

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
CABLE COMMUNICATIONS BOARD

In the Matter of the Proposed Adoption of
Rules of the Minnesota Cable Communications
Board Governing the Provision of Equipment
with Sufficient Channel Capacity by Cable
Companies Granted Access to Multiple Dwelling
Complexes so as to Allow for Service by
Alternative Providers

STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION

The above-captioned rules are being proposed in response to legislative directive contained in Laws 1983, Chapter 329, Section 5, Subdivision 10. The Chapter relates to Cable Communications, authorizing cable companies to use roads and existing utility easements and in major substance, requires and defines, access by cable communications companies to residents of multiple dwelling complexes. In return for this access, certain conditions are imposed upon cable companies. These proposed rules respond to the requirements of the above-cited subdivision in which cable companies granted access under the procedures establishing the amount of compensation to the property owner are required to install equipment that will permit use by alternative providers of television programming or cable communications services.

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 § 14.21 to 14.26 (1982).

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 statute. 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, February 6, 1984, 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.

SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

The agency has complied with the provisions of Minnesota Statutes § 14.115 by considering in the drafting and adoption of these rules their impact on small business as enumerated in Subdivision 2. To the degree that the statutory direction under which the rules are promulgated permits, they have been prepared in accordance with the subdivision's charge to reduce the impact on small business. Any further changes would be violative of the legislative direction contained in Laws 1983, Chapter 329, Section 5, Subdivision 10.

The agency has complied with the provision of M. S. 14.115, Subd. 4 by providing opportunity for small businesses affected by the proposed rules to participate in the rulemaking process and to comment on them at public meetings. In addition, copies of the proposed rules have been distributed to the organizations representing the small businesses affected.

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 - 4.250. *

4 MCAR § 4.240 Definitions.

A. Scope.

This establishes that the definitions set forth in the proposed rules are not otherwise defined.

* 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.

B. Alternative Providers.

This definition conforms to the meaning set forth in Chapter 329 and is identical to the definition set forth in 4 MCAR § 4.240 D.

C. Association Member.

This definition conforms to the meaning set forth in Chapter 329.

D. Other Providers of Television Programming or Cable Communications Services.

This definition conforms to the meaning set forth in Chapter 329 and identifies all known entities capable of providing the services described in Laws 1983, Chapter 329, Section 5, Subdivision 10. It has the same meaning as Section B. Alternative Providers (above).

4 MCAR § 4.241 Conditions for Access by Alternative Providers.

A. Channel Capacity.

A condition of cable companies being granted access to a multiple dwelling complex where compensation to the property owner is established under procedures set forth in the enabling legislation is their provision of distribution equipment within the complex to allow competitive providers of the same or similar services to also be able to serve the same dwelling units within the complex.

The rule is needed to ensure that all persons living in multiple dwelling complexes as defined have the opportunity to avail themselves of the television and other communications services furnished by cable companies or by alternative providers. It carries out the legislative findings and responds to legislative directive that rules be promulgated. It represents a reasonable approach to accomplishment of the objective without exerting undue hardship or lengthy procedures.

B. Technical Plan Approval.

Submission of a technical plan to the property owner for providing the required channel capacity is established as a procedure so that the particular service characteristics of each multiple dwelling complex may be considered. No further compensation for the property owner's

evaluation of the plan is provided, since the property owner may already receive compensation for diminution of fair market value and for professional review of the initial installation or a modification thereof. Further compensation would constitute an unreasonable burden.

C. Duplicate Connections.

To avoid unreasonable burdens on the cable communications company, no requirement for parallel distribution equipment is imposed.

4 MCAR § 4.242 Reimbursement.

A. Providing for Alternative Service.

In order to systematically document a verifiable need for the alternative service, a procedure is established for notifying the cable communications company when the services of an alternative procedure are desired, and for arranging for reimbursement therefrom for the use of the channel capacity required. The rule puts into direct communication the two parties that will share the equipment and apportion its cost.

B. Reimbursement Determination.

Lest there be confusion and conflict, a procedure that is clear and precise must exist for determining the amount of the one-time reimbursement by the alternative provider to the cable communications company for the use of the equipment by the former. The amount itself is to be arrived at strictly in accordance with the formulae provided in Subdivision 10, Section 5, Chapter 329, Laws 1983.

C. Financial Records Made Available.

There is a need for documentation of actual cost. The most logical way is for the rule to require that cost of the equipment made available to the Alternative Provider be documented by financial records made available upon request.

4 MCAR § 4.243 Appeals to the Board.

There is a need to alert persons to their appeal rights already in the Board's rules. An avenue for appeal by any of the parties involved in the activities covered by the rule is set forth.

CONCLUSION

Based on the foregoing, the proposed rules and its addition to the rules of the Cable Communications Board is both needed and reasonable.

Dated:

January 27, 1984

WDD/blf



W. D. DONALDSON
Executive Director

FOLK BROTHERS BOARD
ATTORNEY