

CHAPTER 238

CABLE COMMUNICATIONS

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238.01 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 public 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 Laws 1973, Chapter 568 to vest authority in a board 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.

[1973 c 568 s 1; 1975 c 271 s 6]

238.02 DEFINITIONS. Subdivision 1. The words and phrases used in the provisions of Laws 1973, Chapter 568 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. "Board" shall mean the cable communications board created by the provisions of Laws 1973, Chapter 568.

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 organized town, city, or county with respect to the unorganized territory within its boundaries.

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, municipality, association, corporation or other legal entity.

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

Subd. 13. "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.

[1973 c 568 s 2; 1974 c 506 s 1,2; 1975 c 271 s 6; 1976 c 249 s 1]

238.03 APPLICATION. The provisions of Laws 1973, Chapter 568 shall apply to every cable communications system and every cable communications company as defined in section 238.02, 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 Laws 1973, Chapter 568 shall be deemed to be subject to the provisions of Laws 1973, Chapter 568 although no property may have been acquired, business transacted or franchises exercised.

[1973 c 568 s 3]

238.04 BOARD CREATED. Subdivision 1. A cable communications board is hereby created within the department of administration and shall consist of seven members.

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

Subd. 2. No more than four members shall be from the same political party.

Subd. 2a. The membership terms, compensation, removal of members, and filling of vacancies on the board shall be as provided in section 15.0575.

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

Subd. 4. [Repealed, 1976 c 134 s 79]

Subd. 5. [Repealed, 1976 c 134 s 79]

Subd. 5a. The chairman and other members of the board shall receive their ordinary and necessary expenses in the same manner and amount as state employees.

Subd. 6. A majority of the members of the board then in office shall constitute a quorum for the transaction of any business or the exercise of any power or function of the board. The board 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 board.

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.

Subd. 9. The board shall be established within three months of May 24, 1973. The board shall adopt the regulations required by Laws 1973, Chapter 568 necessary for franchising and certification no later than April 1, 1975.

[1973 c 568 s 4; 1974 c 506 s 3; 1975 c 204 s 100; 1975 c 271 s 6; 1976 c 134 s 52,53; 1976 c 249 s 2; 1976 c 331 s 40]

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

Subd. 2. The board 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 the municipality has developed to review franchise applications;

(b) prescribe minimum standards for inclusion in franchises, including maximum initial, renegotiation and renewal periods; length of residential subscriber contracts; provisions for municipal purchase; prohibitions against the invasion of privacy through a cable communications system; provisions covering construction, operation and abandonment of cable communications systems; and a requirement that no such franchise may be exclusive. Taking into account the size of the cable communications system, the board shall also prescribe minimum standards for performance bond requirements; for channel capacity; for two-way capability; for access to, and facilities to make use of, channels for education, government, and the general public; and for construction and operation of the cable communications system;

(c) prescribe standards for: franchises awarded in the twin cities metropolitan area which designate a uniform regional channel; 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;

(d) designate the entity referred to in clause (c) and prescribe rules for its operation and practice which rules shall insure that priority is given to public use of the uniform regional channel.

Subd. 3. The board shall provide advice and assistance to the cable communications industry; federal, state and local governments; members of the citizenry not commercially involved in cable communications activities; community organizations; and other private and public agencies interested in matters relating to cable communications and services.

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

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

Subd. 6. The board shall adopt, after consulting with either the metropolitan council or regional development commissions of the state as appropriate, a set of minimum standards for the establishment of cable territories within which a franchise may be awarded, and procedures to be followed for alteration of cable service territory boundaries.

Subd. 7. The board shall approve or reject boundaries for specific territories upon receipt of proposals from municipalities or cable communications operator applicants, after consultation with the metropolitan council or the affected regional planning commission. If the proposed boundaries, in whole or part, are within the seven county metropolitan area, the metropolitan council shall be allowed 90 days to review and comment on the proposed boundaries.

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

Subd. 9. The board 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 No. 11246, of the President, as amended by Executive Order No. 11375 and Executive Order No. 11478.

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

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

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

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

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

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

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

Subd. 17. The board shall also promulgate rules pertaining to cable transmission line extension by cable communications companies.

[1973 c 568 s 5; 1974 c 506 s 4-7; 1975 c 271 s 6; 1976 c 249 s 3-6]

238.06 POWERS OF BOARD. Subdivision 1. The board may promulgate, issue, amend, rescind, and provide for the enforcement of such rules and regulations as it may find necessary or appropriate to carry out the provisions of this chapter in accordance with chapter 15. The board may also issue any necessary and appropriate orders. Such orders, rules and regulations may classify persons and matters within the jurisdiction of the board 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 board 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 Laws 1973, Chapter 568 or any rules, regulations or orders issued hereunder.

Subd. 3. The board may subpoena witnesses, administer oaths, take testimony, and require the production of such books, records, papers, or documents as are material in a contested case and designated in the subpoena. The board may authorize

hearing officers to exercise the authority conferred by this subdivision. Disobedience of a subpoena issued by the board or a hearing officer pursuant to this subdivision shall be punishable in like manner as a contempt of the district court in proceedings instituted upon application of the board or a hearing officer made to the district court of Ramsey county or the county in which the person who was subpoenaed resides or has his principal place of business.

Subd. 4. The board may by rule prescribe a schedule of filing fees for matters heard by it pursuant to section 238.14, provided the amount of the fee charged may not exceed the fee charged by the district court for hearings on a similar matter.

Subd. 5. The board may, upon a suitable showing of need in individual instances, order the interconnection of cable communications systems.

Subd. 6. The board may require from any cable communications system granted a certificate of confirmation information and supporting documentation in the form and at the times the board may deem appropriate.

[1973 c 568 s 6; 1974 c 506 s 8,9; 1975 c 271 s 6; 1976 c 249 s 7-9]

238.07 COSTS AND EXPENSES OF THE BOARD. On or before December 1 of each year, the board shall estimate the total costs and expenses, including compensation for personal services necessary to operate and administer the board for the next ensuing state fiscal year. The board 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 board, according to an equitable formula established by the board; 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 board, 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.

[1973 c 568 s 7; 1975 c 271 s 6]

238.08 FRANCHISE REQUIREMENT. Subdivision 1. A municipality shall require a franchise of any cable communications system providing service within the municipality.

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

Subd. 3. Nothing in this chapter shall be construed to limit any municipality from the right to construct, purchase, and operate a cable communications system. Any municipal system shall be subject to the laws, rules and regulations of the board to the same extent as would any nonpublic cable communications system.

Subd. 4. Nothing in Laws 1973, Chapter 568 shall be construed to limit the power of any municipality to impose upon any cable communications company a fee, tax or charge.

[1973 c 568 s 8; 1975 c 271 s 6; 1976 c 249 s 10-12]

238.09 CERTIFICATE OF CONFIRMATION. Subdivision 1. Except as provided in subdivisions 4 and 5, after May 24, 1973, no person shall exercise a franchise, and no such franchise shall be effective, until the board has confirmed such franchise.

Subd. 2. [Repealed, 1976 c 249 s 18]

Subd. 3. Any cable communications company which, pursuant to an existing franchise was lawfully engaged in actual operations on May 24, 1973, may continue to exercise said franchise pursuant to the terms thereof, provided such company files with the board by such date as the board shall set, an application in such form and containing such information and supporting documentation as the board may require. The board 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 May 24, 1973, shall be given a ten year certificate of confirmation provided such company files with the

board by such date as the board shall set, an application in such form and containing such information and supporting documentation as the board may require, and further provided such companies have commenced substantial construction, indicated by erection of the "head end" and stringing of no less than five miles of trunk and distribution cable, by January 1, 1974.

Subd. 5. Notwithstanding the provisions of subdivision 6, 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 system. Any cable communications company so franchised may exercise its franchise pursuant to the terms thereof, provided such company files with the board an application in such form and containing such information and supporting documentation as the board may require. The board shall issue a certificate of confirmation to such a cable communications company valid for ten years.

Subd. 6. Except as provided in subdivision 3, every cable communications company shall be required to secure a certificate of confirmation from the board before becoming operational. Except as provided in subdivisions 3, 4, 5 and 9, such certificate may be granted after full board proceedings and shall be for a period of ten years. A renewal certificate of confirmation may be issued prior to the expiration of any existing certificate.

Subd. 7. Any renewal of a certificate of confirmation shall be for a period of ten years. A renewal certificate of confirmation may be issued prior to the expiration of any existing certificate.

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 May 24, 1973. No confirmation under this section shall preclude invalidation of any franchise illegally obtained.

Subd. 9. Notwithstanding the provisions of subdivision 6, the board may issue an interim certificate of confirmation after its acceptance of an application in such form and containing such information and supporting documentation as the board may require, such certificate to be valid for not more than five years, to an operating company having a franchise approved by the board to erect a community antenna and establish cable television service for any municipality having a population not greater than 15,000 according to the 1970 federal census; provided that the system shall be constructed and ready for operation by July 1, 1975, in full compliance with all applicable regulations of the federal communications commission and with any special terms or conditions set by the Minnesota board to apply in any individual situation, not subject to chapter 15, to include stipulations regarding minimum channel capacity; extent of two-way capability; means for interconnection; and availability of facilities for public access cablecasting and for local program origination.

[1973 c 568 s 9; 1974 c 506 s 10; 1975 c 271 s 6; 1976 c 249 s 13,14]

238.10 REGIONAL DEVELOPMENT COMMISSIONS. For the purposes of assisting in the implementation of Laws 1973, Chapter 568, 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.

[1973 c 568 s 10]

238.11 CENSORSHIP PROHIBITED. Subdivision 1. The board 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.

[1973 c 568 s 11; 1975 c 271 s 6]

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

[1973 c 568 s 12; 1975 c 271 s 6]

238.13 POLES, DUCTS AND CONDUITS. The board may adopt appropriate 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.

[1973 c 568 s 13; 1974 c 506 s 11; 1975 c 271 s 6; 1976 c 249 s 15]

238.14 APPEALS TO THE BOARD. 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 board 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 board 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 board at its discretion shall hold a hearing upon such appeals, requiring due notice to be given to all interested parties.

If the board approves the action of the municipality it shall issue notice to it to that effect, but if the board 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 board approves the action of the cable communications company it shall issue notice to it to that effect, but if the board 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 board 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 board upon appeal or otherwise, within such reasonable time as it may prescribe, the board may itself revoke such license or perform such act with the same force and effect as if performed by the municipality.

[1973 c 568 s 14; 1975 c 271 s 6]

238.15 FINANCIAL INTEREST OF MEMBERS. No member of the board or person appointed pursuant to section 238.04, subdivision 7 shall be employed by, or shall knowingly have any financial interest in any cable communications company or its subsidiaries, major equipment or programming suppliers, or in any broadcasting company holding an operating license issued by the federal communications commission or its subsidiaries. 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 by or who knowingly have any financial interest in any cable communications company, bidding on such franchise, or the cable communications company granted the franchise, or their subsidiaries, major equipment or program suppliers shall abstain from participation in the franchising of a cable communications company or the administration of such franchise.

[1973 c 568 s 15; 1975 c 271 s 6; 1976 c 249 s 16]

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

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Subd. 2. Any person violating the provisions of Laws 1973, Chapter 568 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.

[1973 c 568 s 16; 1975 c 271 s 6]