communications activity planned for the purpose.

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

from the subscriber to make the data available.

2.-3. [Unchanged.]

X.-Y. [Unchanged.]

Z. Termination of franchise for violations. A provision granting the franchising authority the right to terminate and cancel the franchise and all rights and privileges of the franchise if the franchisee substantially violates any provision of the franchise ordinance, attempts to evade any of the provisions of the franchise ordinance, or practices any fraud or deceit upon the franchising authority. The municipality shall provide the franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the franchisee a minimum of 30 days after service of the notice in which to correct the violation.

The franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the franchise. In the event that the municipality determines to terminate the franchise, the franchisee has 30 days from the date of the conclusion of the public hearing at which the termination of the franchise was considered within which to file an appeal with the board, pursuant to Minnesota Statutes, section 238.14. During the 30-day period and until the board determines the appeal, if an appeal is taken, the franchise remains in full force and effect unless the term of the franchise ends sooner. If the board approves of the action of the municipality, the franchise terminates immediately; if the board disapproves of the action of the municipality, the franchise remains in full force and effect during its term unless it is sooner terminated in accordance with law or 4 MCAR SS 4.001-4.250. Any appeal to the board is a contested case to which the board is not a party.

AA.-CC. [Unchanged.]

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

1. The provision must require that the franchisee shall provide to each of its subscribers who receive some or all of

the services offered on the system, reception on at least one specially designated access channel. The specially designated access channel may be used by local educational authorities and local government on a first-come, first-served, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the local educational authorities or local government, the franchisee shall lease time to commercial or noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for that time arises. The franchisee may also use this specially designated access channel for local origination during those hours when the channel is not in use by local educational authorities, local government, or commercial or noncommercial users who have leased time. The VHF spectrum must be used for the specially designated access channel required in DD.

2. The provision must also require that the franchisee shall establish rules for the administration of the specially designated access channel. The franchisee shall file the operating rules governing the specially designated access channel with the board within 90 days after any access channels are put into use.

3. Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers.

4 MCAR S 4.203 Required franchise provisions for a Class B cable system. Franchises for Class B cable systems must contain statements and provisions consistent with 4 MCAR S 4.202, unless hereafter provided otherwise, and statements and provisions consistent with the following requirements:

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

1. The provision must require that the franchisee provide to each of its subscribers who receive all, or any part of, the

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

2. The provision must also require that the franchisee shall establish rules for the administration of the specially designated access channel. The franchisee shall file the operating rules governing the specially designated access channel with the board within 90 days after any access channels are put into use.

3. The provision shall require that whenever the specially designated access channel required in 1. is in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive 3-hour period for six weeks running, and there is a demand for use of an additional

channel for the same purpose, the franchisee has six months in which to provide a new specially designated access channel for the same purpose, provided that provision of the additional channel or channels does not require the cable system to install converters. Nothing in this rule precludes the installation of converters by the system on a voluntary basis, as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

4. Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers.

B. [Unchanged.]

4 MCAR S 4.204 Required franchise provisions for a Class C cable system. Franchises for Class C cable systems must contain statements and provisions consistent with 4 MCAR S 4.202, unless this rule provides otherwise, and statements and provisions consistent with the following requirements:

A. Access channels. A provision establishing the minimum number of public, educational, governmental and leased access channels that the franchisee shall make available. Franchisees subject to this provision are not subject to 4 MCAR S 4.202 DD.

1. The provision must require that the franchisee shall, to the extent of the system's available channel capacity, provide to each of its subscribers who receives some or all of the services offered on the system, reception on at least one specially designated noncommercial public access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel available for local government use; and at least one specially designated access channel available for lease on a first-come, first-served, nondiscriminatory basis by commercial and

noncommercial users. The VHF spectrum must be used for at least one of the specially designated noncommercial public access channels required in A. The provision must require that no charges may be made for channel time or playback of prerecorded programming on at least one of the specially designated noncommercial public access channels required by A. Personnel, equipment, and production costs may be assessed, however, for live studio presentations exceeding five minutes in length. Charges for those production costs and any fees for use of other public access channels must be consistent with the goal of affording the public a low-cost means of television access.

2.-3. [Unchanged.]

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

5. [Unchanged.]

6. Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers.

B.-C. [Unchanged.]

D. Twin Cities metropolitan area franchises. In Twin Cities metropolitan area franchises, a provision designating the standard VHF channel 6 for uniform regional channel usage as required in 4 MCAR S 4.223.

4 MCAR S 4.211 Necessity for a certificate of confirmation. Any cable communications company must secure a regular certificate of confirmation from the board before becoming operational. The certificate may be issued only upon compliance with 4 MCAR SS 4.140 or 4.141 and 4 MCAR SS 4.200-4.204 after full board

proceedings and is effective for the same number of years as the franchise being confirmed.

4 MCAR S 4.212 Procedure for making application for a regular certificate of confirmation.

A.-B. [Unchanged.]

C. Proof of publication. A proof of publication must be filed with the board no later than five days before the meeting at which the application for certification is to be considered.

D. [Unchanged.]

4 MCAR S 4.215 Renewal of a certificate of confirmation. Upon expiration of its certificate of confirmation or the renewal of its cable communications franchise, a cable communications company must obtain renewal of its certificate of confirmation. The renewal of any certificate of confirmation may be issued only after compliance with 4 MCAR SS 4.200-4.204. The renewal of a certificate of confirmation may be issued only after full board proceedings and shall be valid for the same number of years as the renewal franchise period. When a certificate is renewed before its expiration date, the term of the renewed certificate shall begin on the date of its issue; any remaining term of a previously issued certificate is then expired.

The procedure for obtaining the renewal of a certificate of confirmation shall be the same as the procedure for obtaining a regular certificate of confirmation.

Nothing in this rule prohibits a cable communications company from renewing its certificate of confirmation prior to the expiration of any existing certificate of confirmation.

4 MCAR S 4.250 Deregulated systems.

A. Scope. A system which serves more than 50 but fewer than 1,000 subscribers and which has been removed from the provisions of Minnesota Statutes, chapter 238 under Minnesota Statutes, section 238.02, subdivision 3, is subject to the requirements in B.-D.

B. Reports to board. The system operator shall provide to the board information and documentation in the form and at the

times the board requires.

C. Access for educational and governmental programming. The system operator shall provide reception on at least one specially designated access channel to each subscriber who receives some or all of the services offered on the system. Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers. The specially designated access channel may be used by local educational authorities and local government on a first-come, first-served, nondiscriminatory basis. The franchisee may use this specially designated access channel for other purposes during those hours when the channel is not in use by local educational authorities or local government. The VHF spectrum must be used for the specially designated access channel.

D. Operating rules. The system operator shall establish rules for the administration of the specially designated access channel and shall file the rules with the board within 90 days after the channel is put into use.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 2 8 1983

Secretary of State 3:50PM

APPROVED AS TO LEGALITY

January 28, 1983

HUBERT H. HUMPHREY, III ATTORNEY GENERAL

BY Ted A. Martinez
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Administration AR0222

Division: Cable Communications Board

Agency Contact: C. Gregory Peterson

Rule Numbers: 4 MCAR SS 4.001; 4.002; 4.016; 4.046; 4.061; 4.062; 4.066; 4.092; 4.100; 4.133; 4.134; 4.135; 4.140; 4.141; 4.202; 4.203; 4.204; 4.211; 4.212; 4.215; 4.250;

Title: Adopted Rules Governing Cable Communications Systems

Type of Rules: Permanent

Incorporations by Reference:
None

Duplication of Statutory Language:

Rule Number:	Statutory Section Duplicated:
4 MCAR S 4.002 B., C., D., E., I., J., K., L., M., and N.	Minnesota Statutes, section 238.02
4 MCAR S 4.002 O.	Minnesota Statutes, section 473.121, subdivision 2

The attached rules are approved as to form, subject to the following editorial changes:

page 7, lines 8, 9, and 21, change "seven county" to "Twin Cities"

Lower-case the terms "Needs Assessment Report," "Cable Service Territory," and "Request for Proposals" wherever they appear.

page 11, line 30, lower-case "No"

page 11, line 33, lower-case "The"

page 12, line 11, after "I." insert: "Subscriber charges and contracts"

page 19, lines 7 and 8, delete ". The renewal of a certificate of confirmation may be issued only after" and insert: "and"

Steven C. Cross
Revisor of Statutes

Craig E. Lindeke
Assistant Revisor
Phone: 296-0946
Date: January 19, 1983

APPROVED AS TO LEGALITY
January 28, 1983
HUBERT H. HUMPHREY, III ATTORNEY GENERAL
BY

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Adoption of Rules of the State Cable Communications Board Governing Cable Communications Systems

ORDER ADOPTING RULES

Notice of the Board's intent to adopt the above-entitled rules without a public hearing was published in the State Register on September 13, 1982 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on September 10, 1982. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice and receiving no written requests for a public hearing within the 30-day comment period,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules Governing Cable Communications Systems are adopted this 12th day of November, 1982 pursuant to authority vested in the Board by Minnesota Statutes section 238.05 and 238.06.

STATE OF MINNESOTA

Rochelle Barnhart

CHAIRMAN OF
CABLE COMMUNICATIONS BOARD

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed
Adoption of Rules of the State
Cable Communications Board
Governing Cable Communications
Systems

ORDER FOR NOTICE
OF INTENT TO ADOPT
RULES WITHOUT
PUBLIC HEARING

IT IS ORDERED this 30th day of August, 1982 that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Cable Communications Board for that purpose and be published in the State Register.

STATE OF MINNESOTA

EXECUTIVE DIRECTOR OF
CABLE COMMUNICATIONS BOARD

DEPARTMENT OF ADMINISTRATION

CABLE COMMUNICATIONS BOARD

In the Matter of the Proposed Adoption of Rules of the State Cable Communications Board Governing Cable Communications Systems

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the State Cable Communications Board proposes to adopt the above-entitled rules without a public hearing. The Cable Communications Board has determined that the adoption of these rules will not be controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 15.0412, subdivision 4h (1981 Supplement). 2

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in substantial change in the proposed language. 3 4

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subdivisions 4-4f. 5 7

It is requested, but not required, that, if a person wishes to object to a rule, they state in their objection the rule and the number which corresponds to the rule.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to: 6

W. D. Donaldson, Executive Director
Cable Communications Board
500 Rice Street
Saint Paul, Minnesota
(612) 296-2545.

Authority for the adoption of these rules is contained in Minnesota Statutes sections 238.05 and 238.06 (1980). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103, upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103.

STATE OF MINNESOTA

EXECUTIVE DIRECTOR OF
CABLE COMMUNICATIONS BOARD

In the Matter of the Proposed
Adoption of Rules of the State
Cable Communications Board
Governing Regulation of Cable
Communications in Minnesota

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

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

That on the 10th day of September, 1982, at the City of Saint Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the United States mail at said City of Saint 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 State 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 10th day of September,
1982.

Nancy J. Heintz

NANCY J. HEINTZ
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires Mar. 1, 1988

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed
Adoption of Rules of the State
Cable Communications Board
Governing Regulation of Cable
Communications in Minnesota

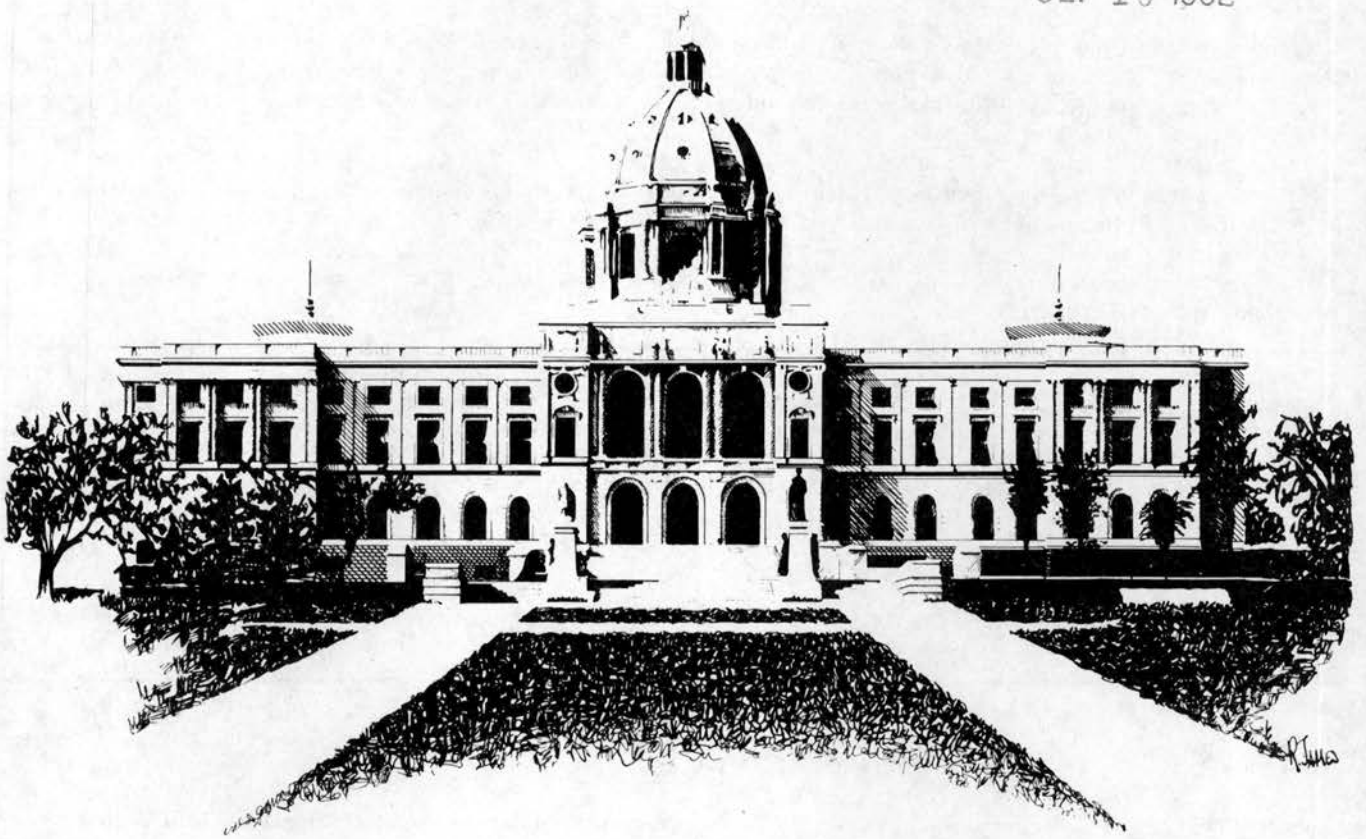
I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the State Cable Communications Board for the purpose of receiving notice of the proposed adoption of rules by this Board is accurate and complete as of 1:00 P.M., this 10th day of September, 1982.

/s/ Gregory Patterson

STATE REGISTER

STATE OF MINNESOTA

MINNESOTA CABLE
COMMUNICATIONS BOARD
SEP 16 1982



VOLUME 7, NUMBER 11

September 13, 1982

Pages 297-336

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 7		
12	Thursday Sept 2	Monday Sept 13	Monday Sept 20
13	Monday Sept 13	Monday Sept 20	Monday Sept 27
14	Monday Sept 20	Monday Sept 27	Monday Oct 4
15	Monday Sept 27	Monday Oct 4	Monday Oct 11

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

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 15.051. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $3.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

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

Albert H. Quie
Governor

James J. Hiniker, Jr.
Commissioner
Department of Administration

Stephen A. Ordahl
Director
State Register and
Public Documents Division

Carol Anderson Porter
Editor

Paul Hoffman, Robin PanLener, Roy Schmidtke, Jean Walburg
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Margaret Connelly
State Register Index Editor

Debbie Kobold
Circulation Manager

Cover graphic: ***Minnesota State Capitol,*** **ink drawing by Ric James.**

CONTENTS

MCAR AMENDMENTS AND ADDITIONS

Cumulative listing for Issues 1-11 300

PROPOSED RULES

Administration Department
Cable Communications Board

Proposed Rules Governing Cable Communications Systems [notice of intent to adopt rules without a public hearing] 302

Pollution Control Agency

Proposed Amendment of Agency Procedural Rules [notice of intent to amend rules without a public hearing] 312

SUPREME COURT

Decisions Filed Tuesday, August 31, 1982

81-481 State of Minnesota v. Jerry P. Chase, Appellant. Olmsted County 324
81-421 Barbara Bailey, a minor, by her father and natural guardian, James E. Bailey, Appellant, v. Robert Morris, *et al.* Hennepin County 324
81-1138 William J. Hoben v. City of Minneapolis, Appellant. Hennepin County 324
81-1315 Edward J. Petschl, Jr. v. Britton Motor Service, *et al.*, Relators. Workers' Compensation Court of Appeals 324
81-674 State of Minnesota v. William Dean Scott, Appellant. Washington County 324
81-897 State of Minnesota v. James E. Wrightington, Appellant. Hennepin County 324
82-61 Walter Schopf v. Red Owl Stores, Inc., and Commercial Union Assurance Companies, Employer-Insurer, Red Owl Stores, Inc., and Hartford Insurance Group, Relators, and Minneapolis Retail Meat Cutters and Food Handlers Health and Welfare Fund. Workers' Compensation Court of Appeals 324
81-495 Mae M. Cambern, Appellant, v. Sioux Tools, Inc., defendant and third-party plaintiff, v. Bayliner Boats, third-party defendant. Dakota County 324
81-686 State of Minnesota v. Edward John Tiessen, Appellant. St. Louis County 325
81-73 State of Minnesota v. Curtis Baugh, Appellant. Hennepin County 325
81-670 Clark Albert Bailey, petitioner, Appellant, v. Arthur E. Noot, etc. Hennepin County 325
81-875, 81-881 Steven A. Bartel, Appellant (81-875), v. New Haven Township, Appellant (81-881). Olmsted County 325
81-1218 State of Minnesota v. Melvin E. Gilbertson, petitioner, Appellant. St. Louis County 325
82-172 Jay C. Paine v. Beek's Pizza, *et al.*, Relators. Workers' Compensation Court of Appeals 325

Decision Filed Tuesday, August 24, 1982

82-611 State of Minnesota, Appellant, v. William Edward Marhoun. Chisago County 325

Decision Filed Wednesday, August 25, 1982

82-709 State of Minnesota, Plaintiff, v. Dale Lawrence Astleford, abd WCCO Television and Donald Shelby, Intervenors. Hennepin County 326

STATE CONTRACTS

Administration Department
Real Estate Management Division

Auction Services Required 326

Finance Department

Notice of Request for Proposals for Financial Study 326

Minnesota Waste Management Board

Request for Submission of Qualifications for Development of Preliminary Designs for Hazardous Waste Land Disposal Facilities 327

OFFICIAL NOTICES

Administration Department

Notice of State Surplus Property Sale 328

Education Department
Instruction Division

Notice of Public Meeting 329

Metropolitan Council of the Twin Cities Area

Metropolitan Significance Review of the Proposed Mdewakanton Sioux Indian Community Reservation Bingo Parlor [notice of commencement; referral file no. 10666-1] 329

Public Employment Relations Board

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing Issues and Appeals, the Arbitration of Terms and Conditions of Employment, the Arbitration of Grievances and Independent Review 330

Public Safety Department
Driver & Vehicle Services Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Special License Plates 330

Public Welfare Department
Mental Health Bureau

Notice of Intent to Solicit Outside Opinion Regarding the Draft Rule Governing the Licensing of Developmental Achievement Centers and Services for Persons Who Are Mentally Retarded and/or Cerebral Palsied 331

NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the MCAR.

MCAR AMENDMENTS AND ADDITIONS

TITLE 1 CONSTITUTIONAL OFFICES

Part 2 Secretary of State

1 MCAR §§ 2.0101-2.1101, 2.2101-2.2115, 2.4101-2.4205, 2.5101-2.5119 (adopted) 207

TITLE 2 ADMINISTRATION

Part 1 Administration Department

2 MCAR §§ 1.8001-1.8024 (proposed) 73
2 MCAR §§ 1.90100-1.90904 (adopted) 174

Part 2 Employee Relations Department

2 MCAR §§ 2.007, 2.009, 2.012, 2.016-2.019, 2.021, 2.024, 2.028, 2.098-2.099, 2.101, 2.106-2.111, 2.116-2.117, 2.119, 2.129-2.146, 2.150-2.153, 2.155, 2.160-2.164, 2.166-2.168, 2.170-2.172, 2.175-2.178, 2.180-2.181, 2.189-2.197, 2.203-2.204, 2.206-2.207, 2.209-2.211, 2.213-2.214, 2.216-2.221, 2.223, 2.226, 2.232, 2.234-2.235, 2.238, 2.240-2.244, 2.246-2.248, 2.250, 2.253-2.254, 2.257, 2.265-2.269, 2.275-2.282 (repealed) 278

TITLE 3 AGRICULTURE

Part 1 Agriculture Department

3 MCAR §§ 1.0325-1.0326 (withdrawn) 246
3 MCAR §§ 1.0388-1.0404 (proposed) 5
3 MCAR §§ 1.0548-1.0560 (proposed) 78
3 MCAR §§ 1.0543-1.0547 (proposed repeal) 78
Agr 402, 404 (proposed repeal) 5

Part 2 Animal Health Board

3 MCAR § 2.005 (adopted) 257
3 MCAR § 2.015 (proposed) 110
3 MCAR § 2.032 (proposed) 111
3 MCAR § 2.062 (proposed) 109
LSB 33 (proposed) 111
LSB 62 (proposed repeal) 109

TITLE 4 COMMERCE

Part 1 Commerce Department

Uniform Conveyancing Blanks to Replace Uniform Conveyancing Blanks 54-M through 57-M (Contracts for Deed) and 58-M and 59-M (Assignments of Contracts for Deed), Originals of Which Are Filed with the Secretary of State, and Copies of Which Are Set Out following Minn. Stat. Ann. Ch. 507; Creating Two New Residential Mortgage Blanks and an Affidavit of Identity and Survivorship for Death Occurring after December 31, 1979 (proposed) 33
4 MCAR §§ 1.9081-1.9088 (proposed) 193
4 MCAR §§ 1.9210-1.9136 (adopted) 257
4 MCAR §§ 1.9285-1.9294 (adopted) 257

Part 3 Public Utilities Commission

4 MCAR §§ 3.0450-3.0463 (notice of hearing) 114

Part 4 Cable Communications Board

4 MCAR §§ 4.001-4.002, 4.016, 4.046, 4.061-4.062, 4.066, 4.092, 4.100, 4.133-4.135, 4.140-4.141, 4.202-4.204, 4.211-4.212, 4.215, 4.250 (proposed) 302

Part 10 Cosmetology Board
4 MCAR §§ 10.002 [Temp], 10.009 [Temp]-10.010 [Temp], 10.042 [Temp]-10.043 [Temp], 10.006 [Temp] (adopted) 94
4 MCAR §§ 10.004 [Temp], 10.021 [Temp], 10.026 [Temp], 10.028 [Temp], 10.041 [Temp] (continued) 94

TITLE 5 EDUCATION

Part 1 Education Department
EDU 143 [Temp]-EDU 146 [Temp] (proposed) 48
EDU 142 C. (proposed temporary repeal) 48
5 MCAR §§ 1.0720-1.0721, 1.0723-1.0724 (proposed) 196
5 MCAR §§ 1.0722, 1.0725 (proposed repeal) 196

Part 3 Board of Teaching
5 MCAR §§ 3.007, 3.065, 3.0601, 3.081, 3.0831, 3.1041 (proposed) 248
5 MCAR §§ 3.072, 3.091, 3.101-3.103, 3.106, 3.108, 3.114, 3.060, 3.083, 3.104 (proposed repeal) 248

TITLE 6 ENVIRONMENT

Part 1 Natural Resources Department
6 MCAR § 1.0094 (adopted) 258

Part 2 Energy Agency (Energy, Planning and Development Department)
6 MCAR §§ 2.0108-2.0116 (adopted) 278
6 MCAR § 2.3120 (proposed) 86

Part 4 Pollution Control Agency
6 MCAR §§ 4.3001-4.3016 (proposed) 312
MPCA 3(b), MPCA 6(c), 6(d), MPCA 9(c), 9(d), 9(f), 9(j), 9(k), 9(l), 9(m), 9(o), 9(p), 9(q), 9(s), MPCA 11, MPCA 13 (proposed repeal) 312
6 MCAR §§ 4.6088-4.6099, 4.6100 (adopted) 278

Part 8 Waste Management Board
6 MCAR §§ 8.201-8.218 (adopted) 260

TITLE 7 HEALTH

Part 8 Pharmacy Board
7 MCAR §§ 8.004, 8.010, 8.013, 8.026-8.027, 8.032, 8.040-8.041, 8.049-8.054, 8.061, 8.071, 8.074, 8.088, 8.118 (adopted) 258

Part 10 Psychology Board
7 MCAR §§ 10.001-10.009 (adopted) 133
Psych 2, 5, 8, 10-13 (repealed) 133

TITLE 8 LABOR

Part 4 Economic Security Department
8 MCAR § 4.0012 (adopted) 174
8 MCAR § 4.3012 (proposed temporary) 229

TITLE 10 PLANNING

Part 1 Planning Agency (Energy, Planning and Development Department)
10 MCAR §§ 1.500, 1.505, 1.510, 1.515, 1.520, 1.525, 1.530, 1.535, 1.540, 1.545, 1.555, 1.560, 1.565 (proposed) 87

TITLE 11 PUBLIC SAFETY

Part 1 Public Safety Department
11 MCAR §§ 1.0046-1.0048 (adopted) 207
SafAd 49-50 (repealed) 207
11 MCAR §§ 1.3071-1.3077 (withdrawn) 129
11 MCAR §§ 1.5101-1.5154 (proposed) 166
Fire Mar 30-51, 4401-4404 (proposed repeal) 166
11 MCAR §§ 1.6101-1.6106 (proposed) 52

TITLE 12 SOCIAL SERVICES

Part 2 Public Welfare Board
12 MCAR § 2.065 (adopted) 139
12 MCAR § 2.222 (proposed) 129

Part 3 Housing Finance Agency
12 MCAR § 3.002 [Temp] (proposed) 11
12 MCAR § 3.002 (proposed) 165
12 MCAR § 3.002 (proposed) 246

TITLE 14 TRANSPORTATION

Part 1 Transportation Department
14 MCAR §§ 1.4010-1.4016 (adopted) 207
14 MCAR §§ 1.7025-1.7037 (proposed) 202

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

Department of Administration
Cable Communications Board

Proposed Rules Governing Cable Communications Systems

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Cable Communications Board proposes to adopt the above-entitled rules without a public hearing. The Cable Communications Board has determined that the adoption of these rules will not be controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 15.0412, subdivision 4h (1981 Supplement).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subdivisions 4-4f.

It is requested, but not required, that, if a person wishes to object to a rule, they state in their objection the rule and the number which corresponds to the rule.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

W. D. Donaldson, Executive Director
Cable Communications Board
500 Rice Street
Saint Paul, Minnesota
(612) 296-2545.

Authority for the adoption of these rules is contained in Minnesota Statutes sections 238.05 and 238.06 (1980). Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103, upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103.

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103.

W. D. Donaldson, Executive Director
Cable Communications Board

Rules as Proposed

4 MCAR § 4.001 Policy. ~~These~~ Rules 4 MCAR §§ 4.001-4.250 shall be liberally construed to effectuate the purposes and provisions of *Minnesota Statutes*, sections 238.01 ~~238.16~~ to 238.17.

4 MCAR § 4.002 Definitions.

A. Scope. As used in ~~these rules~~ 4 MCAR §§ 4.001-4.250 the ~~following~~ words and phrases ~~shall~~ defined in this rule have the meanings given them ~~herein~~ unless a different meaning clearly appears in the text.

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

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

1. ~~Any~~ a system which serves fewer than 50 subscribers,

2. ~~Any~~ a master antenna television system,

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

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

~~C.~~ D. Board. "Board" ~~shall mean~~ means the cable communications board created by ~~the provisions of~~ *Minnesota Statutes*, section 238.04.

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

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

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

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

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

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

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

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

~~L.~~ M. State. "State" means the state of Minnesota.

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

~~N.~~ O. Twin Cities metropolitan area. "Twin Cities metropolitan area" means ~~that area comprised of~~ Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties with the exception of the city of Northfield in Dakota County and the city of New Prague in Scott County.

P. VHF Spectrum. "VHF spectrum" means standard VHF channels 2 to 13.

4 MCAR § 4.016 ~~Computation of~~ Time.

A. ~~In computing any~~ Computation. The computation of a period of time prescribed or allowed by ~~these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday~~ 4 MCAR §§ 4.001-4.250 shall be done in the manner prescribed in *Minnesota Statutes,* section 645.15. For any time period of ~~10~~ ten days or less, Saturdays, Sundays, or legal holidays shall not be included in computing the period of time.

B. [Unchanged.]

4 MCAR § 4.046 Rule-making proceedings. The board shall adopt, amend, suspend, or repeal its rules in accordance with the procedures set forth in *Minnesota Statutes,* chapter 15 and in the rules of the State Office of ~~the Hearing Examiners~~ Administrative Hearings.

4 MCAR § 4.061 Initiating a contested case.

A. [Unchanged.]

B. ~~Initiation~~ Request for action by complaint. Any person authorized by law to submit to the board a complaint that his rights are being abridged, that his privileges are being denied, or that duties owed him are being defaulted upon may request initiation of a contested case by filing a complaint. A complaint ~~shall~~ must contain:

1. [Unchanged.]
2. The ~~name or~~ names of those against whom the complaint is made;
3. The relief sought and the grounds ~~therefor~~ for relief; and
4. The signature of the complaintant or ~~his~~ the complainant's attorney.

C. [Unchanged.]

4 MCAR § 4.062 Commencement of contested case. The board may initiate a contested case within ten days following receipt of a complaint or application or the adoption of an order by the board initiating a contested case~~,~~. If it initiates a contested case the board shall proceed ~~to commence a contested case hearing~~ in accordance with the ~~procedures set forth in the~~ rules of the State Office of ~~the Hearing Examiners~~ Administrative Hearings.

4 MCAR § 4.066 Fees. In every contested case, the plaintiff, petitioner, or other moving party shall pay~~,~~ a fee of $15 to the State Office of Administrative Hearings when the first paper on his part is filed or the first appearance is entered~~, a fee of $15, provided that the board shall not be required to pay such fee~~. The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay~~,~~ a fee of $10 to the State Office of Administrative Hearings when the first paper on his or their part is filed, or the first appearance is entered~~, a fee of $10, provided that the board shall not be required to pay such fee. All such fees shall be credited to the general revenue fund in the state treasury~~. The State Office of Administrative Hearings shall pay the fees into the general fund in the state treasury. Whenever the board is a party in a contested case it is exempt from the fee requirements in this rule.

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

4 MCAR § 4.100 Ownership and control of system.

A. Certain ownership prohibited. None of the ~~following~~ ~~shall~~ persons in 1.-4. may directly or indirectly own, operate, control, or have a legal or equitable interest in a cable communications system~~:~~.

~~A.~~ 1. A television broadcasting station whose predicted Grade B contour, computed in accordance with section 73.684 of the Federal Communications Commission's rules and regulations, overlaps in whole or in part the service areas of the system (e.g., the area within which the system is serving subscribers); ~~or~~

~~B.~~ 2. A national television network; ~~or~~

~~C.~~ 3. A television translator station licensed to the municipality of ~~such~~ that system; or

~~D.~~ 4. A telephone company within its local exchange area, unless a proper and timely waiver is obtained from the Federal Communications Commission~~;~~ ~~or~~

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

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

C. Stockholders in large corporations. In applying ~~the~~ ~~provisions~~ ~~of~~ this rule to the stockholders of a corporation which has more than 50 stockholders:

1.-3. [Unchanged.]

4 MCAR § 4.133 ~~Expansion~~ Change of approved cable service territories. The board shall approve or disapprove ~~the~~ ~~expansion~~ of a change in an approved cable service territory. ~~Any~~ ~~such~~ ~~expansion~~ ~~shall~~ ~~be~~ A change is subject to the procedures provided for in ~~this~~ ~~chapter~~ 4 MCAR §§ 4.130-4.135.

4 MCAR § 4.134 Board procedures.

A. Notice of proposal. Pursuant to the requirements of 4 MCAR § 4.140 B. a cable service territory or ~~expansion~~ ~~of~~ a change in a cable service territory may be proposed to the board by a municipality, a group of municipalities in a joint powers agreement, a cable communications company, or any party who has announced an intention to form a cable communications company. The party proposing the cable service territory or ~~expansion~~ ~~of~~ the change in a cable service territory shall deliver written notice of its proposal to the governing body of each municipality which is within or contiguous to the proposed cable service territory and to the appropriate regional development commission or the Metropolitan Council. At substantially the same time as written notice is delivered, the party proposing the cable service territory or ~~expansion~~ ~~of~~ the change in a cable service territory shall ~~cause~~ ~~to be published~~ ~~in a newspaper~~ ~~of general circulation in the proposed territory.~~ publish a notice of its proposal ~~of a cable service territory to the board~~ in a newspaper of general circulation in the proposed territory. The written and published notices ~~shall~~ must include at least the following information:

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

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

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

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

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

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

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

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

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

4. proof ~~of~~ that the written notice required by A. has been given, which ~~proof~~ may be in the form of copies of the written notices, an affidavit, or ~~other such~~ a certificate of service~~,~~; and

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

C. Copy of proposal to interested person. A copy of the proposal ~~shall~~ must be made available upon request to any interested party. If all or a part of the proposed cable service territory or ~~expansion of~~ change in a cable service territory~~, in whole or part,~~ is within the seven county metropolitan area, a copy of the proposal ~~shall~~ must be submitted to the Metropolitan Council and to each included or contiguous municipality at the same time as the proposal is submitted to the board.

D. Comment period. Before considering a proposal, the board shall allow a comment period of at least 20 days from the date of compliance with the notice requirements set forth in A. ~~of this rule~~ or submission of the proposal to the board, whichever occurs last. The appropriate regional development commission, an affected municipality or cable communications company or any other party having a clear interest shall~~, upon good cause shown,~~ be allowed 30 additional days for comment if the party gives a good reason. If all or a part of the proposed boundaries~~, in whole or part,~~ are within the seven county metropolitan area, the Metropolitan Council shall be allowed ~~90~~ 45 days from the date a copy of the proposal is submitted to it to review and comment on the proposed boundaries.

E. Action on proposal. The board shall accept written and oral comment and approve or reject a proposed cable service territory or a proposed change in a cable service territory at its first regularly scheduled meeting after expiration of the applicable comment period~~, or additional comment period if allowed~~. The board may, upon good cause shown by an interested party, postpone action on a cable service territory proposal until its next regularly scheduled meeting.

F. Reasons for rejection. If the board determines not to approve a proposal, it shall specify its reasons for rejection in a written statement within ~~thirty~~ 30 days of ~~such rejection,~~ rejecting the proposal or at its first regularly scheduled meeting ~~thereafter~~ after the end of the 30-day period.

G. Modified proposals. A proposal rejected by the board may be introduced with appropriate modifications at any time after ~~such~~ the rejection. All reintroduced proposals ~~shall be~~ are subject to the same procedures ~~of this chapter~~ as the original proposal.

4 MCAR § 4.135 Factors and criteria to be considered. In ~~determining its approval or rejection of~~ approving or rejecting a proposal for establishment or ~~expansion of~~ a change in a cable service territory the board shall consider the following: the impact on prospects for development of cable communications service in areas which are within and contiguous to the proposed cable service territory; whether the proposed boundaries encompass any areas which would be more appropriately included in another cable service territory; the impact of the proposed territory on any related policies or plans adopted by the Metropolitan Council or ~~other~~ the appropriate regional development commission; the economic viability of the proposed cable service territory or ~~expansion of~~ the change in an existing cable service territory; and any other factors the board or the applicant deems relevant.

4 MCAR § 4.140 Initial franchise.

A.-B. [Unchanged.]

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

1.-2. [Unchanged.]

3. ~~Such~~ The report ~~shall~~ must include an assessment of the communications needs of the persons residing within the proposed area to be served within the cable service territory~~,~~ and recommendations on the means to satisfy those needs.

4. [Unchanged.]

D. Request for proposals.

1. After approval of the Cable Service Territory by the Minnesota Cable Communications Board, and consideration of the recommendations of the Needs Assessment Report, the franchising authority shall determine the advisability of continuing

the franchising process. If the franchising authority determines that the franchising process should continue, then the franchising authority shall officially adopt in a public hearing, affording reasonable notice and a reasonable opportunity to be heard, the Request for Proposals for a cable communications franchise, which ~~request~~ shall include but not necessarily be limited to, the following items:

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

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

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

(1)-(2) [Unchanged.]

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

d. A list of the information required to be contained in each submitted proposal, as set forth in 5.

2.-3. [Unchanged.]

4. The franchising authority shall give public notice of the availability of the request for proposals for a cable communications franchise at least 45 days before the public hearing awarding the franchise. The notice ~~shall~~ must be published at least once in a newspaper of general circulation within the boundaries of the franchising authority. A copy of the notice ~~shall~~ must be provided to the board on the date of initial publication, together with ~~an affidavit~~ proof of publication. The notice ~~shall~~ must also be published at least once in at least two publications contained in a list approved by the board and on file with the executive director of the board. The published notice ~~shall~~ must contain, at a minimum, the following information:

a.-d. [Unchanged.]

e. A statement that ~~the~~ applicant proposals for a cable communications franchise must be submitted taking into account the system design and service ~~as~~ outlined by the franchising authority in its ~~proposal~~ request for proposals for a cable communications franchise.

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

a.-b. [Unchanged.]

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

(1) The general area for location of ~~antenna(e)~~ antennae and ~~headend(s)~~ the head end, if known;

(2)-(4) [Unchanged.]

d.-k. [Unchanged.]

l. Substantive amendments may not be made in a proposal after a proposal has been submitted to the franchising authority and before a certificate of confirmation has been granted.

E. Award of franchise.

1. ~~A~~ Any public hearing before the franchising authority affording reasonable notice and a reasonable opportunity to be heard with respect to all proposals for the franchise ~~shall~~ must be completed at least 27 days prior to the introduction of the franchise ordinance in the proceedings of the franchising authority. At the hearing the franchising authority must consider the franchisee's technical ability, financial condition, and legal qualifications as required in 4 MCAR § 4.202 N.

2. ~~If a franchise is granted, it shall~~ Franchises may be granted only by ordinance. The board shall review the validity of each franchise ordinance and the franchising authority's compliance with the criteria and priorities contained in the request for proposals. No franchise is effective until the board has confirmed the franchise pursuant to *Minnesota Statutes*, section 238.09~~, subd. 6.~~ and the franchisee ~~shall obtain~~ has obtained a certificate of confirmation ~~pursuant to 4 MCAR §§ 4.210-4.216~~.

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3. ~~Nothing in these rules shall be construed to~~ Rules 4 MCAR §§ 4.140-4.143 do not prohibit a franchising authority from recovering the reasonable and necessary costs of the entire process of awarding, renewing, and amending the cable communications franchise from the successful applicant.

4. ~~Nothing contained in any rule of~~ The board ~~shall~~ may not by rule prohibit a franchising authority from franchising a nonprofit or municipally operated system provided that it is granted pursuant to *Minnesota Statutes*, sections 238.09 to 238.16.

F. [Unchanged.]

4 MCAR § 4.141 Alternative initial franchising procedures.

A.-B. [Unchanged.]

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

1.-2. [Unchanged.]

D. ~~The franchise shall be granted~~ Award of the franchise. Franchises may be awarded only by ordinance ~~and within 10 days of the date on which the ordinance takes effect, the franchising authority shall forward a copy of the franchise ordinance to the board for approval in accordance with Minn. Stat. § 238.09, subd. 1~~.

E. Costs of awarding franchise. Nothing in ~~these rules shall be construed to prohibit~~ 4 MCAR §§ 4.140-4.143 prohibits a franchising authority from recovering from a successful applicant the reasonable and necessary costs of the entire process of awarding the cable communications franchise ~~from the successful applicant~~.

F. ~~In order to be eligible for the use of~~ Eligibility. The procedures described in this rule~~,~~ may be used if

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

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

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

~~c. Have~~ has a population of less than ~~1200,~~ 4,000 and~~:~~

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

~~a.~~ 1. No one municipality within the cable service territory ~~may have~~ has a population over ~~1200~~ 4,000, except in ~~the expansion of~~ a change in an already approved cable service territory~~.~~; and

~~b.~~ 2. The ~~total~~ aggregate population of all municipalities within the cable service territory ~~may~~ does not exceed ~~2,500~~ 9,000 except in the expansion of an already approved cable service territory.

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

G.-I. [Unchanged.]

4 MCAR § 4.202 Required contents of franchises. Where a cable communications franchise is awarded or renewed after April 1, 1973, except as provided in *Minnesota Statutes*, section 238.09, subdivisions 3, 4, 5, and 9, a regular or renewal of a certificate of confirmation will be issued only if the franchise ordinance contains recitations and provisions consistent with the following requirements. The following requirements apply to all classes of systems (A, B, and C,) unless hereafter provided otherwise.

A.-H. [Unchanged.]

I. ~~A provision~~ Provisions specifying:

1. all current subscriber charges or that the current charges are available for public inspection in the municipality; ~~and, if existent,~~

2. the length and terms of residential subscriber contracts, ~~and~~ if they exist, or that the current length and terms of residential subscriber contracts are available for public inspection in the municipality; and

3. ~~a provision stating~~ the procedure by which all subscriber charges ~~may be changed~~ are established, unless such a provision is contrary to state or federal law.

J.-M. [Unchanged.]

N. Approval by franchising authority. A provision that the franchisee's technical ability, financial condition, and legal qualification were considered and approved by the franchising authority in a full public proceeding ~~affording~~ pursuant to 4 MCAR § 4.140 E.1. which afforded reasonable notice and a reasonable opportunity to be heard.

O. [Unchanged.]

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

1. That for franchise areas which will be served by a system proposed to have fewer than 100 plant miles of cable:

a.-c. [Unchanged.]

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

a.-d. [Unchanged.]

Q.-V. [Unchanged.]

W. Use of signals. A provision stating that no signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewed at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revokable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type of classification of Class IV cable communications activity planned for the purpose.

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

2.-3. [Unchanged.]

X.-Y. [Unchanged.]

Z. Termination of franchise for violations. A provision granting the franchising authority the right to terminate and cancel the franchise and all rights and privileges of the franchise ~~in the event that~~ if the franchisee substantially violates any provision of the franchise ordinance, attempts to evade any of the provisions of the franchise ordinance, or practices any fraud or deceit upon the franchising authority. The municipality shall provide the franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the franchisee a minimum of ~~thirty~~ 30 days ~~subsequent to receipt~~ after service of the notice in which to correct the violation.

The franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the franchise. In the event that the municipality determines to terminate the franchise, the franchisee ~~shall have a period of thirty~~ has 30 days~~,~~ ~~beginning the day next following~~ from the date of the conclusion of the public hearing at which the termination of the franchise ~~is~~ was considered~~,~~ within which to file an appeal with the board, pursuant to *Minnesota Statutes*, section 238.14. During ~~such thirty~~ the 30-day period and until the board determines the appeal, if an appeal is taken, the franchise ~~shall remain~~ remains in full force and effect~~,~~ unless the term ~~thereof sooner expires~~ of the franchise ends sooner. If the board approves of the action of the municipality, the franchise ~~shall terminate~~ terminates immediately; if the board disapproves of the action of the municipality, the franchise ~~shall remain~~ remains in full force and effect during ~~the~~ its term ~~thereof~~ unless it is sooner terminated in accordance with law or ~~these rules~~ 4 MCAR §§ 4.001-4.250. Any ~~such~~ appeal to the board is a contested case to which the board is not a party.

AA.-CC. [Unchanged.]

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

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1. The provision ~~shall~~ must require that the franchisee shall provide to each of its subscribers who receive some or all~~, or any part of,~~ the ~~total~~ services offered on the system, reception on at least one specially designated access channel. ~~Franchisees providing subscribers only alarm services or only data transmission services for computer operated functions shall be exempt from this requirement.~~ The specially designated access channel may be used by local educational authorities and local government on a first-come, first-served, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the local educational authorities or local government, the franchisee shall lease time to commercial or noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for ~~such~~ that time arises. The franchisee may also use this specially designated access channel for local origination during those hours when the channel is not in use by local educational authorities, local government, or commercial or noncommercial users who have leased time ~~on the specially designated access channel~~. The VHF spectrum ~~shall~~ must be used for the specially designated access channel required in ~~this subdivision~~ DD.

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

3. ~~Nothing in this rule shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels~~ Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers.

4 MCAR § 4.203 Required franchise provisions for a Class B cable system. Franchises for Class B cable systems ~~shall~~ must contain ~~recitations~~ statements and provisions consistent with 4 MCAR § 4.202, unless hereafter provided otherwise, and ~~recitations~~ statements and provisions consistent with the following requirements:

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

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

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

3. The provision shall require that whenever the specially designated access channel required in 4 ~~MCAR § 4.203 A.~~ 1. ~~of this rule~~ is in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive 3-hour period for six weeks running, and there is a demand for use of an additional channel for the same purpose, the ~~system shall then have~~ franchisee has six months in which to provide a new specially designated access channel for the same purpose, provided that provision of ~~such~~ the additional channel or channels ~~shall~~ does not require the cable system to install converters. ~~However,~~ Nothing in this rule ~~shall be construed so as to preclude~~ precludes the installation of converters by the system on a voluntary basis, ~~or~~ as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

4. Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers.

B. [Unchanged.]

4 MCAR § 4.204 Required franchise provisions for a Class C cable system. Franchises for Class C cable systems ~~shall~~ must contain ~~recitations~~ statements and provisions consistent with 4 MCAR § 4.202, unless ~~hereafter provided~~ this rule provides otherwise, and ~~recitations~~ statements and provisions consistent with the following requirements:

A. Access channels. A provision establishing the minimum number of public, educational, governmental and leased access channels that the franchisee shall make available. Franchisees subject to ~~the requirement of~~ this provision ~~shall~~ are not ~~be~~ subject to ~~the requirements of~~ 4 MCAR § 4.202 DD.

1. The provision ~~shall~~ must require that the franchisee shall, to the extent of the system's available channel capacity, provide to each of its subscribers who ~~receive~~ receives some or all~~, or any part of,~~ the ~~total~~ services offered on the system, reception on at least one specially designated noncommercial public access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel available for local government use; and at least one specially designated access channel available for lease on a first-come, first-served, nondiscriminatory basis by commercial and noncommercial users. ~~Franchisees providing subscribers only alarm system services or only data transmission services for computer operated functions shall be exempt from this requirement.~~ The VHF spectrum ~~shall~~ must be used for at least one of the specially designated noncommercial public access channels required in ~~this subdivision~~ A. The provision ~~shall~~ must require that no charges ~~shall~~ may be made for channel time or playback of prerecorded programming on at least one of the specially designated noncommercial public access channels required by ~~this subdivision, provided, however, that~~ A. Personnel, equipment, and production costs may be assessed, however, for live studio presentations exceeding five minutes in length. Charges for ~~such~~ those production costs and any fees for use of other public access channels ~~shall~~ must be consistent with the goal of affording the public a low-cost means of television access.

2.-3. [Unchanged.]

4. Those systems which offer subscribers the option of receiving programs on one or more special service channels without also receiving the regular subscriber services may comply with this rule by providing the subscribers who receive the special service only, at least one specially designated composite access channel composed of the programming on the specially designated noncommercial public access channel, the specially designated education access channel, and the specially designated local government access channel required in this rule. ~~Franchisees providing subscribers only alarm system services or only data transmission services for computer operated functions shall be exempt from this requirement.~~

5. [Unchanged.]

6. Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers.

B.-C. [Unchanged.]

D. Twin Cities metropolitan area franchises. In Twin Cities metropolitan area franchises, a provision designating the standard VHF channel 6 for uniform regional channel usage as required in 4 MCAR § 4.223.

4 MCAR § 4.211 Necessity for a certificate of confirmation. Any cable communications company ~~shall be required to~~ must secure a regular certificate of confirmation from the board before becoming operational. ~~Such~~ The certificate may be issued only upon compliance with 4 MCAR §§ 4.140 or 4.141 and 4 MCAR §§ 4.200-4.204 after full board proceedings and ~~shall be~~ is effective for ~~a period of ten years from the effective date of the municipal franchise ordinance~~ the same number of years as the franchise being confirmed.

4 MCAR § 4.212 Procedure for making application for a regular certificate of confirmation.

A.-B. [Unchanged.]

C. Proof of publication. A ~~certificate~~ proof of publication ~~shall~~ must be filed with the board no later than ~~seven~~ five days before the meeting at which the application for certification is to be considered.

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D. [Unchanged.]

4 MCAR § 4.215 Renewal of a certificate of confirmation. Upon expiration of its certificate of confirmation or the renewal of its cable communications franchise, a cable communications company must obtain renewal of its certificate of confirmation. The renewal of any certificate of confirmation ~~shall~~ may be issued only after compliance with 4 MCAR §§ 4.200-4.204. The renewal of a certificate of confirmation ~~shall~~ may be issued only after full board proceedings and shall be valid for ~~a period of ten years from the expiration date of the previously issued certificate, except~~ the same number of years as the renewal franchise period. When a certificate is renewed before its expiration date, the term of the renewed certificate shall begin on the date of its issue; any remaining term of a previously issued certificate ~~shall~~ is then ~~be~~ expired.

The procedure for obtaining the renewal of a certificate of confirmation shall be the same as ~~is herein provided~~ the procedure for obtaining a regular certificate of confirmation.

Nothing in this rule ~~shall prohibit~~ prohibits a cable communications company from renewing its certificate of confirmation prior to the expiration of any existing certificate of confirmation.

4 MCAR § 4.250 Deregulated systems.

A. Scope. A system which serves more than 50 but fewer than 1,000 subscribers and which has been removed from the provisions of *Minnesota Statutes*, chapter 238 under *Minnesota Statutes*, section 238.02, subdivision 3, is subject to the requirements in B.-D.

B. Reports to board. The system operator shall provide to the board information and documentation in the form and at the times the board requires.

C. Access for educational and governmental programming. The system operator shall provide reception on at least one specially designated access channel to each subscriber who receives some or all of the services offered on the system. Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers. The specially designated access channel may be used by local educational authorities and local government on a first-come, first-served, nondiscriminatory basis. The franchisee may use this specially designated access channel for other purposes during those hours when the channel is not in use by local educational authorities or local government. The VHF spectrum must be used for the specially designated access channel.

D. Operating rules. The system operator shall establish rules for the administration of the specially designated access channel and shall file the rules with the board within 90 days after the channel is put into use.

Pollution Control Agency
Proposed Amendment of Agency Procedural Rules

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (agency) intends to adopt without a public hearing amendments to MPCA 1-4 and 6-13, the procedural rules of the agency. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

The proposed amendments are authorized by Minn. Stat. § 116.07, subd. 3 (1980). The proposed amendments if adopted would: 1) update the agency's procedural rules in accordance with legislative changes which have occurred since the adoption of the original rules in 1973; 2) in certain instances, conform the rules to actual agency practice; and 3) make stylistic and clarifying changes. The rules as amended will be codified as 6 MCAR §§ 4.3001-4.3016.

The agency has prepared a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon by the agency to support the proposed amendments. Copies of the statement of need and reasonableness and of the proposed amendments are available and may be obtained by contacting:

David Christopherson
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7711

Interested persons have 30 days, specifically until October 13, 1982, to submit comments on the proposed amendments. The proposed amendments may be modified if the data and views submitted to the agency warrant modification and the modification does not result in a substantial change in the proposed amendments.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. In the event that a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4-4f (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to David Christopherson, at the address and telephone number previously stated, no later than October 13, 1982. If a person desires to request a public hearing, the agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Upon adoption of the amendments by the agency board, the rules as proposed, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be sent to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final amendments as adopted, should submit a written statement of such request to David Christopherson at the address previously stated.

Please be advised that 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 (1980) 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 contains certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Louis J. Breimhurst
Executive Director

Rules as Proposed

~~MPCA 2~~ 6 MCAR § 4.3001 Definitions.

A. Scope. As used in ~~these rules of procedure~~ 6 MCAR §§ 4.3001-4.3016 the following words shall have the meanings given them ~~herein~~.

~~(a)~~ B. Agency. "Agency" means the Minnesota Pollution Control Agency, as constituted pursuant to *Minnesota Statutes*, section 116.02, subdivision 1.

~~(b)~~ C. Days. "Days" means calendar days.

~~(c)~~ D. Director. "Director" means the executive director and chief executive officer of the agency.

~~(d)~~ E. Emergency. "Emergency" means imminent and substantial danger to the health and welfare of the people of the state, or any part thereof, as a result of the pollution of air, land, or water.

~~(e)~~ F. Hearing ~~Officer~~ examiner. "Hearing ~~officer~~ examiner" means the person ~~or persons appointed~~ assigned by the ~~agency,~~ chief hearing examiner pursuant to ~~MPCA 9, to call and conduct a hearing~~ *Minnesota Statutes*, section 15.052, subdivision 3, to preside at a rulemaking hearing or contested case hearing.

~~(f)~~ G. Order. "Order" means any written command or direction made by the agency or the director, as provided by law~~, or made by a hearing officer appointed by the agency pursuant to MPCA 9~~.

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~~(g) PARTY. "Party" means any person whose legal rights, duties, or privileges may be determined in a hearing under the provisions of these Rules and any person who has properly intervened in a hearing. The term "party" shall include the Agency when the Agency initiates the hearing pursuant to MPCA 11.~~

~~(h)~~ H. Permit. "Permit" means every discharge, emission, and disposal authorization, every construction, installation, or operation authorization, and every other agency authorization designated "permit" in *Minnesota Statutes*, chapters 115 and 116, as now in force or hereafter amended, including *Minnesota Statutes*, sections 115.03, subdivision 1, 115.07, 116.07, subdivision 4, clause (a), 116.081, and 116.091~~,~~. ~~except that~~ "Permit" does not include an "order," ~~or a~~ "variance," or "stipulation agreement" as defined in this rule, and does not include a certification."

~~(i)~~ I. Person. "Person" means any human being, any municipality or other governmental or political subdivision or other public department or agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agency, legal entity, other than a court of law, or any legal representative of any of the foregoing, but does not include the ~~Minnesota Pollution Control~~ agency.

~~(j) PRONOUNS. Any reference to the male in these regulations shall be construed to include the female.~~

~~(k)~~ J. Public informational meeting. "Public informational meeting" means a meeting called by the agency to solicit public comment and statements on a matter before the agency.

~~(l)~~ K. Schedule of compliance. "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

~~(m)~~ L. Service; serve. "Service" or "serve" means personal service or, unless otherwise provided by law, service by first class United States mail, postage prepaid, addressed to a person or party at his or her last known address~~, unless some other manner of service is specifically required by law~~. Service by mail is complete upon the placing of the item served in the mail. Agencies of the state of Minnesota may also serve by depositing the item to be served with the Central Mailing Section, Publications Division, Department of Administration.

~~(n)~~ M. Stipulation agreement. "Stipulation agreement" means any agreement entered into between the agency and any person or persons establishing a schedule for compliance with applicable statutes, rules, ~~regulations~~ or standards by designated dates, or otherwise providing for settlement for noncompliance with applicable statutes, rules, or standards.

~~(o)~~ N. Variance. "Variance" means an authorization from the agency ~~which~~ that grants an exemption from the requirements of any rule~~, regulation,~~ or standard of the agency and which does not require compliance with ~~said~~ the rule~~, regulation,~~ or standard for the duration of the authorization. "Variance" does not include permits, stipulation agreements, schedules of compliance, or any modifications thereto, or any order of the agency which allows interim operation during completion of a compliance program, nor does variance include a time extension of an existing variance.

6 MCAR § 4.3002 Computation of time. In computing any period of time prescribed by these rules, the day of the last act, event, or default from which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday.

~~MPCA 1~~ 6 MCAR § 4.3003 Duty of candor. In all formal or informal negotiations, communications, proceedings, and other dealings between any person and any member, employee, or agent of the agency, it shall be the duty of each person and each member, employee, or agent of the agency to act in good faith and with complete truthfulness, accuracy, disclosure, and candor. ~~Any violation of the aforesaid duty shall be cause for imposition of sanctions as provided in MPCA 11.~~

~~MPCA 3 Agency Meetings and Officers.~~

6 MCAR § 4.3004 Officers, committees, and duties.

~~(a) Agency~~ A. Officers.

~~(1) Titles.~~ The officers of the agency ~~shall consist of chairman, vice chairman~~ are the chairperson, vice chairperson, and director.

~~(2) Elections~~

~~(i) Chairman.~~ B. Electing the chairperson. The ~~chairman shall~~ chairperson must be elected by a majority of all agency members at each annual meeting for a term of one ~~(1)~~ year. No member elected to the office of ~~chairman~~ chairperson may serve in that capacity more than two ~~(2)~~ full terms consecutively.

~~(ii) Vice chairman.~~ C. Electing the vice chairperson. The vice ~~chairman shall~~ chairperson must be elected by a majority of all agency members at each annual meeting for a term of one ~~(1)~~ year. No member elected to the office of vice ~~chairman~~ chairperson may serve in that capacity more than two ~~(2)~~ full terms consecutively.

~~(3) Duties~~

~~(i) Chairman~~ D. Duties. The ~~chairman~~ chairperson shall have ~~such~~ the duties ~~as are~~ prescribed by rule ~~or regulation~~ of the agency.

~~(ii) Vice chairman.~~

The vice ~~chairman~~ chairperson shall discharge all duties of the ~~chairman~~ chairperson during the absence or disability of the ~~chairman~~ chairperson.

~~(iii) Director.~~ The director shall have ~~such~~ the duties ~~as are~~ prescribed by statute or by rule ~~or regulation~~ of the agency.

~~(4)~~ E. Vacancies. Upon a vacancy (~~i.e.~~ for example, death, resignation, or removal) in the office of ~~Chairman~~ chairperson of the agency, the vice ~~chairman~~ chairperson shall become the ~~chairman~~ chairperson until such time as new officers are elected at the next annual meeting. Upon a vacancy in the office of vice ~~chairman~~ chairperson, a special election shall be held at the next regular meeting, for a term ending at the next annual meeting.

~~(5)~~ F. Removal. The ~~chairman~~ chairperson or vice ~~chairman may be~~ chairperson is removed from office by the affirmative vote of two-thirds of all members of the agency, ~~said~~ this vote to be taken at the next regular meeting following the motion for removal.

(b) [see repealer]

~~(c)~~ G. Committees. The agency may from time to time establish committees of agency members as it may deem necessary and desirable to facilitate its work. All committee recommendations shall be duly submitted to the agency for appropriate action.

~~(d)~~ H. Execution of documents. Contracts, stipulation agreements, and other documents approved by the agency pursuant to law shall be executed on the agency's behalf by the ~~Chairman~~ chairperson and the director.

6 MCAR § 4.3005 Agency meetings.

A. Regular meetings. Twelve regular monthly meetings of the agency shall be held each calendar year. A date for each regular meeting shall be set by the agency. The annual meeting, also conducted as a regular meeting, shall be held during the month of July of each year. The time and place of each regular meeting, including the annual meeting, shall be designated by the chairperson. The chairperson may direct that any regular meeting, except the annual meeting, be postponed or advanced.

B. Special meetings. The chairperson, or in the chairperson's absence the vice chairperson, or in their absence the director of the agency, may call a special meeting of the agency when, in his or her opinion, a meeting is necessary or desirable. The chairperson shall call a special meeting upon receipt of a request from three members of the agency.

C. Notice of regular meetings. The director shall give written notice of the time and place of each regular meeting to all agency members at least ten days prior to any regular meeting.

D. Notice of special meetings. The chairperson or the director shall give as much notice as possible to all agency members prior to any special meeting. This notice shall state the time, place, and subject matter of the meeting. Except as provided in 6 MCAR § 4.3006, this notice shall be given at least two days prior to any special meeting.

E. Public notice of meetings. The director shall give public notice of the time and place of regular and special meetings in the manner provided in G.

F. Agenda preparation. At least ten days prior to all regular meetings of the agency, the director shall prepare a proposed agenda of business to be conducted at the meeting. Except when exigencies of time and circumstances warrant, an agenda must be prepared for all special meetings as far in advance of the special meeting as possible. The agenda must include a list of all matters to be considered at the meeting. Agency members may place items on the agenda by notifying the director at least 14 days prior to a regular meeting. Citizens may request in writing that items be placed on the agenda by notifying the director at least 14 days prior to a regular meeting. The director may in his or her discretion determine whether to place a citizen item on the agenda, but the director shall advise the agency of all items the director decides not to place on the agenda. Items may be placed on the agenda for a special meeting in the same manner as for regular meetings.

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G. Notice of agenda. At least ten days prior to the regular meeting, the director shall mail a copy of the agenda to every member of the agency, to each person directly affected by a decision of the agency on the agenda matter, and to each person the director deems appropriate in the circumstances. The agenda for a regular meeting must be available for public inspection in the agency offices at least ten days prior to the regular meeting for which the agenda has been prepared.

The agenda for a special meeting must be available for public inspection in the agency offices at least two days prior to the meeting, and as far in advance of the meeting as reasonably possible, except as provided in 6 MCAR § 4.3006.

H. Quorum. A majority of the members of the entire agency constitute a quorum, and a quorum must be present for the transaction of business.

I. Presiding officer. The chairperson shall preside at all agency meetings. The vice chairperson shall preside in the chairperson's absence. The remaining members shall elect a presiding officer from among the members present whenever the chairperson and vice chairperson are both absent. The presiding officer shall serve only for that meeting or until the chairperson or vice chairperson shall arrive.

J. Agenda. The first order of business at the meeting shall be adoption of the agenda, which may be amended or modified by the agency at this time.

K. Agenda items. No matter may be considered at a regular agency meeting unless it has been placed on the agenda and all relevant public information has been made available for public inspection at least ten days prior to the regular meeting, except where the agency in its discretion by unanimous vote of those members present determines otherwise. Public information regarding matters to be considered at a special meeting must have been available for public inspection at least two days prior to the meeting, and as far in advance of the special meeting as reasonably possible, except as provided in 6 MCAR § 4.3006.

L. Voting. Except as otherwise specifically provided, a majority vote of the entire agency is necessary to make any decision. All members present, including the presiding officer, shall vote or abstain on every matter presented for decision. If the final vote taken on an agenda item does not result in a decision, but half or more of the voting members vote affirmatively, the matter must be placed on the agenda of the next regular monthly meeting or considered at a special meeting, unless the agenda item concerns rescission of a decision.

M. Decisions at open meetings. All regular and special meetings of the agency must be open to the public, and all decisions of the agency must be made at these meetings. However, if the chairperson, or in the chairperson's absence the vice chairperson, determines that the exigencies of time and circumstances warrant, then an agency decision may be made by telephone poll or other appropriate means. The unavailability of any agency member shall not postpone the making of the any decision. In the event that an agency decision is made by telephone poll or other appropriate means, this decision must be subject to confirmation at the next agency meeting.

N. Reconsideration of decision. On the same day as originally made, upon the motion of any agency member who voted on the prevailing side and upon the affirmative vote of a majority of the entire agency, any decision of the agency may be reconsidered.

O. Rescission of decision. Upon placement on the agenda by an agency member as provided in F. and upon the affirmative vote of two-thirds of the entire agency, any decision of the agency or director may be rescinded.

P. Record of meetings. The agency shall keep full and accurate minutes of all meetings, including a record of all votes of individual members.

Q. Parliamentary procedure. Except as specifically provided in these rules, *Robert's Rules of Order* shall govern any question of parliamentary procedure that may arise at any meeting of the agency.

MPCA 4 6 MCAR § 4.3006 Declaration of emergency.

~~(a)~~ A. Delegation to director. The agency herewith delegates to the director the authority to exercise, in accordance with the limitations and procedures hereinafter enumerated, emergency powers granted to the agency by *Minnesota Statutes*, section 116.11.

~~(b)~~ B. Notification to agency. If the director anticipates that emergency conditions may be approaching, ~~he~~ the director shall keep the agency informed of ~~such~~ these conditions by ~~such means as may be~~ any means practicable. Upon declaration of an emergency by the director, ~~he~~ the director shall immediately notify all agency members that ~~such~~ an emergency has been declared, and shall poll the members on the action taken by the director. Notification may be by telegram, telephone, or any other means practicable. The unavailability of any agency members shall not postpone the implementation of any emergency ~~or~~

~~any rules, regulations or~~ orders ~~pursuant thereto~~. If, pursuant to the poll, a majority of all members of the agency disapprove of the declaration of emergency, the declaration and the action taken shall be discontinued immediately. If, pursuant to the poll, a majority of all members of the agency disapprove of the action taken by the director, but agree that an emergency exists, the action of the director shall remain in effect until the agency ~~shall order~~ orders different action to be taken.

~~(c)~~ C. Duration. Any action taken by the director pursuant to ~~his~~ the declaration of emergency shall remain effective according to the following provisions:

~~(1)~~ 1. for not to exceed three ~~(3)~~ days, unless approved by a majority of the members of the agency pursuant to the poll required in ~~section (b)~~ B.; or

~~(2)~~ 2. if extended beyond three ~~(3)~~ days, as provided in ~~subsection (c)(1) hereof~~ item 1., then the period until the date of the next agency meeting, unless extended by the agency at ~~such~~ the meeting; or

~~(3)~~ 3. ~~Subsection (c)(1) and (c)(2)~~ items 1. and 2. notwithstanding, until notice, hearing, and determination are effected pursuant to law; or

~~(4)~~ 4. ~~said emergency action may be~~ until discontinued ~~at any time~~ by the declaration of the director or by majority vote of the agency.

~~(d)~~ D. Report. Any action taken by the director pursuant to a declaration of emergency ~~shall~~ must be included on the agenda of the next meeting of the agency, at which time the director shall report to the agency on the status of the emergency.

~~(e)~~ E. Agency action. The agency may by majority vote exercise its emergency powers. The action of the agency taken in an emergency situation shall remain effective until discontinued by majority vote of the agency or until notice, hearing, and determination are effected pursuant to law.

~~(f)~~ F. Notice. The notice requirements of ~~MPCA 3 shall~~ 6 MCAR § 4.3005 do not apply when the agency or the director ~~are~~ is considering the exercise of ~~their~~ emergency powers, but the agency and the director shall give such notice to the public as is possible under the circumstances.

~~(g)~~ G. Emergency powers. Nothing contained in ~~these Rules of Procedure~~ 6 MCAR §§ 4.3001-4.3016 shall be construed to preempt, repeal, or conflict with ~~MPCA 4~~ this rule or any other rule~~, regulation~~ or statute ~~which~~ that provides for acts to be taken or procedure to be followed by the agency or the director in an emergency.

MPCA 6 6 MCAR § 4.3007 Variances.

~~(a)~~ A. Scope. This rule ~~shall govern~~ governs the procedure for issuance of all variances by the agency, except to the extent otherwise specifically provided by statute or ~~regulation~~ rule.

~~(b)~~ B. Written application. In no case shall the agency grant a variance unless a written application ~~therefor~~ has been made~~, under oath,~~ to the agency. The application ~~shall~~ must be served upon the director.

The written application ~~shall~~ must contain:

~~(1)~~ 1. the name and address of the applicant and the person who prepared the application;

~~(2)~~ 2. the signature of the applicant or ~~the~~ authorized representative ~~thereof~~;

~~(3)~~ 3. a description, including the location, of the business, plant, system, or facility for which a variance is sought~~, including the location thereof~~;

~~(4)~~ 4. the nature of the variance sought, including an identification of the applicable ~~regulations~~ rules or standards from which a variance is sought, the period of time for which it is sought, and the reasons relied upon by the applicant in requesting the variance;

~~(5)~~ 5. if the applicant seeks a variance primarily on grounds of economic burden, ~~the application shall be accompanied by~~ financial statements prepared or approved by a certified public accountant, or other person acceptable to the agency, which shall fairly set forth the status of the business, plant, system, or facility for each of the three financial years immediately preceding the year of the application, and an analysis of the effect of such financial status if the variance is not granted~~.~~ (if the business, plant, system, or facility has not been in operation for ~~such~~ this period, then the financial statements and ~~said~~ analysis ~~shall~~ must be based on the most complete data available);

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~~(6)~~ 6. if the applicant seeks a variance on grounds that compliance is not technologically feasible, ~~the application shall be accompanied by~~ a report from a registered professional engineer, or other person acceptable to the agency, stating fully the reasons why compliance is not technologically feasible;

~~(7)~~ ~~such~~ 7. other ~~or~~ additional data or information ~~which~~ that is required by any applicable agency ~~regulation~~ rule or standard; and

~~(8)~~ ~~such~~ 8. any other relevant data or information ~~which~~ that the agency or the director deems essential to a determination on the application, including but not limited to the following:

~~(i)~~ a. a general description of the materials handled or processed by the applicant ~~which~~ that are pertinent to the subject application, and a statement of the nature and quantity of the materials being discharged, emitted, or disposed of, and ~~which~~ that can reasonably be expected to be discharged, emitted, or disposed of~~,~~ during the period of the proposed variance, and proposed methods for the control of ~~such~~ these materials:

~~(ii)~~ b. a comprehensive proposed plan indicating the steps to be taken by the applicant during the period of the variance, even if the applicant is seeking a permanent variance, to reduce emission levels or discharges to the lowest limits practical;

~~(iii)~~ c. a concise statement of the effect upon the air, water, and land resources of the state and upon the public and other persons affected, including those residing in the area where the variance will take effect, which will result from agency approval of the requested variance;

~~(iv)~~ d. a statement of the alternatives to the proposed operation under the variance which have been considered by the applicant; and

~~(v)~~ e. a concise statement of the effect on the establishment, maintenance, operation, and expansion of business, commerce, trade, traffic, and other economic factors ~~which~~ that may result from approval and from denial of the requested variance.

(c)-(d) [See Repealer.]

C. Review of applications. The director shall review all variance applications for completeness. If the director finds that the application is incomplete or otherwise deficient, the director shall promptly advise the applicant of the incompleteness or deficiency. The director shall suspend further processing of the portion of the application affected by the deficiency until the applicant has supplied the necessary information or otherwise corrected the deficiency.

D. Preliminary determination; preparation of public notice. After a variance application is complete, the director shall make a preliminary determination as to whether the variance should be issued or denied. The director shall prepare a notice of the completed application and the preliminary determination. The notice must include a statement as to the manner in which the public may submit comments on the variance application and the manner in which a person may file a request pursuant to 6 MCAR §§ 4.3010 B. or 4.3015 B. asking that a contested case hearing or public informational meeting be held on the variance application. The notice must provide the public 30 days in which to submit these comments or requests.

E. Availability of public notice. The director shall make a copy of the public notice available at the main agency office and at the applicable agency regional office.

F. Mailing of public notice. The director shall mail a copy of the public notice to the applicant, to all persons who have registered their names on the mailing list established under *Minnesota Statutes*, section 15.0412, subdivision 4, and to any person upon request.

G. Circulation of public notice. The director shall circulate the public notice within the geographical area of the facility or activity that is the subject of the variance request. The director shall designate the geographical area, which shall as a minimum include the county in which the facility or activity is or will be located.

The director shall circulate the public notice in one or more of the following ways: posting the notice in the post office, public library, or other buildings used by the general public in the designated geographical area; posting the notice at or near the entrance of the applicant's premises, if located near the facility that is the subject of the variance application; or publishing the notice in one or more newspapers or periodicals of general circulation in the designated geographical area.

~~(e)~~ H. Agency decision. The agency shall make all final decisions on variance applications. The agency shall approve or deny each application. The agency may grant a variance upon such conditions as the agency may prescribe.

If a contested case hearing has been held, the agency shall act on each variance application as expeditiously as possible after receipt of the hearing ~~officer's~~ examiner's recommendation, or after submission of the application if no hearing is held. Any

person may submit to the agency an oral or written statement or recommendation regarding a variance application in accordance with ~~MPCA 9(m)(4) or MPCA 13(a)~~ 6 MCAR § 4.3011.

~~(f)~~ I. Notification. Every decision of the agency on a variance application shall be served on the applicant and upon all persons who ~~entered an appearance at any public hearing held on the application~~ have submitted to the agency a request to receive a copy of the decision.

~~(g)~~ J. Agency remedies preserved. During the pendency of a variance application, the agency may, in its discretion, avail itself of any legal, equitable, or administrative remedy provided by law for violation of *Minnesota Statutes* or rules.

~~(h)~~ K. Amendment or modification. In the event a variance has been granted by the agency, the person holding the variance may file with the agency at any time a written application for modification or amendment of the variance. The application for modification or amendment, and the agency's consideration of the application, shall comply with the requirements of these rules. This provision shall not apply to a time extension of an existing variance.

~~(i)~~ L. Assignment. No variance may be assigned or transferred by the holder without the approval of the agency. ~~The agency may, in its discretion, hold a hearing on any request to assign or transfer a variance.~~

M. Violation by variance holder. Any variance holder who violates a provision of the variance is subject to revocation or suspension of the variance, or other sanction as authorized or provided by law. No revocation, suspension, or other sanction may be imposed before notice to the variance holder and opportunity for a contested case hearing.

~~MPCA 7~~ 6 MCAR § 4.3008 Stipulation agreements.

~~(a)~~ A. Data or information. Whenever any person or the agency proposes that a stipulation agreement be entered into, the person who is proposed as a signer of the stipulation agreement shall furnish such information or data as is deemed essential by the agency or the director in making a determination regarding the proposed stipulation agreement.

~~(b)~~ B. Interim operation. The agency may in its discretion provide under the terms of a stipulation agreement for the operation of existing systems pending completion of compliance under the schedule therefor, and under such further conditions as it may prescribe in the stipulation agreement. Completion of performance under the stipulation agreement shall not relieve any party thereto of any requirement of law or agency rules ~~or regulations~~ to apply for all necessary permits or variances.

~~MPCA 8~~ 6 MCAR § 4.3009 Informal complaints. Any person may file with the director an informal complaint concerning a pollution source. The informal complaint may be either written or oral and ~~shall~~ must state the name and address of the person filing the informal complaint, the name and address of the alleged pollution source, and a description of the matter giving rise to the complaint. A person making an oral complaint may be asked to submit his or her complaint in writing. Upon receipt of ~~such~~ this informal complaint, the director shall make such investigation as is deemed necessary and appropriate. Within ~~twenty (20)~~ days after the complaint is filed, the director shall notify the person responsible for the alleged pollution source that an informal complaint has been filed. At any time after a complaint is filed, the agency may take whatever action it deems necessary and appropriate. The person who filed the complaint shall be notified of the disposition of his or her complaint. In all actions taken pursuant to this rule, the director shall comply with the provisions of *Minnesota Statutes*, sections 15.1611 to 15.1699.

~~MPCA 9~~ 6 MCAR § 4.3010 Contested case hearings.

~~(a)~~ A. Objectives. All contested case hearings required by statute or ~~regulation~~ rule and all contested case hearings ordered by the agency ~~in its discretion, other than rule-making hearings conducted pursuant to Minnesota Statutes, chapter 15 and other than public informational meetings,~~ shall be conducted in accordance with the procedures set forth in the rules of the Office of Administrative Hearings, 9 MCAR §§ 2.201-2.299, and in accordance with this rule. No ~~person before this agency shall have his~~ person's rights, privileges, or duties may be determined without regard for fundamental fairness. To that end, this rule is intended to assure that all parties are provided a just and speedy ~~public~~ contested case hearing.

~~(b) Decision to Hold a Hearing.~~

~~(1)~~ B. Public requests for contested case hearing. Any person may request the agency to hold a ~~public~~ contested case hearing on any matter. The person may submit ~~such~~ this request at an agency meeting if the matter is on the agenda for consideration by the agency. If the matter is not on an agenda, the person shall request the director to place ~~such~~ the matter on the agenda for the next agency meeting. ~~Such~~ This request ~~shall~~ must be made pursuant to ~~MPCA 3(b)(4)(i)~~ 6 MCAR

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§ 4.3005 F. The agency shall not consider a request for a ~~public~~ contested case hearing on a matter unless the matter is properly on the agenda for the agency meeting. The person requesting that a ~~public~~ hearing be held ~~may~~ shall accompany ~~his~~ the request with a ~~complaint~~ document stating ~~his~~ the person's reasons for requesting the hearing, ~~how he~~ the manner in which the person has been aggrieved, and the relief requested.

~~(2)~~ C. Agency decision to hold contested case hearing. The agency shall~~, in its discretion,~~ grant ~~or deny~~ the hearing request or may order upon its own motion that a contested case hearing be held if it finds all three of the following:

1. that there is a material issue of fact or of the application of fact to law related to the matter pending before the agency;

2. that the agency has the jurisdiction to make determinations on the issue of fact or of the application of facts to law; and

3. that there is a reasonable basis underlying the issue of fact or of the application of facts to law such that the holding of a contested case hearing would aid the agency in making a final determination on the matter.

~~(3) The agency, upon its own motion, may order that a public hearing be held on a matter.~~

If the agency decides not to hold a contested case hearing the agency may, in its discretion, ~~decline to order a public hearing but~~ order that a public informational meeting be held as provided in 6 MCAR § 4.3015 C.

(c)-(d) [See Repealer.]

~~(e)~~ C. Parties. Any person whose legal rights, duties, or privileges may be determined in the matter for which the contested case hearing is to be held ~~shall be~~ is a party. When a contested case hearing is held pursuant to a request for a hearing, the person or persons requesting the hearing ~~shall be~~ are parties to the matter. In any hearing on an application for a permit or variance, the applicant ~~shall be~~ is a party. The agency ~~shall be~~ director is a party in any hearing to ~~revoke~~ issue, reissue, modify, deny, revoke and reissue, revoke without reissuance, or suspend a permit or variance ~~pursuant to MPCA 11~~. Any person who has properly intervened in the ~~matter shall be~~ contested case is a party.

(f) [See Repealer.]

~~(g)~~ D. Right to counsel. Any party may be represented by legal counsel throughout the contested case hearing.

E. Ex parte communication. No person shall communicate with any agency member concerning a matter for which a contested case hearing has been ordered by the agency except in writing, or orally after providing reasonable notice to all parties of the meeting at which the matter will be discussed. Copies of any written communication must be sent to all parties to the matter and to all agency members.

~~(h)~~ F. Informal disposition. Informal disposition by stipulation, agreed settlement, or consent order may be made of any matter for which a contested case hearing is scheduled, or any contested issue ~~therein by stipulation, agreed settlement, or consent order~~, at any point ~~therein~~ in the hearing, subject to ~~the~~ agency approval of ~~such~~ this informal disposition~~,~~ or ~~any~~ its terms ~~thereof, by the agency~~.

~~(i)~~ G. Consolidation. The agency may consolidate two or more matters for which contested case hearings are scheduled and hold a joint hearing. The requirements of these rules ~~of Procedure~~ shall be followed when consolidation is ordered. Any party may object to consolidation by filing a petition for severance with the agency at least ~~twenty (20)~~ days before the hearing. The agency may sever the matter to which the petitioner is a party from the joint hearing.

(j)-(m) [See Repealer.]

~~(n)~~ H. Default. Whenever any party with adequate notice fails to appear at the contested case hearing, the hearing ~~officer~~ examiner may decide all issues in the matter adversely to the defaulting party, may terminate the hearing, may proceed with the hearing, or may take other appropriate action, without further notice to the party. The hearing ~~officer~~ examiner shall consider the rights of other parties to the matter when a party defaults.

(o)-(q) [See Repealer.]

~~(r) REHEARING~~

~~(1) Agency Right to Reconsider. The Agency may, upon request and good cause shown, or on its own motion, reconsider a final decision. This right may be exercised until it is lost by appeal or the granting of a writ of certiorari or until the time allowed by the statute for appeal, or six months, whichever is less, has expired.~~

~~(2) Obtaining a Rehearing~~

~~(i)~~ I. Petition for ~~Rehearing~~ reopening of hearing and remand to hearing examiner. At any time ~~prior to~~ up to ten days after the agency's ~~loss of the right to reconsider a~~ final decision, any party to ~~the matter may request a rehearing~~

a contested case hearing may request that the hearing be reopened and the matter be remanded to the hearing examiner by filing a petition ~~for rehearing~~. ~~Such~~ This petition shall contain~~:~~

~~1.~~ the name and address of the petitioner~~;~~,

~~2.~~ the agency designation for the matter~~;~~, and

~~3.~~ the reasons for the petition.

~~(ii) Agency Action.~~

The agency shall grant or deny a petition ~~for Rehearing~~ as part of the record. ~~Such~~ This petition shall be granted upon a showing that there are irregularities in the hearing, errors of law, or newly discovered material evidence of such importance as likely to have altered the outcome of the hearing. A ~~rehearing~~ petition may be granted upon a showing of good cause for failure to answer or appear at the hearing. Evidence and argument may be presented at the discretion of the agency in written or oral form, or both, by any party to the matter with respect to the granting or denial of the petition.

~~(3) Notice of Rehearing. Notice of rehearing shall be provided in the same manner prescribed for notice of hearing.~~

~~(4)~~ ~~Rehearing~~ J. Reopened hearing, procedure. ~~A rehearing in a matter shall~~ The hearing of a contested case that has been reopened and remanded to the hearing examiner must be conducted in the same manner prescribed for a contested case hearing.

~~(5)~~ K. Decision after ~~Rehearing~~ reopening and remand. The decision after ~~rehearing shall~~ reopening of the hearing and remand to the hearing examiner must be made in the same manner prescribed for the decision after a contested case hearing.

(s) [See Repealer.]

6 MCAR § 4.3001 Final decisions and orders in contested cases.

A. Time for filing comments and exceptions. The agency shall take no final action with respect to a matter for which a contested case hearing has been held for at least 20 days after the date of issuance of the hearing examiner's report. Any person may file written comments on or exceptions to the findings of fact, conclusions, and recommendations of the hearing examiner at any time up to ten days prior to the agency meeting at which the matter will be considered for final decision. However, these comments and exceptions must be based solely upon the record of the hearing.

B. Service of comments and exceptions. Any person who files written comments on or exceptions to the hearing examiner's report shall serve these comments or exceptions upon each individual agency member and upon all parties.

C. Appearance at agency meeting. Any party may appear at the agency meeting at which the matter will be considered for final decision and present comments and arguments, limited to evidence in the record, subject to time limitations and conditions that the chairperson prescribes.

D. Agency decision. The agency shall make all final decisions and orders in those matters for which a contested case hearing has been held. The agency's decision or order must be based solely on the record from the hearing. The decision or order must be accompanied by a concise statement of the findings and conclusions upon each contested issue of fact necessary to the decision.

E. Time. The agency shall reach a final decision or order on the matter as expeditiously as possible after receipt of the hearing examiner's recommendation.

F. Manner. The director shall place the matter on the agenda for an agency meeting. The decision or order must be announced at the agency meeting, and in all cases the decision or order must be entered in the minutes of the agency meeting.

G. Alternatives. The agency may accept, modify, or reject the recommendation of the hearing examiner, in whole or in part. The agency may remand the matter to the hearing examiner for further proceedings.

H. Notice. Every final decision or order in a matter for which a contested case hearing has been held must be served on all parties to the matter and on all persons who have submitted to the agency a request to be notified of the decision.

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~~MPCA 10 Inspection and Confidential Information.~~

~~(a)~~ 6 MCAR § 4.3012 Inspection of public records. All ~~public~~ records and data of the agency that are "public" within the meaning of *Minnesota Statutes*, sections 15.1611 to 15.1699 and 116.075, or copies ~~thereof~~, ~~shall be~~ are available for inspection and copying by any person, Monday through Friday, excluding legal holidays, between the hours of 9:00 a.m. and 4:00 p.m. at the agency offices. No public records shall be removed from ~~said~~ agency offices. Any inspection or copying of ~~said~~ records or data ~~shall~~ must be made in the presence of an officer, employee, or agent of the agency. The agency may charge and collect a reasonable fee for the reproduction of any public records.

~~(b)~~ 6 MCAR § 4.3013 Confidential information.

~~(1)~~ A. Certification. In order to certify records, information, or objects for the confidential use of the agency, an owner ~~or~~, operator, or other person qualified by law~~,~~ shall submit to the director a written statement setting forth those statutory grounds ~~which~~ that require the agency to keep ~~such~~ the records, information, or objects confidential. Any certification of records or information ~~which~~ that applies to water pollution sources must be approved by the director. ~~Such~~ These records ~~or~~ and information shall not be released unless the director denies the certification request. Whenever the director ~~shall deny~~ denies a certification request, ~~he~~ the director shall notify the certifier of ~~such~~ the denial at least ~~three (3)~~ seven days prior to making the records or information available to the public. The certifier may withdraw ~~such~~ the records or information if such an option is available ~~to him~~.

~~(2)~~ B. Filing. All certified records, information, or objects ~~shall~~ must be appropriately identified and segregated at the offices of the agency.

~~(3) Use~~

~~(i)~~ C. Agency use. Certified records, information, and objects, when approved by the director if required, ~~shall be~~ are only for the confidential use of the agency. However, confidential information may be used by the agency in compiling or publishing analyses or summaries relating to the general condition of the state's water, air, and land resources so long as ~~such~~ these analyses or summaries do not identify any owner or operator who has so certified.

~~(4) Release~~

~~(i) Approval~~ D. Release authorization. Confidential information may be released when the agency is specifically authorized to do so by ~~the person who certified the records, information, or ojects~~ statute.

~~(ii)~~ E. Denial of request. Certified records or information ~~which~~ that apply to water pollution sources may be released if the director denies the certification request. The provisions of ~~subparagraph (b)(1) above shall~~ A. apply to ~~such~~ this release.

~~(iii)~~ F. Federal law. Regardless of whether records or information are certified confidential, the agency may disclose any information which it is obligated to disclose ~~in order to comply with~~ under federal law ~~and~~ or regulation, to the extent and for the purposes of such federally required disclosure. Whenever the agency is required to release certified information pursuant to federal law, ~~he~~ the director shall notify the certifier of ~~such~~ this requirement at least ~~three (3)~~ seven days prior to making the records or information available to the public. The certifier may withdraw ~~such~~ this information if such an option is available ~~to him~~.

~~(iv) Public~~ G. Use in contested case hearings. Confidential information ~~which~~ that is relevant to a matter for which a ~~public~~ contested case hearing is being held, and that has been made a part of the record, may be considered by the agency in reaching a decision on the matter, but ~~shall~~ must not be released to the public unless the agency is required by statute to release it. When the agency is required by statute to release the information at the public hearing, the person who certified the information may withdraw the information, but the information shall not be considered by the agency or the hearing ~~officer~~ examiner in reaching a decision or recommendation on the matter. Whenever confidential information is considered by the agency or a hearing ~~officer~~ examiner in reaching a decision or recommendation on a matter, that fact ~~shall~~ must be so stated on the record.

~~MPCA 12~~ 6 MCAR § 4.3014 Conflict of interest. Any member of the agency who has a direct and substantial financial or employment interest relating to any matter before the agency, which interest is reasonably likely to affect ~~his~~ the impartiality or judgment of the agency member in the matter, shall make known ~~such~~ this interest and shall refrain from participating in~~,~~ or voting upon~~,~~ ~~such~~ the matter.

No employee or agent of the agency, including the director, shall engage in any outside employment or other conduct ~~which~~ that is likely to affect adversely the effectiveness or efficiency of any functions or duties ~~he performs~~ performed for the agency.

6 MCAR § 4.3015 Public participation in agency meetings.

A. Agenda items for which no hearing was held. Upon request made prior to or at an agency meeting, any person who desires to present a statement on a matter that is on the agenda for the meeting, and for which no contested case or rulemaking hearing

was held, must be afforded an opportunity to present an oral statement to the agency at the meeting. The chairperson may, depending on the circumstances, limit the time and manner of this statement.

Persons who desire to present a written statement on the matter may do so if, at least ten days before the meeting, they have served a copy of the written statement upon the director. The director shall then promptly provide a copy of the statement to each agency member.

The agency may allow any person adversely affected by these oral or written statements additional time to respond.

B. Request for public informational meeting. Any person may request the agency to hold a public informational meeting on any matter. The person may submit this request at an agency meeting if the matter is on the agenda for consideration by the agency. If the matter is not on the agenda, the person may request the director, pursuant to 6 MCAR § 4.3005 F., to place the matter on the agenda as a citizen item for the next agency meeting.

The agency shall not consider a request for a public informational meeting on a matter unless the matter is properly on the agenda for the agency meeting. The agency shall grant or deny the request. This rule does not limit the right of the agency to order, upon its own motion, that a public informational meeting be held on a matter, and does not limit the right of the director to hold public meetings.

C. Agenda items for which contested case hearing has been held. When a contested case hearing has been held on an agenda item the participation of the public and of the parties in the matter is governed by 6 MCAR §§ 4.3010-4.3011.

D. Agency items for which rulemaking hearing has been held. When a rulemaking hearing has been held, the agency shall take no final action with respect to the matter for at least 20 days after the date of issuance of the hearing examiner's report. Any person may file written comments or exceptions to the findings of fact, conclusions, and recommendations of the hearing examiner at any time up to ten days prior to the agency meeting at which the matter will be considered for final decisions. However, these comments and exceptions must be based solely upon the record of the hearing.

Any person who files written comments on or exceptions to the hearing examiner's report shall serve these comments or exceptions upon each individual agency member and upon the director.

Any person may appear at the agency meeting at which the matter will be considered for final decision, and may present comments and arguments limited to evidence in the record, within limits of time and manner as the chairperson may establish under the circumstances.

6 MCAR § 4.3016 Public participation in director's activities.

A. Extent of participation. Any person may participate in the activities of the director. Participation in the director's activities includes the right to submit statements, the right to attend meetings and conferences and share in discussions, and the right to receive sufficient notice of progress in the matter to adequately exercise these rights.

However, if a meeting of the director involves information that is not public within the meaning of *Minnesota Statutes*, sections 15.1611 to 15.1699 or 116.075, the director shall conduct a closed meeting to discuss the nonpublic information.

B. Notice of progress. Any person who wishes to receive notice of progress in an agency matter shall so advise the director. Thereafter, the director shall give this person adequate notice of pending events in the matter.

Repealer. Rules MPCA 3(b), MPCA 6(c), 6(d), MPCA 9(c), 9(d), 9(f), 9(j), 9(k), 9(l), 9(m), 9(o), 9(p), 9(q), 9(s), MPCA 11, and MPCA 13 of the Minnesota Pollution Control Agency are repealed.

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SUPREME COURT

Decisions Filed Tuesday, August 31, 1982

Compiled by John McCarthy, Clerk

81-481 State of Minnesota v. Jerry P. Chase, Appellant. Olmsted County.

Evidence of defendant's guilt of theft of over $2,500 was sufficient. Affirmed. Amdahl, C. J.

81-421 Barbara Bailey, a minor, by her father and natural guardian, James E. Bailey, Appellant, v. Robert Morris, *et al*. Hennepin County.

The existence of provocation for a dog bite is an issue of fact which is properly submitted to the jury in an action brought pursuant to Minn. Stat. § 347.22 (1980).

A special interrogatory on the question of provocation which did not specifically ask whether it was the plaintiff who had provoked the dog was not prejudicial error.

Affirmed. Otis, J. Dissenting, Todd, Yetka, Scott, and Wahl, JJ.

81-1138 William J. Hoben v. City of Minneapolis, Appellant. Hennepin County.

Minn. Stat. § 65B.48, subd. 4 (1980) requires that municipalities provide reparation security for economic loss benefits arising out of the use of municipally owned motor vehicles. Under such circumstances municipalities do not enjoy immunity conferred by Minn. Stat. § 466.03 (1980).

Under Minn. Stat. § 65B.54, subd. 1 (1980), it was the intent of the legislature to deal prospectively with future payments of all basic economic loss benefits, regardless of when the incident giving rise to the claim occurred.

Affirmed in part, reversed in part. Otis, J.

81-1315 Edward J. Petschl, Jr. v. Britton Motor Service, *et al.*, Relators Workers' Compensation Court of Appeals.

A partially disabled employee who lived 60 miles from the Twin Cities but was employed in the Twin Cities when he sustained a work-related injury is not entitled to workers' compensation benefits if he refuses to seek work in the metropolitan area when, in spite of his disability, he is physically capable of commuting in the same manner as before his injury.

Reversed and remanded. Otis, J. Dissenting, Wahl, J., Todd, J., Yetka, and Scott, J.

81-674 State of Minnesota, v. William Dean Scott, Appellant. Washington County.

Evidence identifying defendant as participant in robbery was sufficient, and trial court did not prejudicially err in requiring defendant to wear leg restraints during trial or in admitting evidence of defendant's prior participation in a similar robbery.

Affirmed. Peterson, J.

81-897 State of Minnesota v. James E. Wrightington, Appellant. Hennepin County.

Evidence was sufficient to sustain defendant's convictions for criminal sexual conduct in the first degree.

Trial court did not err in admitting evidence of contents of statements by minor victim of sex crime to her brother, mother, uncle, school counselor, police and others.

Affirmed. Scott, J.

82-61 Walter Schopf v. Red Owl Stores, Inc., and Commercial Union Assurance Companies, Employer-Insurer, Red Owl Stores, Inc., and Hartford Insurance Group, Relators, and Minneapolis Retail Meat Cutters and Food Handlers Health and Welfare Fund. Workers' Compensation Court of Appeals.

Employee's testimony concerning the nature of his work and the medical opinion credited by the Workers' Compensation Court of Appeals sustain employee's burden of proving by a preponderance of the evidence that a lipoma in his right hand was work-related.

Affirmed. Wahl, J. Dissenting, Otis, J., and Amdahl, C. J.

81-495 Mae M. Cambern, Appellant, v. Sioux Tools, Inc., defendant and third-party plaintiff, v. Bayliner Boats, third-party defendant. Dakota County.

On these facts the trial court's failure to notify counsel and make a proper record of its refusal to accede to the jury's request for additional instructions was not prejudicial error.

In this products liability case the trial court correctly refused to aggregate the merely concurrent fault of the defendant manufacturer and the third-party defendant employer to compare with the plaintiff's fault.

Affirmed. Simonett, J. Dissenting, Todd and Yetka, JJ.

81-686 State of Minnesota v. Edward John Tiessen, Appellant. St. Louis County.

Evidence was sufficient to support defendant's conviction of assault in the second degree, and there is no merit to defendant's contention that prosecutor's closing argument, to which defense counsel did not object, was prejudicially improper.

Affirmed. Simonett, J.

81-73 State of Minnesota v. Curtis Baugh, Appellant. Hennepin County.

Postconviction court properly refused to grant new trial based on petitioner's claim of newly discovered evidence.

Affirmed. Kelley, J.

81-670 Clark Albert Bailey, petitioner, Appellant, v. Arthur E. Noot, etc. Hennepin County.

The Commissioner of Public Welfare may not transfer a patient who has been committed to him by a court as a psychopathic personality, following conviction of a crime, from the Minnesota Security Hospital under his jurisdiction to the Commissioner of Corrections.

When the Commissioner of Public Welfare, pursuant to Minn. Stat. § 253A *et seq.*, determines that a patient committed to him as a psychopathic personality, following conviction of a crime, is unamenable to treatment in the Minnesota Security Hospital, the Commissioner of Public Welfare should petition the sentencing court for an order revoking the order staying execution of sentence.

A convicted criminal who has been committed to the Commissioner of Public Welfare as a psychopathic personality is premature in attempting to raise the issue of his alleged "right to treatment" until he has, in fact, been deprived of the alleged "right" after being incarcerated in a state penal institution.

Reversed and remanded. Kelley, J.

81-875, 81-881 Steven A. Bartel, Appellant (81-875), v. New Haven Township, Appellant (81-881). Olmsted County.

Medical payments received by a driver from his no-fault insurer are deductible under Minn. Stat. § 65B.51, subd. 1 (1980) from a tort recovery against a township which negligently placed traffic control signs.

A defendant who voluntarily pays to a plaintiff the amount of the verdict receives a satisfaction and files the satisfaction with the court without reserving appeal rights is thereafter barred from appealing the judgment on the issue of liability.

Affirmed. Kelley, J. Dissenting, Simonett, J., and Todd, J.

81-1218 State of Minnesota v. Melvin E. Gilbertson, petitioner, Appellant. St. Louis County.

Defendant committed act of reckless driving in order to avoid being apprehended by police on charge of driving under suspension, and therefore under Minn. Stat. § 609.035 (1980) the trial court was free to sentence defendant for only one of the offenses.

Remanded for vacation of one sentence. Kelley, J.

82-172 Jay C. Paine v. Beek's Pizza, *et al.*, Relators. Workers' Compensation Court of Appeals.

When an employee voluntarily leaves an area where exists employment opportunities within his physical restrictions to move to an area where few, if any, employment opportunities exist, such move is considered a withdrawal by him from the labor market thereby precluding him from total disability compensation as provided in Minn. Stat. § 176.101, subd. 2 (1980).

Reversed. Kelley, J. Dissenting, Todd, J., Yetka, J. and Scott, J.

Decision Filed Tuesday, August 24, 1982

82-611 State of Minnesota, Appellant, v. William Edward Marhoun. Chisago County.

District court in criminal case erred in granting pretrial motions by defendant to suppress (a) statement by defendant to police obtained during interrogation of defendant, (b) evidence seized in warranted search of defendant's automobile, and (c) identification testimony by restaurant employee who saw defendant and the victim together shortly before the crime is believed to have been committed.

District court properly denied motion to dismiss indictment on ground of insufficiency of evidence.

Affirmed in part; reversed in part; remanded for trial. Todd, J.

SUPREME COURT

Decision Filed Wednesday, August 25, 1982

82-709 State of Minnesota, Plaintiff, v. Dale Lawrence Astleford, abd WCCO Television and Donald Shelby, Intervenors. Hennepin County.

Criminal defendant has failed to demonstrate on appeal that trial court erred in evidentiary rulings relating to defendant's claim that outrageous conduct by agent of state requires dismissal of the charges against him or suppression of the evidence seized in warranted searches.

Remanded for trial. Simonett, J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

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

Department of Administration
Real Estate Management Division

Auction Services Required

The State of Minnesota is contemplating the sale by auction of four single family residences in Fergus Falls, Minnesota during October, 1982. Auction companies interested in providing the services may secure information and bid forms by writing or calling:

Howard W. Eicher, Assistant Director
Real Estate Management Division
G-22 Administration Building
St. Paul, Minnesota 55155
Telephone: 612/296-6674

Department of Finance

Notice of Request for Proposals for Financial Study

Qualified consulting actuaries whose primary business function is liability planning, asset allocation, and plan modeling are invited to submit to the Minnesota State Department of Finance proposals to study the financial condition of specific Minnesota public retirement funds and to develop for use by Finance staff a flexible interactive computer model to forecast and evaluate the cost implications of future retirement legislation. Additional information on qualifications and the specific tasks to be completed may be obtained from:

Ron Hackett, Director
Grants/Aids/Pensions Budgeting and Analysis
Department of Finance
309 State Administration
50 Sherburne Avenue
St. Paul, Minnesota 55155
Telephone: 612/296-5618

Proposals must be received no later than October 4, 1982.

Minnesota Waste Management Board

Request for Submission of Qualifications for Development of Preliminary Designs for Hazardous Waste Land Disposal Facilities

The State of Minnesota Waste Management Board (WMB) hereby requests the submission of qualifications for the development of preliminary designs and operating specifications for hazardous waste land disposal facilities.

It is anticipated that this work may be performed in stages and will require preliminary designs for facilities at approximately six candidate sites. These sites are expected to be selected by the WMB on or about November 30, 1982. However, stage I of this work may begin in October, 1982 by developing prototype designs suitable for consideration at two or more candidate sites. Stage I envisions site-specific application of such designs based on existing geo-technical and site data.

Prospective contractors are advised that the WMB reserves the option to negotiate a contract for one or more stages of the work with the initial contractor. Such stages may include, but may not be limited to, refinement of site-specific preliminary designs and development of operating specs for alternative facilities at the final candidate sites. Existing geotechnical data, consisting of well logs and/or soils analyses and general water-table information obtained from approximately five 100'-depth borings at each of the currently inventoried candidate areas, will be provided to the contractor. Additional geotechnical data collection will be obtained, commencing under a separate contract, as soon as the final candidate sites are selected.

Submitted qualifications by prospective contractors shall be evaluated on the basis of:

- demonstrated technical knowledge, skills and abilities; relating to various geologic environments and facilities most suited to each.
- verifiable experience in designing facilities and operating specs for hazardous waste land disposal facilities for private waste management firms and/or other major clients.
- thorough knowledge of all pertinent rules and regulations of the U.S. Environmental Protection Agency.
- availability of specifically identified key professionals for a specified time period, tentatively through mid-1983.
- availability of a specifically identified project manager possessing a verifiable record of accomplishment in producing results in harmony with clients.
- ready accessibility to WMB staff and its existing data base, preferably including an existing office in Minnesota, and desirably, in the Twin Cities.
- avoidance of existing or potential conflict of interest.

While the level of detail and staging of this work is not yet definite, prospective contractors will, however, be evaluated at this time on their capability to design detailed construction plans for the following elements:

1. Grading materials, soils selection, and borrow sources;
2. Cell design and construction sequencing;
3. Uncontaminated surface water handling and diversion;
4. Liner systems;
5. Leachate collection systems;
6. Monitoring systems;
7. Wastewater handling and/or treatment;
8. Major equipment;
9. Buildings (administration, storage and garaging);
10. On-site transportation and storage;
11. Buffer areas;
12. Security systems;
13. Cell closure and site post-closure.

Because of the relationship between land disposal and hazardous waste processing, expertise in various processing facilities will also be given consideration.

Proposals for carrying out this work cannot and *should not* be submitted at this time. Subsequently, the most qualified contractors will be invited to submit proposals.

An approximate estimate of cost for Stage I is $80,000. Subsequent stages, should such additional work be contracted for, would equal or exceed this estimate.

Memos Katsoulis, P. E., will serve as project manager for the WMB.

The deadline for submission of qualifications is either postmarked (U.S. Mail) September 27, 1982, or delivered to WMB offices at 7323 58th Avenue North, 123 Thorson Center, Crystal, Minnesota 55428, by 4:30 p.m., September 28, 1982.

For more information call Jim Newland, P. E., Staff Director, at 612-536-0816 or -8552.

OFFICIAL NOTICES

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

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

Department of Administration

Notice of State Surplus Property Sale

In compliance with Minn. Stat. § 94.09, *et seq*, the Commissioner of Administration offers for sale by auction four single family residences. The addresses, their related legal descriptions and a brief description of each property are as follows:

1304 North Union (Lot 4 Block 1, Fergus Falls State Hospital Plat No. 1). A three bedroom, one bath, rambler with detached single garage. The house was built in 1949 and has about 1176 square feet on the main floor. Bidding for this property will begin at: $45,000. Bids in a lesser amount will not be accepted.

1320 North Union (Lot 6 Block 1, Fergus Falls State Hospital Plat No. 1). A three bedroom, one bath rambler with about 1228 square feet on the main floor. The house was built in 1954 and has an attached single garage. Bidding for this property will begin at: $48,500. Bids in a lesser amount will not be accepted.

1311 North Park (Lot 2 Block 1, Fergus Falls State Hospital Plat No. 1). A three bedroom, 1½ bath rambler with about 1310 square feet on the main floor and an attached single garage. Built in 1958. Bidding for this property will begin at: $54,500. Bids in a lesser amount will not be accepted.

202 West Fir (Lot 3 Block 1, Fergus Falls State Hospital Plat No 1). A three bedroom, 1½ bath rambler with about 1310 square feet on the main floor and an attached single garage. Built in 1959. Bidding for this property will begin at: $52,500. Bids in a lesser amount will not be accepted.

The property will be made available for inspection by appointment only. Arrangements for showing may be made by contacting Les Baird at the address and telephone number noted in an ensuing paragraph.

The auction shall be held at the homes, and shall commence at 1:30 p.m. on October 12, 1982.

The successful bidder shall be required to make a down payment immediately after having been awarded the property by the auctioneer. The amount of the down payment shall be not less than ten percent (10%) of the amount of the successful bid. The down payment shall be in the form of cash or a check payable to the State of Minnesota. If the down payment is in the form of a personal check, the successful bidder will be required to replace it within 10 days with a cashier's check, a certified check, or a money order payable to the State of Minnesota in the same amount as the check being replaced.

The successful bidder will have the choice of making payment of the balance remaining after the down payment by one of the following two methods:

1) Payment in full of the balance no later than January 12, 1983; or

2) Payment of the remaining balance in not less than equal annual installments for not to exceed five years, with principal and interest payable annually in advance at the rate of 11% per annum on the unpaid balance, by certified check or cashier's check payable to the State Treasurer on or before June 1 of each year.

Possession will be transferred to the successful bidder immediately after the successful bidder has (1) made payment in full, or (2) entered into a contract for deed with the Commissioner of Administration.

When payment in full has been received by the State of Minnesota, the State shall convey the property by QUIT CLAIM DEED. The State of Minnesota will not furnish an abstract. Prospective bidders are hereby admonished that the State assumes no obligation to perform any acts or to pay for any expenses incurred in connection with possible title deficiencies except to deliver an executed QUIT CLAIM DEED. Interested prospective bidders are advised to inspect the real estate and conditions of title in order to insure full knowledge of existing conditions.

The State of Minnesota will pay the real estate taxes, if any, due and payable against this property in the year 1982 and all prior years. The successful bidder shall be responsible for the payment of all real estate taxes due and payable in 1983, if any, and in all succeeding years.

The State of Minnesota will pay in full all special assessments due and payable against this property as of the date of the sale.

The Commissioner of Administration reserves the right to reject any or all bids and to waive informalities therein.

For further details concerning the auction sale, or to make an appointment to inspect the homes, call:

Les Baird, Director of Physical Plant Operations
Fergus Falls State Hospital
Telephone: (218) 739-7321

or

Jim Kamholz
Real Estate Management Division
G-22 Administration Building
St. Paul, Minnesota 55155
Telephone: (612) 296-6674

State Department of Education Instruction Division

Notice of Public Meeting

The Minnesota Special Education Advisory Council will hold a two day meeting on September 16 and 17, 1982. The meeting is scheduled to begin at 9:00 a.m. on the 16th in the Walnut Room of the Capp Towers Best Western Hotel in Downtown St. Paul. Agenda items include: State Department of Education Special Education Rule Revision Proposal; Review of FY82 Activities and State Department of Education Plans for FY83.

For additional information contact Barbara S. Burke, Special Education Section, at (612) 296-8588.

Metropolitan Council of the Twin Cities Area

Metropolitan Significance Review of the Proposed Mdewakanton Sioux Indian Community Reservation Bingo Parlor

Notice of Commencement

Referral File No. 10666-1

Notice is hereby given that on August 27, 1982, in accordance with MC6, a Metropolitan Significance Review of the above-captioned matter was commenced effective August 27, 1982. The matter subject to review is the proposed Mdewakanton Sioux Indian Community Reservation Bingo Parlor, a proposal which involves the construction of a 1400 seat bingo parlor planned to accommodate two shifts per evening on land owned by the Shakopee Mdewakanton Sioux community. The proposed project is located on County Road 83 at the north edge of the City of Prior Lake adjoining the City of Shakopee.

Additional information may be obtained by contacting the Metropolitan Council, Robert Mazanec, 291-6330.

Charles R. Weaver, Chairman

Public Employment Relations Board

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing Issues and Appeals, the Arbitration of Terms and Conditions of Employment, the Arbitration of Grievances and Independent Review

Notice is hereby given that the Minnesota Public Employment Relations Board is seeking information or opinions from sources outside the agency in preparing to promulgate amended rules governing issues and appeals presented to the Board, the arbitration of terms and conditions of employment, the arbitration of grievances, and independent review. The rules are currently codified at 8 MCAR § 3.001 *et seq.* The promulgation of these amendments is authorized by Minn. Stat. § 179.72, subds. 2 and 4 (1980) which require the Public Employment Relations Board to adopt reasonable and proper rules relative to and regulating its procedures and the presentation and processing of matters within its authority.

The Public Employment Relations Board requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Claudia M. Hennen, Executive Director
Public Employment Relations Board
205 Aurora Avenue
St. Paul, Minnesota 55103

Oral statements will be received during regular business hours over the telephone at (612) 296-8947 and in person at the above address.

All statements of information and comments shall be accepted until November 1, 1982. Any written material received by the Public Employment Relations Board shall become part of the record in the event that amendments to the rules are promulgated.

September 2, 1982

Karen A. Olsen, Chair
Public Employment Relations Board

Department of Public Safety
Driver & Vehicle Services Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Special License Plates

Notice is hereby given that the State Department of Public Safety is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing personalized plates, amateur radio operator plates, citizen band radio plates, handicapped plates, classic plates, collector plates, street rod plates, original plates, firefighter plates and ex-POW plates.

The promulgation of these rules is authorized by various sections of Minnesota Statutes Chapter 168, which requires the agency to determine specifications and criteria for issuance of these special types of plates.

The State Department of Public Safety requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Diane Hamilton
Department of Public Safety
211 Transportation Bldg.
St. Paul, Mn 55155

Oral statements will be received during regular business hours over the telephone at 296-2001 and in person at the above address.

All statements of information and comment shall be accepted until October 1, 1982. Any written material received by the State Department of Public Safety shall become part of the record in the event that the rules are promulgated.

Kenneth A. Dirkzwager
Commissioner of Public Safety

Department of Public Welfare
Mental Health Bureau

Notice of Intent to Solicit Outside Opinion Regarding the Draft Rule Governing the Licensing of Developmental Achievement Centers and Services for Persons Who Are Mentally Retarded and/or Cerebral Palsied

Notice is hereby given by the Minnesota Department of Public Welfare, Mental Health Bureau, has begun consideration of a proposed rule governing the licensing of Developmental Achievement Centers and services for persons who are mentally retarded and/or cerebral palsied.

In order to determine the reasonableness and completeness of the proposed rule, the Department of Public Welfare hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rule.

All interested or affected persons or groups are requested to participate. Statements of information and comment should be made in writing. Copies of the draft rule will be made available to you by writing or calling the address or phone number which is printed below.

Written statements of information and comment may be addressed to:

Ardo Wrobel, Director
Mental Retardation Division
Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55155
(612) 296-2682

The draft Rule 38, if adopted, would supersede DPW Rule 3 (1968 edition).

All statements of information and comment must be received by October 4, 1982. Any written material received by the Department shall become part of the hearing record.

STATE OF MINNESOTA

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING AMENDED RULE

I, Rochelle Barnhart, do hereby certify that I am a member and the 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 14th day of January, 1983; 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 Non-Hearing Rules adopted November 12, 1982 relating to cable communications systems be and they hereby are amended to include the new language defining a cable system contained in Section 11 of Chapter 514, Laws 1982, and that Rochelle Barnhart, of the Cable Communications Board, be and hereby is authorized to perform the necessary acts to provide that the amended rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28th day of January, 1983.

Rochelle Barnhart

CHAIRMAN OF
CABLE COMMUNICATIONS BOARD

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULE

I, C. Gregory Peterson, do hereby certify that I am Secretary 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 14th day of January, 1983, 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 rules relating to Cable Communications Systems be and they hereby are 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 these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 20th day of January, 1983.

C. Gregory Peterson

SECRETARY
CABLE COMMUNICATIONS BOARD

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

CABLE COMMUNICATIONS BOARD

In the Matter of Proposed Rules
of the Cable Communications Board
Governing Definitions, General
Procedure, Contested Cases, Reports
to the Board, Ownership and Control
of Systems, Cable Service Territories,
Franchising Procedures, Franchise
Standards, Certificates of Confirmation,
Deregulated Systems, and Other Non-
substantive Changes including Addition
of Clarifying Language

STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION

The Cable Communications Board conducted a comprehensive rulemaking with the purpose of easing, speeding and clarifying its regulatory process and requirements during 1979 and 1980.

The above-captioned rules are being proposed to further clarify existing Cable Communications Board rules, to streamline cable system franchising procedures for small-scale service areas and to implement 1982 amendments to the Cable Communications Act, Minnesota Statutes, Chapter 238.

AUTHORITY TO ADOPT RULES

The agency believes that the proposed rules are noncontroversial in nature, and that it may, therefore, utilize procedures for adoption of rules without public hearing as provided in Minnesota Statutes § 15.0412, Subdivision 4h.

This Statement of Need and Reasonableness is being made available to the public before notice of intent to adopt the rules in accordance with the procedures specified in the above-cited subdivision. A notice of intent to adopt rules without public hearing, together with

the proposed new rules, will be published in the Minnesota State Register on Monday, September 13, 1982, and the same notice will be given by mail to persons who have registered their names with the agency for the purpose of receiving notice of rule hearings.

For 30 days following the published notice, all interested persons will have an opportunity to object to the lack of a hearing and to submit data and views on the proposed rules in writing. If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing on a proposed rule, the agency will proceed under subdivision 4 of the above-cited statute to hold a public hearing thereon, affording all interested persons an opportunity to participate.

General rulemaking authority is given to the Cable Communications Board in Minnesota Statutes § 238.06, Subdivision 1.

NEED AND REASONABLENESS

The current rules of the Cable Communications Board (the Board) are contained in the Minnesota Code of Agency Rules, 4 MCAR § § 4.001 - 4.231.*

Following is a statement of need and reasonableness in support of the proposed Board rules.

Rule changes being made only for addition of section and paragraph headnotes, for grammatical and organizational consistency in the rules, or for incorporation of other nonsubstantive changes suggested by the Minnesota Office of the Revisor of Statutes, are made to enhance the clarity and readability of the rules.

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* A copy of the current rules may be purchased from the Documents Division, Department of Administration, State of Minnesota, 117 University Avenue, Saint Paul, MN 55155; telephone: (612) 297-3000.

4 MCAR § 4.002 C. Cable communications system.

This definition is being changed to make it conform with the amendment of the Cable Communications Act in Chapter 515 of the 1982 Session Laws.

4 MCAR § 4.002 O. Twin Cities metropolitan area.

This definition is being changed to make it conform with Minn. Stat. § 473.121, Subd. 2.

4 MCAR 4.002 P. VHF Spectrum.

This definition is being added to state the exact location of the spectrum for the purpose of the Board's rules.

4 MCAR § 4.016 Computation of time.

This general procedural rule is being amended to clarify the method of computation of time by changing the wording of the rule and by incorporating by reference a general provision of statutory interpretation.

4 MCAR § 4.046 Rule making proceedings.

This rule is being amended to reflect a change in the name of a state agency.

4 MCAR § § 4.061 - 4.062 Initiation and commencement of a contested case.

Clarification has been needed concerning the Board's discretion as it may consider initiation of a contested case. The change in the wording of the rules will establish that the Board is not necessarily required to initiate a contested case after receiving a request by a complainant to do so.

4 MCAR § 4.066 Fees.

Clarification has been needed as to what state agency a party to a contested case must pay the filing fee, and as to where fees will be ultimately deposited.

4 MCAR 1§ 4.092 Operator required to file reports with board.

This change will give the agency more latitude for selection reporting times considering practical implications and the convenience of the parties involved.

4 MCAR § 4.100 Ownership and control.

This rule is being restructured to enable precise citiation of its paragraphs and subparagraphs.

4 MCAR § § 4.133 - 4.135 Cable service territories.

The wording of the present rules have appeared to limit the Board to either initial establishment or to later expansion of a cable service territory (CST). However, the Board's experience administering the rule indicates that it should expressly have the latitude, as well, to reduce the size of a territory, to abolish a territory or to consolidate (merge) two or more territories. Therefore, deletion of the term "expansion of" in favor of the term "change in" will sufficiently broaden the scope of the Board's ongoing discretion administering the CST rules.

4 MCAR § 4.134 B. 1. Board procedures.

Addition of the terms "plat or fire" to the subparagraph that requires showing of proposed CST boundaries will enhance the Board's ability to make informed decisions as to whether a cable-feasible population concentration is appropriately included within a proposed CST configuration. Under the rule currently in effect, a proposer of a CST may submit a marked highway map which may provide little or no geographic density information. The proposed rule will allow acceptance of a map other than a plat or a fire map if neither is available.

4 MCAR § 4.134 B. 5. Contents of proposal.

Deletion of requirement of an "affidavit" of publication of intent to submit a CST proposal in favor presentation of "proof" of publication will give the Board latitude to accept other kinds of documentation that a notice was published, such as a clipping of a notice containing the name of a newspaper and the date of an issue in which it appeared.

4 MCAR § 4.134 D. Comment period.

Providing 45 days for Twin Cities metropolitan council comment will make this rule conform with the amendment of the Cable Communications Act in Chapter 515 of the 1982 Session Laws.

4 MCAR § 4.140 D. 1. d. Request for proposals.

This subparagraph is being added so as to ensure that a list of the information required in subparagraph D. 5. will also be contained in a request for proposals.

4 MCAR § 4.140 D. 4. Request for proposals.

Deletion of "affidavit" of publication in favor of "proof" of publication is needed here for the same reason given for the change in 4 MCAR § 4.134 B. 5.

4 MCAR § 4.140 D. 5. c. (1) Request for proposals.

Addition of the terms "if known" will allow taking into account that the exact location of antennae and a cable system head end may not be determined by this stage in a franchising process.

4 MCAR § 4.140 D. 5. l. Request for proposals.

Express prohibition against the making of a substantive amendment to a proposal after submission and before granting of a certificate of confirmation will give additional protection from extraneous pressures to all parties in a franchising process.

4 MCAR § 4.140 E. Award of franchise.

A hearing to consider various aspects of a prospective franchisee is required in the Board's franchising standards. The addition with cross-reference avoids confusion by specifying that the requirement must be fulfilled at this stage in the franchising process.

4 MCAR § 4.140 E. 2. Award of franchise.

Providing for Board review of the validity of a franchise ordinance and the franchising authority's compliance with criteria and priorities listed in its request for proposals (RFP) will allow the Board to assert its jurisdiction ensuring that a franchise is awarded in an orderly and fair manner consonant with the public interest.

4 MCAR § 4.140 E. 3. Award of franchise.

These additions are made in recognition of the fact that a franchising authority may incur, and therefore may reasonably wish to recover, costs while renewing or amending a franchise.

4 MCAR § 4.141 C. Copies of notice.

Deletion of "affidavit" of publication in favor of "proof" of publication is needed here for the same reason given for the change in 4 MCAR § 4.134 B. 5.

4 MCAR § 4.141 F. 1. a. and b. Eligibility.

These subparagraphs will be deleted for consistency with the Board's policy that extension of service may only occur within an approved CST, and that adjacence to pre-existing or proposed cable communications facilities does not provide sufficient reason to permit a franchising authority to use the abbreviated franchising procedures.

4 MCAR § 4.141 F. 1. c. Eligibility.

Factors determining a franchising authority's eligibility to use the abbreviated franchising procedures are being adjusted in order to permit most of what are likely to become Class A systems (having 50 to 1,000 subscribers) to franchise under those procedures. Accordingly, population factors are being proportionately increased so that the procedures in this rule may be used if no municipality within a CST has a population of less than 4,000 and the total population of all municipalities in the CST does not exceed 9,000.

Following is a breakdown by population of the number of Minnesota cities remaining to be franchised:

Population	Non-franchised Cities
over 4,000	10
3,001-4,000	4
2,001-3,000	13
1,001-2,000	51
501-1,000	109
150 - 500	238

After the eligibility factor changes, 415 cities will be able to use the abbreviated procedures, while only 10 cities will be required to follow the full franchising process.

Agency staff will be directed to devise means of regularly informing all cable companies interested in applying for franchises in communities using the abbreviated procedures concerning their franchising intentions.

4 MCAR § 4.141 F. 2. c. Eligibility.

This subparagraph is being deleted so that some small cities in the 7-county Twin Cities metropolitan area will have the abbreviated procedure option.

4 MCAR § 4.202 I. Subscriber charges.

These changes regarding specification of subscriber charges will make the rule conform with the amendment of the Cable Communictions Act in Chapter 515 of the 1982 Session Laws.

4 MACT § 4.202 N. Approval by franchising authority.

This cross-reference is added to clarify the stage in the franchising process in which the requirement must be fulfilled.

4 MCAR § 4.202 P. Construction schedule.

This rule is restructured so that requirement of a full description of the system proposed will be applicable to systems both under and over 100 plant miles. It has been the intent of this rule to provide for equal treatment of systems under and over 100 plant miles. Language inadvertently deleted during the 1979-1980 comprehensive rulemaking is being reinstated.

4 MCAR § 4.202 DD. 3 Access channels

This subparagraph is being deleted because the language is not necessary.

4 MCAR § 4.204 D. Twin Cities Metropolitan Area franchises

This paragraph is being added so that Twin Cities metropolitan area franchise ordinances are required to recite the provision with a cross-reference to the regional channel rule.

4 MCAR § 4.211 Necessity for a certificate of confirmation.

This change making a certificate coterminous with a franchise will make this rule conform with amendment of the Cable Communications in Chapter 515 of the 1982 Session Laws.

4 MCAR § 4.212 C. Proof of publication.

The deadline for filing proof of publication has been changed from 7 to 5 days before a meeting at which an application for certification is to be considered because no more than 5 days are needed for staff recommendations to be assembled.

4 MCAR § 4.215 Renewal of a certificate of confirmation.

This change making a certificate renewal coterminous with a franchise renewal will make this rule conform with amendment of the Cable Communications Act in Chapter 515 of the 1982 Session Laws.

4 MCAR § 4.250 Deregulated systems.

This new rule will implement amendment of the Cable Communications Act in Chapter 514 of the 1982 Session Laws.

The above-cited amendment to the act allows a political subdivision or political subdivisions having granted a franchise for a cable system serving more than 50 and fewer than 1,000 subscribers to remove the system from the requirements of the state Cable Communications Act.

However, the amendment to the act mandates that the Board adopt rules to ensure that any system which is removed from the requirements of the act provides adequate access for educational and governmental programming.

The amendment also directs the Board to consider the needs of the community and the capability of the system in the adoption of rule requirements. Accordingly, the new rule will require that a system operator provide reception of educational and governmental programming on at least one specifically designated channel. Accommodation of such access only to the extent of actual local need is built into the rule requirement by providing that the designated channel may be used by the system operator for other purposes when not in use for access programming.

The rule will provide that the system operator shall establish its own rules for administration of the designated channel and that the operating rules must be filed with the Board. The Board's rule will stipulate that access be provided on a first-come, first-served, nondiscriminatory basis; however, a system's access channel operating rules may contain any other reasonable use conditions an operator may deem appropriate or necessary in a local circumstance.

The Board has the authority to acquire information from an operator in order to ascertain the extent of Board jurisdiction under the act, to administer rule requirements and to monitor compliance.

CONCLUSION

Based on the foregoing, the proposed amendments to the rules of the Cable Communications Board are both needed and reasonable.

W. D. DONALDSON
Executive Director

Dated: September 13, 1982

09/09/82
RZ/JMM/blf

In the Matter of the Proposed Adoption
of Rules of the State Cable
Communications Board Governing
Cable Communications Systems

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Assistant Attorney General J. Michael Miles, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act and the Attorney General's rules, all requirements have been followed. Any exceptions are noted below.

Assistant Attorney General

Dated: 11/22/82