

CHAPTER 2300
CABLE COMMUNICATIONS BOARD
BOARD PRACTICE AND PROCEDURE

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2300.0100 DEFINITIONS.

Subpart 1. **Scope.** As used in chapters 2300 to 2350, the words and phrases defined in this part have the meanings given them unless a different meaning clearly appears in the text.

Subp. 2. **Board.** "Board" means the Cable Communications Board created by Minnesota Statutes, section 238.04.

Subp. 3. **Cable communications company.** "Cable communications company" means any person owning, controlling, operating, managing, or leasing a cable communications system within the state.

Subp. 4. **Cable communications system.** "Cable communications system" means a system which operates the service of receiving and amplifying programs broadcast by one or more television or radio stations and other programs originated by a cable communications company or by another party, and distributing those programs by wire, cable, microwave, or other means, whether the means are owned or leased, to persons who subscribe to the service. This definition does not include:

- A. a master antenna television system;
- B. a specialized closed-circuit system which does not use the public rights-of-way for the construction of its physical plant;
- C. a translator system which receives and rebroadcasts over-the-air signals; and

D. a system which serves fewer than 50 subscribers or a system which serves more than 50 but fewer than 1,000 subscribers if the governing bodies of all political subdivisions served by the system, vote, by resolution, to remove the system from the provisions of Minnesota Statutes, chapter 238. Any system which serves more than 50 but fewer than 1,000 subscribers that has been

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removed from the provisions of Minnesota Statutes, chapter 238 shall be returned to the provisions of Minnesota Statutes, chapter 238 if the governing bodies of 50 percent or more of the political subdivisions served by the system vote, by resolution in favor of the return.

Subp. 5. **Franchise.** "Franchise" means any authorization granted by a municipality in the form of a franchise, privilege, permit, license, or other municipal authorization to construct, operate, maintain, or manage a cable communications system in any municipality.

Subp. 6. **Franchise area.** "Franchise area" means the geographic area to be served by the franchisee pursuant to the terms of the franchise.

Subp. 7. **Franchising authority.** "Franchising authority" means a municipality with the authority to issue a cable communications franchise, or a group of municipalities acting in concert pursuant to a joint powers agreement, that issues a franchise pursuant to a joint powers agreement.

Subp. 8. **Head end.** "Head end" means the electronic control center of a cable communications system, which includes antennas, preamplifiers, frequency converters, demodulators, modulators, and other related equipment which receives, amplifies, filters, and converts incoming signals to cable system channels.

Subp. 9. **Master antenna television system.** "Master antenna television system" means any system which serves only the residents of one or more apartment dwellings under common ownership, control, or management and any commercial establishment located on the premises of that apartment house and which transmits only signals broadcast over the air by stations which may be normally viewed or heard locally without objectionable interference, and which does not provide any additional service over its facilities other than closed-circuit security viewing services.

Subp. 10. **Municipality.** "Municipality" means any organized town, city, or county with respect to the unorganized territory within its boundaries.

Subp. 11. **Person.** "Person" means any individual, trustee, partnership, municipality, association, corporation, or other legal entity.

Subp. 12. **Program.** "Program" means any broadcast-type program, signal, message, graphics, data, or communication content service.

Subp. 13. **State.** "State" means the state of Minnesota.

Subp. 14. **State agency.** "State agency" means any office, department, board, commission, bureau, division, public corporation, agency, or instrumentality of the state.

Subp. 15. **Twin Cities metropolitan area.** "Twin Cities metropolitan area" means Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties with the exception of the city of Northfield in Dakota County and the city of New Prague in Scott County.

Subp. 16. **VHF spectrum.** "VHF spectrum" means standard VHF channels 2 to 13.

Statutory Authority: *MS s 238.02; 238.05; 238.06*

2300.0200 POLICY.

Chapters 2300 to 2350 shall be liberally construed to effectuate the purposes and provisions of Minnesota Statutes, sections 238.01 to 238.17.

Statutory Authority: *MS s 238.05; 238.06*

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2300.0300 BOARD OFFICERS.

Subpart 1. **Chair and vice-chair.** The officers of the board are the chairman and vice-chairman. 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. 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.

Subp. 2. **Vacancy.** 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.

Statutory Authority: *MS s 238.04 subds 3,9*

BOARD MEETINGS

2300.1000 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.1100 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.1200 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 quasi-judicial 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.1300 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 had 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.1400 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.1500 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.1600 STAFF DISCUSSION PAPERS.

Papers prepared by the board's staff for purposes of discussion will be distributed as follows. 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. 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. All copies will be clearly designated for discussion purposes only in order to distinguish them from materials intended for statutory public hearings.

Statutory Authority: *MS s 238.04 subd 9*

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DELEGATED AUTHORITY

2300.1700 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 Robert's Rules of Order shall be the governing authority.

Statutory Authority: *MS s 238.04 subd 9*

2300.1800 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.1900 QUORUM.

A majority of the members of the board shall constitute a quorum, and a quorum must be present for the transaction of business.

Statutory Authority: *MS s 238.04 subd 9*

2300.2000 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.2100 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.2200 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.

Statutory Authority: *MS s 238.04 subd 9*

BOARD PROCEDURES

2300.3000 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

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thereof shall be served on every party or person named in the motion, petition, or other official pleading as an adverse party or person.

Statutory Authority: *MS s 238.04 subd 9; 238.14*

2300.3100 FORM OF PAPERS FILED WITH BOARD.

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

Statutory Authority: *MS s 238.04 subd 9; 238.14*

2300.3200 SUBSCRIBER COMPLAINTS.

Subpart 1. **Procedure.** 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 parts 2310.0200 to 2310.0600 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 an administrative law judge pursuant to parts 2300.5100 to 2300.5600. 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.

Subp. 2. **Unresolved complaints.** 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

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complaint or complaints as is prescribed by law.

Statutory Authority: *MS s 238.04 subd 9; 238.14; 238.16*

History: *L 1984 c 640 s 32*

2300.3300 OPPOSITIONS AND REPLIES.

Subpart 1. **Filing.** 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.

Subp. 2. **Motions.** 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.3400 SERVICE OF PAPERS AND PROOF OF SERVICE.

Subpart 1. **Application.** 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 part.

Subp. 2. **Date of service.** Service shall be made on or before the day on which the paper is filed.

Subp. 3. **Receipt of service.** 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.

Subp. 4. **Delivery.** Delivery of a paper pursuant to this part 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 part means handing a copy thereof to the following:

A. to the chairman of the county board or to the county auditor of a county;

B. to the chief executive office or to the clerk of a city;

C. to the chairman of the town board or to the clerk of a town;

D. to any member of the board or any governing body of a school district;

E. to any member of the board or any governing body of a public board or a public body; and

F. 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

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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.

Subp. 5. **Service by mail.** 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.

Subp. 6. **Proof of service.** 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 acknowledgement 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.3500 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. Procedures to be followed by the board shall, unless specifically prescribed in these rules, or Minnesota Statutes, chapter 14, be such as in the opinion of the board will best serve the purposes of such proceedings.

Statutory Authority: *MS s 238.04 subd 9; 238.06; 238.16*

2300.3600 INTERVENTION IN BOARD PROCEEDINGS.

Subpart 1. **Intervention matter of right.** 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.

Subp. 2. **Persons who may intervene.** 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: the Federal Communications Commission; or any municipality of the state of Minnesota whose interest is directly affected by the matter in question; or 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.

Subp. 3. **Intervention by petition.** 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.

Subp. 4. **Party status.** Any person who intervenes or who is permitted to intervene in any proceeding in accordance with subparts 2 and 3 of this part shall be deemed a party to said proceeding.

Statutory Authority: *MS s 238.04 subd 9; 238.06*

2300.3700 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

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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 part, 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.

Statutory Authority: *MS s 238.04 subd 9; 238.06*

2300.3800 CENSURE OR SUSPENSION OF PERSONS APPEARING BEFORE BOARD.

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.

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.

Statutory Authority: *MS s 238.04 subd 9*

2300.3900 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 part, 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.

Statutory Authority: *MS s 238.04 subd 9; 238.06; 238.14*

2300.4000 RECORDS RETENTION.

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.

Statutory Authority: *MS s 238.04 subd 9; 238.06*

2300.4100 FORM AND INSPECTION OF 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.

Statutory Authority: *MS s 238.04 subd 9; 238.06*

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2300.4200 PETITIONS FOR RECONSIDERATION.

Subpart 1. **Final board order.** For purposes of this part, "final board order" shall include final orders made on behalf of the board pursuant to the authority delegated in these rules.

Subp. 2. **Petition and contents.** Any party aggrieved by a final board order may file a petition for reconsideration of said order. 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.

Subp. 3. **Filing and service.** 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.

Subp. 4. **Opposition.** Oppositions to a petition for reconsideration may be filed by any party to the initial proceeding.

Subp. 5. **Evidence.** 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 part.

Subp. 6. **Order.** 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.

Subp. 7. **Setting aside order.** The board may, on its own motion, set aside any order within 20 days after release of the order.

Statutory Authority: *MS s 238.04 subd 9; 238.06*

2300.4300 TIME.

Subpart 1. **Computation.** The computation of a period of time prescribed or allowed by chapters 2300 to 2350 shall be done in the manner prescribed in Minnesota Statutes, section 645.15. For any time period of ten days or less, Saturdays, Sundays, or legal holidays shall not be included in computing the period of time.

Subp. 2. **Filing.** 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.

Statutory Authority: *MS s 238.04 subd 9; 238.05; 238.06*

2300.4400 VARIANCES.

Subpart 1. **Limitations.** The board may grant a variance from any of its rules 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 or standards relating to cable communications.

Subp. 2. **Petition.** Any person may petition the board for a variance from a rule or standard. The petition shall set forth the text of the rule 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

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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.

Subp. 3. Contesting petition. 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 parts 2300.5100 to 2300.5600 of these rules.

Subp. 4. Granting. 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.

Statutory Authority: *MS s 238.04 subd 9; 238.05; 238.06*

RULEMAKING

2300.5000 RULEMAKING PROCEEDINGS.

The board shall adopt, amend, suspend, or repeal its rules in accordance with the procedures set forth in Minnesota Statutes, chapter 14 and in the rules of the Office of Administrative Hearings.

Statutory Authority: *MS s 238.04 subd 9; 238.06*

CONTESTED CASES

2300.5100 INITIATING A CONTESTED CASE.

Subpart 1. 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:

- A. the name and address of the applicant;
- B. a statement of the nature of the determination requested and the reasons therefor;
- C. the names and addresses of all persons known to the applicant who will be directly affected by such determination; and
- D. the signature of the applicant or his attorney.

Subp. 2. Request for action by complaint. Any person authorized by law to submit to the board a complaint that his rights are being abridged, that his privileges are being denied, or that duties owed him are being defaulted upon may request initiation of a contested case by filing a complaint. A complaint must contain:

- A. the name and address of the complainant;
- B. the names of those against whom the complaint is made;
- C. the relief sought and the grounds for relief; and
- D. the signature of the complainant or the complainant's attorney.

Subp. 3. 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.

Statutory Authority: *MS s 238.04 subd 9; 238.05; 238.06; 238.14*

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2300.5200 COMMENCEMENT OF CONTESTED CASE.

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

Statutory Authority: *MS s 238.05; 238.06; 238.14*

2300.5300 BOARD DECISION.

Subpart 1. **Exceptions.** Parties adversely affected by the report of the administrative law judge 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.

Subp. 2. **Hearing of arguments.** 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.

Subp. 3. **Decision or order.** 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 subpart 1 above the board shall issue a decision or order in the contested case. The decision or order shall be in writing or state 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.

Statutory Authority: *MS s 238.04 subd 9; 238.06*

History: *L 1984 c 640 s 32*

2300.5400 REHEARING.

Subpart 1. **Limitations.** 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.

Subp. 2. **Parties other than 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 the name and address of the petitioner, the board designation for the case, and the reasons for the petition.

Subp. 3. **Board's own motion.** 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.

Subp. 4. **Default judgments.** A party against whom a default has been adjudged pursuant to Office of Administrative Hearings part 1400.6000 may obtain a rehearing upon a timely showing of good cause for his failure to appear or plead.

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Subp. 5. **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.

Subp. 6. **Rehearing procedure.** A rehearing in a contested case shall be conducted in the same manner prescribed by the rule of the Office of Administrative Hearings.

Subp. 7. **Decision after rehearing.** The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing as provided in part 2300.5300 (1400.8200).

Statutory Authority: *MS s 238.04 subd 9*

2300.5500 APPEAL BY BOARD.

The board may appeal pursuant to Minnesota Statutes, sections 14.63 to 14.68 any adverse decision. The board shall be deemed a "person" for such purposes.

Statutory Authority: *MS s 238.04 subd 9; 238.06*

2300.5600 FEES.

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

Statutory Authority: *MS s 238.04 subd 9; 238.05; 238.06*

DELEGATED AUTHORITY

2300.6000 DELEGATION PROCEDURE.

Delegations are arranged in parts 2300.6000 to 2300.6500 under headings denoting the person or persons to whom authority has been delegated. 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.6100 AUTHORITY OF PERSON TO WHOM FUNCTIONS ARE DELEGATED.

Except as provided elsewhere in parts 2300.6000 to 2300.6500, 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.

Except as provided elsewhere in parts 2300.6000 to 2300.6500, any action taken pursuant to delegated authority shall have the same force and effect and

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shall be made, evidenced, and enforced in the same manner as actions of the board.

Statutory Authority: *MS s 238.04 subd 9*

2300.6200 EXERCISE OF DELEGATED AUTHORITY.

Subpart 1. **Delegation.** Any official or group of officials to whom authority is delegated in parts 2300.6000 to 2300.6500 is authorized to issue orders pursuant to such authority and to enter into general correspondence concerning any matter for which he is responsible under parts 2300.6000 to 2300.6500.

Subp. 2. **Delegation limited.** Authority delegated to any person to issue orders or to enter into correspondence under subpart 1 of this part may be exercised only by that official.

Subp. 3. **Actions under authority to be in writing.** Except as otherwise provided in parts 2300.6000 to 2300.6500, actions taken as provided in subpart 1 of this part 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.6300 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 actions of routine character and 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.

Statutory Authority: *MS s 238.04 subd 9*

2300.6400 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 chapters 2300 to 2350;

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

F. to issue informal interpretations of chapters 2300 to 2350, 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.

Statutory Authority: *MS s 238.04 subd 9*

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2300.6500 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 parts 2310.1000 to 2310.1900.

Statutory Authority: *MS s 238.04 subd 9*