

CHAPTER 568—S.F.No.1283

[Coded in Part]

An act relating to cable communications; providing penalties; appropriating money; amending Minnesota Statutes 1971, Sections 161.45, Subdivision 1; and 222.37, Subdivision 1.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **[238.01] CABLE COMMUNICATIONS; DECLARATION OF LEGISLATIVE FINDINGS AND INTENT.** Upon investigation of the public interest associated with cable communications, the legislature of the state of Minnesota has determined that while cable communications serve in part as an extension of interstate broadcasting, that their operations also involve public rights-of-way, municipal franchising, and vital business and community service, which are of state concern; that while said operations must be subject to state oversight, they also must be protected from undue restraint and regulation so as to assure development of cable systems with optimum technology and maximum penetration in this state as rapidly as economically and technically feasible; that the municipalities and the state would benefit from valuable educational and public services through cable communications systems; that the cable communications industry must provide the opportunity for minority participation and benefit which its diversity promises; that the public and the business community would benefit if served by cable channels sufficient to meet the needs of producers and distributors of program and other communication content services; that the cable communications industry is in a period of rapid growth and corporate consolidation and should proceed in accord with regional and statewide service objectives; that these objectives should encourage area-wide service where consistent with the public interest and discourage concentration of control and ownership when not in the public interest; and that many municipalities lack the necessary resources and expertise to plan for and secure these benefits and to protect subscribers and other parties to the public interest in franchise negotiations.

There is, therefore, a need for a state agency to develop a state cable communications policy; to promote the rapid development of the cable communications industry responsive to community and public interest and consonant with policies, regulations and statutes of the federal government; to assure that cable communications companies provide adequate, economical and efficient service to their subscribers, the municipalities within which they are franchised and other parties to the public interest; to encourage the endeavors of public and private institutions, municipalities, associations and organizations in developing programming for pub-

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lic interest; and to provide minorities with the fullest opportunity to make effective use of the medium.

It is the intent of the legislature in the provisions of this act to vest authority in a commission to oversee development of the cable communications industry in Minnesota in accordance with the statewide service plan; to review the suitability to practices for franchising cable communications companies to protect the public interest; to set standards for cable communications systems and franchise practices; to assure channel availability for municipal services, educational television, program diversity, local expression and other program and communications content services; to assure that municipal franchising results in communication across metropolitan areas and in neighborhood communities in larger municipalities; to provide consultant services to community organizations and municipalities in franchise negotiations; and, to stimulate the development of diverse instructional, educational, community interest and public affairs programming with full access thereto by cable communications companies, educational broadcasters and public and private institutions operating closed circuit television systems and instructional television fixed services.

Sec. 2. [238.02] DEFINITIONS. Subdivision 1. The words and phrases used in the provisions of this act shall have the following meanings unless a different meaning clearly appears in the text.

Subd. 2. "Cable communications company" shall mean any person owning, controlling, operating, managing or leasing a cable communications system within the state.

Subd. 3. "Cable communications system" shall mean 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:

- (a) any system which serves fewer than 50 subscribers;
- (b) any master antenna television system;
- (c) any specialized closed-circuit system which does not use the public rights-of-way for the construction of its physical plant; and
- (d) any translator system which receives and rebroadcasts over-the-air signals.

Subd. 4. "Commission" shall mean the commission on cable communications created by the provisions of this act.

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Subd. 5. "Franchise" shall mean 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.

Subd. 6. "Gross annual receipts" shall mean all compensation received directly or indirectly by a cable communications company from its operations within the state, limited to sums received from subscribers in payment for programs received.

Gross annual receipts shall not include any taxes on services furnished by a cable communications company imposed directly on any subscriber or user by any municipality, state, or other governmental unit and collected by the company for such governmental unit.

Subd. 7. "Master antenna television system" shall mean 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.

Subd. 8. "Municipality" shall mean any village, town, city, borough, county, or any combination of these which undertakes to issue a franchise.

Subd. 9. "State" shall mean the state of Minnesota.

Subd. 10. "State agency" shall mean any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of the state.

Subd. 11. "Person" shall mean any individual, trustee, partnership, association, corporation or other legal entity.

Subd. 12. "Program" shall mean any broadcast-type program, signal, message, graphics, data, or communication content service.

Sec. 3. [238.03] APPLICATION. The provisions of this act shall apply to every cable communications system and every cable communications company as defined in section 2, operating within the state, including a cable communications company which constructs, operates and maintains a cable communications system in whole or in part through the facilities of a person franchised to offer common or contract carrier services. Persons possessing franchises for any of the purposes contemplated by the provisions of this act shall be deemed to be subject to the provisions of this

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act although no property may have been acquired, business transacted or franchises exercised.

Sec. 4. [238.04] COMMISSION CREATED. Subdivision 1. A state commission on cable communication is hereby created within the department of administration and shall consist of seven members. The commission shall reside within the department of administration for a period not to exceed two years from the effective date of this act.

The members of the commission shall be representative of the broad range of interests related to telecommunication needs and concerns.

Subd. 2. Each member shall be appointed by the governor, by and with the advice and consent of the senate, for four years provided, however, that of the seven members first appointed, three for two years, four for four years, from January 1 next succeeding their appointment. Their successors shall be appointed for terms of four years each. Members shall continue in office until their successors have been appointed and qualified. No more than four members shall be from the same political party.

Subd. 3. The governor shall designate one of the members to be chairman who shall be the chief executive officer of the commission. The members shall elect one of their number as vice chairman of the commission.

Subd. 4. Vacancies in the commission occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as original appointments.

Subd. 5. The chairman and the other members of the commission shall receive \$35 per diem compensation.

Subd. 6. A majority of the members of the commission then in office shall constitute a quorum for the transaction of any business or the exercise of any power or function of the commission. The commission may delegate to one or more of its members, or its officers, agents, or employees, such powers and duties as it may deem appropriate.

Subd. 7. The department of administration may appoint an executive director and such other officers, employees, agents, and consultants as it may deem necessary, and prescribe their duties.

The attorney general shall appoint a counsel for the commission.

Subd. 8. The executive director shall serve in the unclassified service of the state. All other employees shall serve in the classified service of the state.

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Subd. 9. The commission shall be established within three months of the effective date of this act. The commission shall adopt the regulations required by this act necessary for franchising and certification within one year after it is established.

Sec. 5. [238.05] DUTIES OF THE COMMISSION. Subdivision 1. The commission shall develop and maintain a statewide plan for development of cable communications services, setting forth the objectives which the commission deems to be of regional and state concern.

Subd. 2. The commission shall, to the extent permitted by, and not contrary to, applicable federal and state law, rules and regulations;

(a) prescribe procedures and practices which municipalities shall follow in granting franchises, including those providing for issuance of a public invitation to compete for the franchise, said invitation containing the outlines for the municipality's cable system and the desired services, as well as the criteria and priorities which shall be applied;

(b) prescribe minimum standards for inclusion in franchises, including maximum initial, renegotiation and renewal periods, a requirement that no such franchise may be exclusive, length of residential subscriber contracts, and municipal purchase; taking into account the size of the cable communications system, the commission shall also prescribe minimum standards for channel capacity, access to, and facilities to make use of, channels for education, government and public access, two-way capability, performance bonds, and construction and operation of the cable communication system;

(c) prescribe a list of items for inclusion in franchises;

(d) prescribe standards for: franchises awarded in the twin cities metropolitan area which designate a uniform regional channel reserved for public use; the interconnection of all cable systems within this area; and the designation of a single entity to schedule programs and facilitate use of this channel.

Subd. 3. The commission shall provide advice and technical assistance to the cable communications industry, federal, state and local governments, members of the citizenry without commercial cable interests, community organizations, and other private and public agencies interested in matters relating to cable communications, franchises and services.

Subd. 4. The commission shall issue certificates of confirmation in accordance with the standards prescribed by the commission.

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Subd. 5. The commission shall represent the interests of the people of the state before the federal communications commission.

Subd. 6. The commission shall adopt, after consulting with the metropolitan council and regional development commissions of the state, a set of minimum standards for the size of cable territories within which a franchise may be awarded, and procedures to be followed for alteration of cable service territory boundaries, by municipalities in the twin cities metropolitan area as designated in Minnesota Statutes 1971, Section 473B.01, and other designated standard metropolitan statistical areas.

Subd. 7. The commission shall approve, modify or reject boundaries for specific territories proposed by municipalities or cable communications applicants, after consultation with the affected regional planning commission.

Subd. 8. The commission shall prohibit invasion of privacy.

Subd. 9. The commission shall insure that minorities and all other groups have the fullest access to cable communications at all levels, including the establishment of an affirmative action regulation and compliance mechanism consistent with Federal Executive Order 11246, of the President, as amended by Executive Order No. 11375 and Executive Order No. 11478.

Subd. 10. The commission shall establish standards pertaining to transfer, renewal, termination or amendment of franchises.

Subd. 11. The commission shall establish standards pertaining to ownership and control of cable communications companies.

Subd. 12. The commission shall prescribe standards for interconnection and compatibility of cable communications systems.

Subd. 13. The commission shall establish provisions pertaining to liability for obscenity and defamation.

Subd. 14. The commission shall encourage experimental, innovative approaches to the building and operation of cable communications systems.

Subd. 15. The commission shall encourage the establishment of nonprofit corporations to facilitate production for the access channels.

Subd. 16. The commission shall establish standards covering the construction, operation and abandonment of cable communications systems.

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Sec. 6. [238.06] POWERS OF COMMISSION. Subdivision 1. The commission may promulgate, issue, amend, rescind, and provide for the enforcement of such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this act in accordance with Minnesota Statutes 1971, Chapter 15. Such orders, rules and regulations may classify persons and matters within the jurisdiction of the commission and prescribe different requirements for different classes of persons or matters. A copy of any order, rule or regulation promulgated hereunder shall be subject to public inspection during reasonable business hours.

Subd. 2. The commission or other aggrieved party shall have the right to institute or to intervene as a party in any action in any court of competent jurisdiction seeking mandamus, injunctive or other relief to compel compliance with any provision of this act or any rules, regulations or orders issued hereunder.

Sec. 7. [238.07] COSTS AND EXPENSES OF THE COMMISSION. On or before December 1 of each year, the commission shall estimate the total costs and expenses, including compensation for personal services necessary to operate and administer the commission for the next ensuing state fiscal year. The commission shall, at such time or times and pursuant to such procedure as it shall determine by regulation, bill and collect from each franchised cable communication company funds to carry on the work of the commission, according to an equitable formula established by the commission; provided that the amount billed to or collected from any operating cable communications company pursuant to this section shall never exceed one percent of the gross annual receipts of such company during the 12 month period designated by the commission, and further provided that in no case shall the amount collected pursuant to this section diminish the amount collected by the municipality from the cable communications company. The proceeds collected pursuant to this section shall be annually appropriated to the general fund of the state treasury.

Sec. 8. [238.08] FRANCHISE REQUIREMENT. Subdivision 1. A municipality shall have the power to require a franchise of any cable communications system providing service within the municipality.

Subd. 2. Nothing in the provisions of this act shall be construed to prevent franchise requirements in excess of those prescribed by the commission, unless such requirement is inconsistent with the provisions of this act or any regulation, policy or procedure of the commission.

Subd. 3. Nothing in this act shall be construed to limit any municipality from the right to construct, purchase, and operate a cable communications system.

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Subd. 4. Nothing in this act shall be construed to limit the power of any municipality to impose upon any cable communications company a fee, tax or charge.

Sec. 9. [238.09] CERTIFICATE OF CONFIRMATION. Subdivision 1. Except as provided in subdivisions 4 and 5 of this section, after the effective date of this act, no person shall exercise a franchise, and no such franchise shall be effective, until the commission has confirmed such franchise.

Subd. 2. The commission may issue a certificate of confirmation contingent upon compliance with standards, terms or conditions set by the commission.

Subd. 3. Any cable communications company which, pursuant to an existing franchise was lawfully engaged in actual operations on the effective date of this act, may continue to exercise said franchise pursuant to the terms thereof, provided such company files with the commission by such date as the commission shall set, an application in such form and containing such information and supporting documentation as the commission may require. The commission shall issue a certificate of confirmation to such a cable communications company valid for five years without further proceedings.

Subd. 4. Cable communications companies which have been granted a franchise prior to April 1, 1973, and which were not in operation prior to the effective date of this act, shall be given a ten year certificate of confirmation provided such company files with the commission by such date as the commission shall set, an application in such form and containing such information and supporting documentation as the commission may require, and further provided such companies have commenced substantial construction, indicated by erection of the "head end" and stringing of no less than 5 miles of trunk and distribution cable, by January 1, 1974.

Subd. 5. Notwithstanding the provisions of section 9, subdivision 6, of this act, a municipality may issue a franchise by September 15, 1973, if done so pursuant to a municipal enabling ordinance on cable communications enacted by April 1, 1973, containing detailed specifications for the construction and operation of a cable communications systems. Any cable communications company so franchised may exercise its franchise pursuant to the terms thereof, provided such company files with the commission an application in such form and containing such information and supporting documentation as the commission may require. The commission shall issue a certificate of confirmation to such a cable communications company valid for ten years.

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Subd. 6. Any cable communications company granted a franchise after April 1, 1973, shall be required to secure a certificate of confirmation from the commission before becoming operational. Such certificate may be granted after full commission proceedings and shall be for a period of ten years.

Subd. 7. Any renewal of a certificate of confirmation shall be for a period of five years.

Subd. 8. Nothing in this section shall be deemed to validate a franchise not granted in accordance with law or affect any claims in litigation on the effective date of this act. No confirmation under this section shall preclude invalidation of any franchise illegally obtained.

Sec. 10. [238.10] REGIONAL DEVELOPMENT COMMISSIONS. For the purposes of assisting in the implementation of this act, the metropolitan council and regional development commissions of the state may engage in a program of research and study concerning interconnection, cable territories, regional use of cable communications and all other aspects which may be of regional concern.

Sec. 11. [238.11] CENSORSHIP PROHIBITED. Subdivision 1. The commission may not promulgate any regulation or condition which would interfere with the right of free speech by means of cable communications.

Subd. 2. No cable communications company may prohibit or limit any program or class or type of program presented over a leased channel or any channel made available for public access, governmental or educational purposes.

Sec. 12. [238.12] RATES. Subdivision 1. Except as otherwise provided in this section, the rates charged by a cable communications company shall be those specified in the franchise, which may establish, or provide for the establishment of reasonable classifications of service and categories of subscribers, or specify different rates for differing services or for subscribers in different categories.

Subd. 2. Such rates may not be changed except as provided for in the approved franchise.

Subd. 3. The commission shall provide assistance regarding rates and related economic matters to interested municipalities and their citizens. The commission shall study, or cause to be studied, the desirability of regulation of all rates and charges of cable communications system.

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Sec. 13. [238.13] POLES, DUCTS AND CONDUITS. The commission shall within two years from the effective date of this act adopt complete and detailed rules specifying necessary regulations for contractual agreements between cable communications operators and any public utilities with respect to the use of poles, ducts, conduits, and other appurtenances related to the cable communications transmission lines.

Sec. 14. [238.14] APPEALS TO THE COMMISSION. Any franchised cable communications company, who is aggrieved by action of any franchise authority in modifying, suspending, cancelling, revoking, or declaring forfeited the franchise, may appeal to the commission within 30 days following notice of such action by a petition in writing, setting forth all the material facts in the case. Any municipality which is aggrieved by the failure of its franchisee to perform according to the municipal ordinance may appeal to the commission for assistance in gaining franchisee compliance with the municipal ordinance by a petition in writing, setting forth all the material facts in the case.

The commission at its discretion shall hold a hearing upon such appeals, requiring due notice to be given to all interested parties.

If the commission approves the action of the municipality it shall issue notice to it to that effect, but if the commission disapproves of its action it shall issue a decision in writing advising the municipality of the reasons for its decision and ordering the municipality to conform with such decision. If the commission approves the action of the cable communications company it shall issue notice to it to that effect, but if the commission disapproves of its action it shall issue a decision in writing advising the cable communications company of the reasons for its decision and ordering the cable communications company to conform with the decision.

Upon request, or upon its own initiative, the commission may investigate the renewal or assignment of such franchise or the conduct of the business being done thereunder, and may, after hearing, modify, suspend, revoke or cancel such license for cause.

If the municipality fails to suspend, revoke, cancel or declare forfeited a license or to perform any other disciplinary act when lawfully ordered so to do by the commission upon appeal or otherwise, within such reasonable time as it may prescribe, the commission may itself revoke such license or perform such act with the same force and effect as if performed by the municipality.

Sec. 15. [238.15] FINANCIAL INTEREST OF MEMBERS AND EMPLOYEES. No member of the commission and no employee of the commission shall be employed by, or shall have any

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financial interest in any cable communications company holding a franchise in the state, their subsidiaries, major equipment or programming suppliers, or in any broadcasting company holding an operating license issued by the federal communications commission, their subsidiaries, major equipment or programming suppliers. Members of any elected body granting franchises and employees of any franchising body who would be directly involved in the granting or administration of franchises for cable communications and who are employed or have any financial interest in any cable communications company holding a franchise in the state, their subsidiaries, major equipment or program suppliers shall abstain from participation in the franchising of cable communications companies.

Sec. 16. [238.16] FINES AND PENALTIES. Subdivision 1. The commission may seek such injunctive relief as is necessary to prevent violations of the orders, rules or regulations of the commission.

Subd. 2. Any person violating the provisions of this act or any rules or regulations made pursuant thereto, is guilty of a gross misdemeanor. Any term of imprisonment imposed for any violation by a corporation shall be served by the senior resident officer of the corporation.

Sec. 17. APPROPRIATION. The sum of \$300,000 is hereby appropriated from the general fund to the department of administration as an appropriation for the commission.

Sec. 18. ENACTMENT. The act shall take effect the day following enactment.

Sec. 19. Minnesota Statutes 1971, Section 161.45, Subdivision 1, is amended to read:

161.45 PUBLIC UTILITIES AND WORKS ON TRUNK HIGHWAYS; RELOCATION OF UTILITIES. Subdivision 1. Electric transmission, telephone or telegraph lines, pole lines, community antenna television lines, railways, ditches, sewers, water, heat or gas mains, gas and other pipe lines, flumes, or other structures which, under the laws of this state or the ordinance of any village, borough or city, may be constructed, placed, or maintained across or along any trunk highway, or the roadway thereof, by any person, persons, corporation, or any subdivision of the state, may be so maintained or hereafter constructed only in accordance with such regulations as may be prescribed by the commissioner who shall have power to prescribe and enforce reasonable rules and regulations with reference to the placing and maintaining along, across, or in any such trunk highway of any of the utilities hereinbefore set forth. Nothing herein shall restrict the actions of

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public authorities in extraordinary emergencies nor restrict the power and authority of the department of public service as provided for in other provisions of law. Provided, however, that in the event any local subdivision of government has enacted ordinances relating to the method of installation or requiring underground installation of such community antenna television lines, the permit granted by the commissioner of highways shall require compliance with such local ordinance.

Sec. 20. Minnesota Statutes 1971, Section 222.37, Subdivision 1, is amended to read:

222.37 PUBLIC ROADS; USE, RESTRICTION. Subdivision 1. Any water power, telegraph, telephone, pneumatic tube, community antenna television, or electric light, heat, or power company may use public roads for the purpose of constructing, using, operating, and maintaining lines, subways, canals, or conduits, for their business, but such lines shall be so located as in no way to interfere with the safety and convenience of ordinary travel along or over the same; and, in the construction and maintenance of such line, subway, canal, or conduit, the company shall be subject to all reasonable regulations imposed by the governing body of any county, town, village, borough or city in which such public road may be. Nothing herein shall be construed to grant to any person any rights for the maintenance of a telegraph, telephone, pneumatic tube, community antenna television system, light, heat, or power system within the corporate limits of any city ~~or~~, village or borough until such person shall have obtained the right to maintain such system within such city ~~or~~, village or borough, or for a period beyond that for which the right to operate such system is granted by such city ~~or~~, village or borough.

Approved May 23, 1973.

CHAPTER 569—S.F.No.1374

An act relating to elections; nomination, affidavits and election of county court judges; amending Minnesota Statutes 1971, Sections 202.03, Subdivision 1; 202.04, Subdivisions 1 and 3; 203.41; 487.03, Subdivision 2; and repealing Minnesota Statutes 1971, Section 487.03, Subdivision 3.

Be it enacted by the Legislature of the State of Minnesota:

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