

# **MINNESOTA CODE OF AGENCY RULES**

## **RULES OF THE CABLE COMMUNICATIONS BOARD**

**1982 Reprint**



**All rules as in effect on September 15, 1982**

**Prepared by**

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## CABLE COMMUNICATIONS BOARD

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4 MCAR § 4.002

DEPARTMENT OF ADMINISTRATION  
CABLE COMMUNICATIONS BOARD

**Chapter One: 4 MCAR §§ 4.001-4.025 Practice and Procedure General.**

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

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

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

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

1. Any system which serves fewer than 50 subscribers;
2. Any master antenna television system;
3. Any specialized closed-circuit system which does not use the public rights-of-way for the construction of its physical plant; and
4. Any translator system which receives and rebroadcasts over-the-air signals.

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

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

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

F. "Franchising authority" means a municipality, as herein defined, that has the authority to issue a cable communications franchise, or a group of

municipalities, as herein defined, acting in concert pursuant to a joint powers agreement, that issue any franchise(s) pursuant to a joint powers agreement.

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

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

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

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

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

L. "State" means the State of Minnesota.

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

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

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

**4 MCAR § 4.004 Oppositions and replies.**

A. Except as otherwise provided by law, rule or board order, opposition to any motion, petition, or other pleading shall be filed as an adverse party within 20 days after the original pleading is filed. A copy of the opposition shall be served on the person who filed the original pleading. The person who filed the original pleading may reply to the opposing party within ten days after the time for filing opposition has expired and a copy thereof shall be

filed with the board. The reply shall be limited to matters raised in the opposition, and the response to all such matters shall be set forth in a single pleading; separate replies to individual points of opposition shall not be filed. A copy of the reply shall be served on any person who has served and filed an opposition to the original pleading. Additional pleadings may be filed only if specifically authorized by the board.

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

#### **4 MCAR § 4.005 Subscriber complaints—procedure.**

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

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

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

B. Where numerous unresolved complaints are referred to the board, or



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

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

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

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

1. The Federal Communications Commission; or
2. Any municipality of the State of Minnesota whose interest is directly affected by the matter in question; or
3. The Metropolitan Council or the regional development commission having territorial jurisdiction with regard to the subject matter of the proceeding and whose interest is directly affected by the matter in question.

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

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

**4 MCAR § 4.008** Censure or suspension of persons appearing before the board.

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

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

**4 MCAR § 4.009 Form of papers filed with the board.**

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

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

**4 MCAR § 4.010 Service of papers and proof of service.**

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

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

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

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

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

1. To the chairman of the county board or to the county auditor of a county.
2. To the chief executive officer or to the clerk of a city.
3. To the chairman of the town board or to the clerk of a town.

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

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

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

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

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

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

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

is "pending" before the board from the time it is accepted for filing by the board until a board grant or denial of the request is no longer subject to reconsideration by the board.

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

**4 MCAR § 4.014 Petitions for reconsideration.**

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

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

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

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

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

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

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

**4 MCAR § 4.015 Ex parte communications.** In order to avoid all possibilities

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

#### 4 MCAR § 4.016 Computation of time.

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

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

#### 4 MCAR § 4.017 Board officers.

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

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

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

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

4 MCAR § 4.018 Variances. The board may grant a variance from any of its rules, regulations or standards, except where inconsistent with or otherwise

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

**4 MCAR §§ 4.019-4.025** Reserved for future use.

**Chapter Two: 4 MCAR §§ 4.026-4.045 Board Meetings.**

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

**4 MCAR § 4.027 Special meetings.** The chairman of the board may call a special meeting of the board when, in his opinion, a meeting is necessary or

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

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

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

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

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

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

**4 MCAR § 4.032 Filing of agenda matters.** Except when the board in its discretion determines otherwise, no matter shall be considered at a regular board meeting unless it has been placed on the agenda and all relevant public information has been made available for public inspection at the offices of the

board, at least three days prior to such regular meeting. Public information regarding matters to be considered at a special meeting shall be made available for public inspection at the meeting place prior to the meeting and as far in advance of a special meeting as is reasonable at the office of the board.

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

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

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

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

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

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

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

**4 MCAR § 4.037 Advisory committees.** The board may from time to time establish committees advisory to the board on any subject matter within the scope of the board's duties. All such committees shall be appointed by the chairman of the board subject to the approval of the members of the board. A member of the board designated by the chairman of the board shall preside over the meetings of each such advisory committee, provided, however, that the chairman of the board may delegate to the executive director of the board the responsibility to select a member of the board's staff to preside over the meetings of any such advisory committee.



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

**4 MCAR §§ 4.039-4.045** Reserved for future use.

**Chapter Three: 4 MCAR §§ 4.046-4.060 Rule making.**

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

**4 MCAR §§ 4.047-4.060** Reserved for future use.

**Chapter Four: 4 MCAR §§ 4.061-4.085 Rules for Contested Cases.**

**4 MCAR § 4.061 Initiating a contested case.**

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

1. The name and address of the applicant;
2. A statement of the nature of the determination requested and the reasons therefor;
3. The names and addresses of all persons known to the applicant who will be directly affected by such determination; and
4. The signature of the applicant or his attorney.

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

1. The name and address of the complainant;
2. The name or names of those against whom the complaint is made;
3. The relief sought and the grounds therefor; and
4. The signature of the complainant or his attorney.

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

*insert new: AR0222ST*

~~4 MCAR § 4.062 Commencement of contested case. Within ten days following receipt of a complaint or application or the adoption of an order by the board initiating a contested case, the board shall proceed to commence a contested case hearing in accordance with the procedures set forth in the rules of the Office of the Hearing Examiners.~~

**4 MCAR § 4.063 The board decision.**

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

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

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

**4 MCAR § 4.064 Rehearing.**

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

**B. Obtaining a rehearing:**

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

- a. The name and address of the petitioner;
- b. The board designation for the case;

c. The reasons for the petition.

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

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

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

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

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

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

*insert new: ARO 222ST*  
~~4 MCAR § 4.066 Fees. In every contested case, the plaintiff, petitioner or other moving party shall pay, when the first paper on his part is filed or the first appearance is entered, a fee of \$15, provided that the board shall not be required to pay such fee. The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay, when the first paper on his or their part is filed, or the first appearance is entered, a fee of \$10, provided that the board shall not be required to pay such fee. All such fees shall be credited to the general revenue fund in the state treasury.~~

4 MCAR §§ 4.067-4.085 Reserved for future use.

Chapter Five: 4 MCAR §§ 4.086-4.091 Delegations of Authority.

4 MCAR § 4.086 General provisions.

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

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

**4 MCAR § 4.087 Authority of person to whom functions are delegated.**

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

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

**4 MCAR § 4.088 The exercise of delegated authority.**

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

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

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

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

A. Actions of routine character;

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

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

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

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

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

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

E. To return applications or pleadings which are not acceptable under board rules;

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

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

Chapter Six: 4 MCAR §§ 4.092-4.093 Reports to board,

*insert new: ARO2225T*  
~~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 time and in such form as the board may deem appropriate.~~

4 MCAR § 4.093 Mailing address and telephone number to be furnished by cable communications companies.

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

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

Chapter Seven: 4 MCAR §§ 4.100-4.104 Ownership and Control.

*insert new: ARO2225T*  
~~4 MCAR § 4.100 Certain ownership prohibited. None of the following shall directly or indirectly own, operate, control or have a legal or equitable interest in a cable communications system:~~

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

B. A national television network; or

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

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

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

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

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

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

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

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

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

**4 MCAR §§ 4.102-4.104 Reserved for future use.**

**Chapter Eight: 4 MCAR §§ 4.105-4.119 Discrimination Prohibited.**

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

**4 MCAR § 4.106 Discrimination by cable communications company.**

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

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

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

**4 MCAR § 4.108 Equal employment opportunity program.**

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

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

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

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

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

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

5. Conduct continuing review of job structure and employment practices and adopt positive recruitment, training, job design and other measures needed to assure genuine equality of opportunity to participate fully in all organizational units, occupations and levels of responsibility in the system.

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

**4 MCAR § 4.109 Additional information to be furnished.**

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

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

2. If the operator of a proposed system believes that the system will continuously during January, February and March of the year following commencement of operations satisfy the conditions of § 76.311 (c) (1) (i) (b) of



the rules of the Federal Communications Commission, he may submit a statement justifying that conclusion in lieu of a statement of the proposed system's equal employment opportunity program;

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

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

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

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

1. To assure nondiscrimination in employment:

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

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

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

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

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

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

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

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

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

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

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

3. To assure non-discriminatory placement and promotion:

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

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

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

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

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

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

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

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

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

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

G. Where, pursuant to E. and F. of this rule, if more than one annual employment report is filed with respect to cable communications systems under common ownership or control, or headquarters offices performing work related to such systems, a multiple cable system operator shall also file a consolidated report covering all systems and headquarters office employees included in those reports;

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

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

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

**4 MCAR § 4.110 Records available to the public.**

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

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

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

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

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

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

4 MCAR §§ 4.112-4.119 Reserved for future use.

**Chapter Nine: 4 MCAR §§ 4.120-4.129 Poles, Ducts and Conduit Agreements.**

**4 MCAR § 4.120 Policy.** These rules shall be liberally construed to effectuate the purposes and provisions of Minn. Stat. § 238.13.

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

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

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

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

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

**4 MCAR § 4.123 Permits.** Every pole, duct and conduit agreement shall contain a provision that before attaching to the public utility company's poles or occupying any part of the public utility's conduit system, the cable communications company shall make application and receive a permit therefor on a form provided by the public utility company. If the cable communications company accepts the permit, it may attach its equipment to the poles covered by said permit or occupy the conduit system of the public utility to the extent authorized by said permit, subject to the provisions of this chapter and all terms of the agreement between the contracting parties. In granting or denying a permit, the public utility has the right to determine whether a grant

of a permit would adversely affect its public services, duties and obligations or have an adverse effect on the economy, safety, and future needs of the public utility.

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

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

pany shall also carry such insurance as will protect it from all claims under any workmen's compensation laws in effect that may be applicable to it. All insurance required shall remain in effect for the entire term of the agreement.

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

**4 MCAR §§ 4.127-4.129** Reserved for future use.

#### **Chapter Ten: 4 MCAR §§ 4.130-4.139 Cable Service Territories.**

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

**4 MCAR § 4.131 Definitions.**

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

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

**4 MCAR § 4.132 Approved cable service territories.** The board hereby recognizes as an approved cable service territory the area of any municipality or group of contiguous municipalities which have granted franchise(s) to a single cable communications company and for which a special certificate of confirmation has been or may be issued pursuant to Minn. Stat. § 238.09, subds. 3, 4, or 5, or for which an interim certificate of confirmation has been or may be issued pursuant to Minn. Stat. § 238.09, subd. 9.

*insert new: ARO 2225T*  
**4 MCAR § 4.133 Expansion of approved cable service territories.** The board shall approve or disapprove the expansion of an approved cable service territory. Any such expansion shall be subject to the procedures provided for in this chapter.

*insert new: ARO 2225T*  
**4 MCAR § 4.134 Board procedures.**

A. Pursuant to the requirements of 4 MCAR § 4.140 B. a cable service territory or expansion of a cable service territory may be proposed to the board by a municipality, a group of municipalities in a joint powers agreement, a cable communications company, or any party who has announced an intention to form a cable communications company. The party proposing the

cable service territory or expansion of a cable service territory shall deliver written notice of its proposal to the governing body of each municipality which is within or contiguous to the proposed cable service territory and to the appropriate regional development commission or the Metropolitan Council. At substantially the same time as written notice is delivered, the party proposing the cable service territory or expansion of a cable service territory shall cause to be published in a newspaper of general circulation in the proposed territory, a notice of its proposal of a cable service territory to the board. The written and published notices shall include at least the following information:

1. Identity of the party proposing the cable service territory or expansion of a cable service territory;
2. Date, time and place of the board meeting at which the proposal is expected to be considered;
3. A statement that interested parties may submit written or oral comments on the proposal to the board;
4. Name, address and telephone number of a person representing the party making the proposal who may be contacted for the purpose of obtaining information or making comments about the proposal;
5. A brief description of the boundaries of the proposed cable service territory or expansion of a cable service territory.

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

1. A map (county or township map if available) showing the boundaries of the total proposed cable service territory and boundaries of the area within this territory in which service is to be initially provided;
2. Population and number of dwelling units in the total service territory and in the area in which service is expected to be initially provided;
3. Population density data or other information to demonstrate to the board that all areas in which service is, or may become feasible, are being included in the cable service territory and in the area within the cable service territory that is to be initially served;
4. Proof of written notice required by A., which proof may be in the form of copies of the written notices, an affidavit, or other such certificate of service.
5. An affidavit of publication of the required notice, which may be submitted separately, but no later than five days prior to the board meeting at which the proposal is to be considered.



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

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

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

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

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

*insert new: ARO 2225T*  
4 MCAR § 4.135 Factors and criteria to be considered. In determining its approval or rejection of a proposal for establishment or expansion of a cable service territory the board shall consider the following: impact on prospects for development of cable communications service in areas which are within and contiguous to the proposed cable service territory; whether the proposed boundaries encompass any areas which would be more appropriately included in another cable service territory; impact of the proposed territory on any related policies or plans adopted by the Metropolitan Council or other appropriate regional development commission; the economic viability of the proposed cable service territory or expansion of an existing cable service territory; any other factors the board or applicant deems relevant.

4 MCAR §§ 4.136-4.139 Reserved for future use.

**Chapter Eleven: 4 MCAR §§ 4.140-4.149 Franchising, Franchise Renewal and Franchise Amendment Procedures.**

**4 MCAR § 4.140 Initial franchise.**

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

B. Cable service territory approval. The proposed boundaries for all cable service territories must be approved by the board in accordance with 4 MCAR § 4.134 before the Needs Assessment is completed and the Request for Proposals is issued.

*insert new: AR022251*  
 C. Needs assessment report. The franchising authority or a group of two or more individuals appointed by the franchising authority shall compile a "Needs Assessment Report" on cable communications for the proposed area to be served within the Cable Service Territory.

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

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

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

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

11 D. Request for proposals.

11 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:

*insert new AR 02225T*

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:

*insert new AR 02225T*

(1) The closing date for submission of applications;

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

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

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

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

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

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

b. The date by which all proposals must be submitted;

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

d. The amount of any application fee;

*insert new: AR02225T*

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

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

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

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

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

(2) Schedule for activating two-way capacity;

(3) Type of automated services to be provided;

(4) Number of channels and services to be made available for access cablecasting, and a schedule of charges for facilities and staff assistance for access cablecasting.

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

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

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

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

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

i. Plans for financing the proposed system, which shall indicate every significant anticipated source of capital and any significant limitations

and/or conditions with respect to the availability of the indicated sources of capital;

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

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

*insert new: AR02225T*  
E. Award of franchise.

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

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

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

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

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

#### 4 MCAR § 4.141 Alternative initial franchising procedures.

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

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

1. Before a franchising authority may use this procedure, it must submit to the board a complete application containing such information as the board may deem necessary, for determining eligibility to use the procedures

of this rule. Within 10 days after receipt, the board's executive director shall review each application and give a written determination of eligibility to the requesting franchising authority.

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

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

- a. Name of municipality making the request;
- b. The closing date for submission of applications;
- c. A statement of the application fee, if any, and the method for its submission;
- d. A statement by the franchising authority of the desired system design and services to be offered;
- e. A statement by the franchising authority of criteria and priorities against which the applicants for the franchise shall be evaluated;
- f. A statement that all applications for the franchise must contain at least the information required by 4 MCAR § 4.140 D.;
- g. Date, time, and place for the public hearing, to hear proposals from franchise applicants;
- h. The name, address and telephone number of the individual(s) who may be contacted for further information.

*insert new! 020225T*

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

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

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

*insert new 'AR0222ST'*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4 MCAR § 4.142 Franchise renewal.

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

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

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

2. The Renewal Report shall assess the performance of the franchisee according to the terms of the franchise and make recommendations to the franchising authority regarding the apparent or likely need for upgrading the system to meet the current state of the art. The report shall also include recommendations for revised or additional provisions of the franchise, considering at least the following items: channel capacity; channels for access cablecasting; facilities and staff assistance available for access cablecasting; two-way capability; and the need for further service to be extended within the franchise area based upon a reassessment of the communications needs of the persons residing within the franchise area in relation to the services generally offered by the cable industry.

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

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



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

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

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

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

**4 MCAR § § 4.144-4.149** Reserved for future use.

**Chapter Twelve: 4 MCAR § § 4.150-4.159 Sale or Transfer of a Franchise, Sale or Transfer of Stock.**

**4 MCAR § 4.150** A provision specifying the requirements for the sale or transfer of a franchise.

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

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

**C.** Any sale or transfer of a franchise, including a sale or transfer by means of a fundamental corporate change requires notification to the board by the

franchising authority. The notification shall be accompanied by the written certification of the transferee that it meets all of the requirements with respect to technical ability and financial stability demanded of the original franchisee. The franchising authority shall cause to be sent to the board a copy of all public documents related to sale or transfer of the franchise.

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

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

**4 MCAR § 4.151 Sale or transfer of stock.** Sale or transfer of stock in a corporation so as to create a new controlling interest in a cable communication system shall be subject to the requirements of 4 MCAR § 4.100 and 4 MCAR § 4.150.

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

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

#### **Chapter Thirteen: 4 MCAR § § 4.200-4.209 Franchise Standards.**

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

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

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

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

**4 MCAR § 4.201 Reclassification of systems.** A franchise shall be amended by the franchising authority when the number of subscribers served by the cable communications system in the franchise area changes so as to result in

reclassification of the system pursuant to 4 MCAR § 4.200. Such amendments shall include provisions consistent with the requirements of that class of cable communications systems.

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

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

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

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

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

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

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

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

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

*insert new! OK 2225T*

I. A provision specifying all subscriber charges and, if existent, the length and terms of residential subscriber contracts, and a provision stating the procedure by which all subscriber charges may be changed, unless contrary to state or federal law.

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

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

L. A provision that at the time the franchise becomes effective and at all times thereafter, until the franchisee has liquidated all of its obligation with the franchising authority, the franchisee shall furnish a performance bond, certificate of deposit or any other type of instrument approved by the franchising authority in such amount as the franchising authority deems to be adequate compensation for damages resulting from the franchisee's nonperformance. The franchising authority may, from year to year, in its sole discretion, reduce the amount of the performance bond or instrument.

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

*11*

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

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

*11*

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

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

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

c. That the requirement of this rule may be waived by the franchising authority only upon occurrence of unforeseen events or acts of God.

*insert new: AR 0222 ST*  
2. Provided however, that for franchise areas which will be served by a system proposed to have 100 plant miles of cable or more, a provision:

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

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

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

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

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

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

S. Unless otherwise already provided for by local law, a provision that the franchising authority and the franchisee shall establish a procedure in the

franchise for the relocation or removal of the franchisee's wires, conduits, cables and other property located in said street, right-of-way or public place whenever the franchising authority undertakes public improvements which affect the cable equipment.

T. A provision incorporating by reference as a minimum the technical standards promulgated by the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communication's Commission rules and regulations relating to cable communications systems. The results of any tests required by the Federal Communications Commission shall be filed within 10 days of the conduct of such tests with the franchising authority and the board.

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

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

1. In cases where an initial franchise is granted, the franchisee shall provide a cable communications system having the technical capacity for non-voice return communications.

2. When a franchise is renewed, sold, or transferred and is served by a system that does not have the technical capacity for non-voice return communications, the franchising authority shall determine when and if the technical capacity for non-voice return communications is needed after consultation with the appropriate regional development commission and the Minnesota Cable Communications Board and appropriate public proceedings at the municipal level giving reasonable notice and a reasonable opportunity to be heard.

*insert new AR 022251*

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

*insert new: 020222ST*

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

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

3. For purposes of this provision, a Class IV cable communications channel means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the communications system.

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

Y. A provision requiring that at least a toll-free or collect telephone number for the reception of complaints be provided to the subscriber and that the franchisee maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. The provision shall also state who will bear the costs included in making such repairs, adjustments or installations.

Z. A provision granting the franchising authority the right to terminate and cancel the franchise and all rights and privileges of the franchise in the event that the franchisee substantially violates any provision of the franchise ordinance, attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the franchising authority. The municipality shall provide the franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the franchisee a minimum of thirty days subsequent to receipt of the notice in which to correct the violation. The franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the franchise. In the event that the municipality determines to terminate the franchise, the franchisee shall have a period of thirty days, beginning the day next following the date of the conclusion of the public hearing at which the termination of the franchise is considered, within which to file an appeal with the board, pursuant to Minn. Stat. § 238.14. During such thirty day period and until the board determines the appeal, if an appeal is taken, the franchise shall remain in full force and effect, unless the term thereof sooner expires. If the board approves of the action of the municipality, the franchise shall terminate immediately; if the

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~~Board disapproves of the action of the municipality, the franchise shall remain in full force and effect during the term thereof unless sooner terminated in accordance with law or these rules. Any such appeal to the board is a contested case to which the board is not a party.~~

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

BB. A provision requiring that upon termination or forfeiture of a franchise, the franchisee remove its cable, wires, and appliances from the streets, alleys and other public places within the franchise area if the franchising authority so requests, and a procedure to be followed in the event the franchisee fails to remove its cable, wires, and appliances from the streets, alleys and other public places within the franchise area.

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

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

*insert new  
ARCA 2251*

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

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



3. Nothing in this rule shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

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

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

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

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

3. The provision shall require that whenever the specially designated access channel required in 4 MCAR § 4.203 A. 1. of this rule is in use during

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

B. A provision establishing the minimum equipment that the franchisee shall make available for public use. The provision shall require that the franchisee shall make readily available for public use upon need being shown, at least the minimal equipment necessary to perform good quality playback of prerecorded programming, and to make it possible to record programs at remote locations with battery operated portable equipment. Need within the meaning of this rule shall be determined by subscriber petition. The petition must contain the signatures of at least 10 percent of the subscribers of the system, but in no case more than 350 nor fewer than 100 signatures.

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**4 MCAR § 4.204 Required franchise provisions for a Class C cable system.** Franchisees for Class C cable systems shall contain recitations and provisions consistent with 4 MCAR § 4.202, unless hereafter provided otherwise, and recitations and provisions consistent with the following requirements:

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

1. The provision shall require that the franchisee shall, to the extent of the system's available channel capacity, provide to each of its subscribers who receive all, or any part of, the total services offered on the system, reception on at least one specially designated noncommercial public access channel available for use by the general public on a first come, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel available for local government use; and at least one specially designated access channel available for lease on a first come, nondiscriminatory basis by commercial and noncommercial users. Franchisees providing subscribers only alarm system services or only data transmission services for computer operated functions shall be exempt from this requirement. The VHF spectrum shall be used for at least one of the specially designated noncommercial public access channels required in this subdivision. The provision shall require that no charges shall be made for channel time or playback of prerecorded programming on at least one of the specially designated noncommercial public access channels required by this subdivision, provided, however, that personnel, equipment, and production costs may be assessed for live studio presentations exceeding

five minutes in length. Charges for such production costs and any fees for use of other public access channels shall be consistent with the goal of affording the public a low-cost means of television access.

2. The provision shall require that whenever the specially designated noncommercial public access channel, the specially designated education access channel, the specially designated local government access channel, or the specially designated leased access channel required in 4 MCAR § 4.204 A. 1. of this rule is in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive 3 hour period for six weeks running, and there is demand for use of an additional channel for the same purpose, the franchisee shall then have six months in which to provide a new specially designated access channel for the same purpose, provided that provision of such additional channel or channels shall not require the cable system to install converters. However, nothing in this rule shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

3. The provision shall also require that the franchisee shall establish rules pertaining to the administration of the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel required in this rule. The operating rules established by the franchisee governing the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel required in this rule shall be filed with the Minnesota Cable Communications Board within 90 days after any such channels are put into use.

*insert new! ARO 22257*  
4. Those systems which offer subscribers the option of receiving programs on one or more special service channels without also receiving the regular subscriber services may comply with this rule by providing the subscribers who receive the special service only, at least one specially designated composite access channel composed of the programming on the specially designated noncommercial public access channel, the specially designated education access channel, and the specially designated local government access channel required in this rule. Franchisees providing subscribers only alarm system services or only data transmission services for computer operated functions shall be exempt from this requirement.

5. On those systems without sufficient available channel capacity to allow for activation of all the specially designated access channels required in this subdivision, or where demand for use of the channels does not warrant activation of all the specially designated access channels required in this subdivision, public, educational, governmental, and leased access channel programming may be combined on one or more cable channels. To the extent time is available therefore, access channels may also be used for other broadcast and nonbroadcast services, provided that such services are subject to immediate displacement if there is demand to use the channel for its specially

designated purpose. Each such system shall, in any case, provide at least one full channel on the VHF spectrum for shared access programming.

*insert new: AR 0222 ST*

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

1. The provision shall require that the franchisee shall make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the specially designated noncommercial public access channel required by 4 MCAR § 4.204 A. 1. of this rule. The franchisee shall also make readily available, upon need being shown, the minimum equipment necessary to make it possible to record programs at remote locations with battery operated portable equipment. Need within the meaning of this rule shall be determined by subscriber petition. The petition must contain the signatures of at least 10 percent of the subscribers of the system, but in no case more than 500 nor fewer than 100 signatures.

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

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

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

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

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

4 MCAR §§ 4.206-4.209 Reserved for future use.

**Chapter Fourteen: 4 MCAR §§ 4.210-4.219 Certificates of Confirmation.**

*insert new: 4.210-4.219*  
**4 MCAR § 4.210 Introduction.** The board shall issue certificates of confirmation only in accordance with the rules prescribed in this chapter.

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

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

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

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

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

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

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

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

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

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

**4 MCAR § 4.213 Public meeting.**

A. No later than 60 days after a completed application for a certificate of

confirmation is received, the board shall hold a public meeting thereon. Any such public meeting may be combined with a regular or special board meeting. If, at any such meeting, application is substantially contested, the board may adjourn the public meeting and deem the matter a contested case for disposition in accordance with Chapter Four of these rules, provided that the decision of any hearing examiner, appointed thereunder, shall not be binding unless adopted by the board. For purposes of the contested case procedure, the board shall not be deemed a party to any proceeding in which only the granting of a regular certificate of confirmation is at issue.

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

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

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

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

**4 MCAR §§ 4.217-4.219 Reserved for future use.****Chapter Fifteen: 4 MCAR §§ 4.220-4.229 Interconnection.**

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

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

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

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

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

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

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

**4 MCAR § 4.222 Interim interconnection.**

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

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

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

b. A projection of expected operating costs;

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

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

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

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

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

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

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

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

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

D. The board shall require interim interconnections within the Twin Cities



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

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

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

**4 MCAR § 4.224 Regional channel entity.**

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

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

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

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

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

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

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

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

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

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

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

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

#### 4 MCAR § 4.225 Interconnect entity.

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

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

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

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

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

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

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

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

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

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

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

7. The plans for financing the proposed system;

8. Descriptions of the equipment used in providing interconnection;

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

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

#### 4 MCAR § 4.226 Technical standards.

##### A. Interconnection entity—video signals.

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

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

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

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

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

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

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

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

- (1) differential phase of  $\pm .5^\circ$
- (2) differential gain of  $\pm .25$  db
- (3) group delay of  $\pm 50$  ns
- (4) 20 db IF quieting with 100 uv input.

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

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

b. All specifications set forth above shall be met over an outdoor temperature range of  $-20^\circ\text{F}$  to  $+100^\circ\text{F}$  over variations in supply voltages from 105 to 130 VAC.

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

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

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

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

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

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

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

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

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

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

E. Report of measurements. At the completion of the installation of any

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

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

**4 MCAR §§ 4.227-4.229 Reserved for future use.**

**Chapter Sixteen: 4 MCAR §§ 4.230-4.239 Obscenity and Defamation.**

**4 MCAR § 4.230 Obscenity.**

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

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

**4 MCAR § 4.231 Defamation.**

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

B. Except as hereinafter provided, whoever has knowledge of the defamatory character of the matter and communicates the defamatory matter to a third person without the consent of the person defamed violates this rule;

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

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

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

2. The communication is absolutely privileged; or

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

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

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

4 MCAR §§ 4.232-4.239 Reserved for future use.

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