

STATE OF MINNESOTA  
DEPARTMENT OF ADMINISTRATION  
CABLE COMMUNICATIONS BOARD

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

STATEMENT OF NEED  
AND REASONABLENESS

**INTRODUCTION**

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

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

**AUTHORITY TO ADOPT RULES**

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

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

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

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

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

#### **NEED AND REASONABLENESS**

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

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

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

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

4 MCAR § 4.002 C. Cable communications system.

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

4 MCAR § 4.002 O. Twin Cities metropolitan area.

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

4 MCAR 4.002 P. VHF Spectrum.

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

4 MCAR § 4.016 Computation of time.

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

4 MCAR § 4.046 Rule making proceedings.

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

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

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

4 MCAR § 4.066 Fees.

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

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

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

4 MCAR § 4.100 Ownership and control.

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

4 MCAR §§ 4.133 - 4.135 Cable service territories.

The wording of the present rules have appeared to limit the Board to either initial establishment or to later expansion of a cable service territory (CST). However, the Board's experience administering the rule indicates that it should expressly have the latitude, as well, to reduce the size of a territory, to abolish a territory or to consolidate (merge) two or more territories.

Therefore, deletion of the term "expansion of" in favor of the term "change in" will sufficiently broaden the scope of the Board's ongoing discretion administering the CST rules.

4 MCAR § 4.134 B. 1. Board procedures.

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

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

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

4 MCAR § 4.134 D. Comment period.

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

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

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

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

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

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

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

4 MCAR § 4.140 D. 5. 1. Request for proposals.

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

4 MCAR § 4.140 E. Award of franchise.

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

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

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

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

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

4 MCAR § 4.141 C. Copies of notice.

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

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

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

4 MCAR § 4.141 F. 1. c. Eligibility.

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

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

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

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

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

4 MCAR § 4.141 F. 2. c. Eligibility.

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

4 MCAR § 4.202 I. Subscriber charges.

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

4 MACT § 4.202 N. Approval by franchising authority.

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

4 MCAR § 4.202 P. Construction schedule.

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

4 MCAR § 4.202 DD. 3 Access channels

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

4 MCAR § 4.204 D. Twin Cities Metropolitan Area franchises

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

4 MCAR § 4.211 Necessity for a certificate of confirmation.

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

4 MCAR § 4.212 C. Proof of publication.

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

4 MCAR § 4.215 Renewal of a certificate of confirmation.

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

4 MCAR § 4.250 Deregulated systems.

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

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

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

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

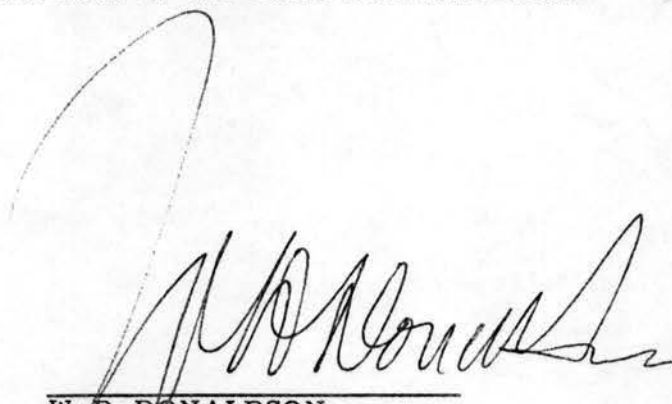


The rule will provide that the system operator shall establish its own rules for administration of the designated channel and that the operating rules must be filed with the Board. The Board's rule will stipulate that access be provided on a first-come, first-served, nondiscriminatory basis; however,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

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

#### CONCLUSION

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



W.D. DONALDSON  
Executive Director

Dated: September 13, 1982

09/09/82  
RZ/JMM/blf