

## 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 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 this chapter to oversee development of the cable communications industry in Minnesota; 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 guidance 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.

**History:** 1985 c 285 s 10

## 238.02 DEFINITIONS.

*[For text of subds 1 to 3, see M.S.1984]*

Subd. 4. [Repealed, 1985 c 285 s 54]

*[For text of subds 5 to 13, see M.S.1984]*

Subd. 14. "Core service unit" shall mean the municipality, or, in the case of a joint powers agreement, municipalities, in which a cable communications system first provides service under a lawful franchise and from which the cable communications system extends service into additional areas which are included in the boundaries of a cable service territory.

*[For text of subds 15 and 16, see M.S.1984]*

Subd. 17. **Class A cable systems.** "Class A cable systems" means systems that are located outside of the metropolitan area, are located in a franchise area having a population of 4,000 or fewer persons, and are serving fewer than 1,000 subscribers.

Subd. 18. **Class B cable systems.** "Class B cable systems" means all systems, except those systems meeting the criteria of the class A system, that are located outside of the metropolitan area, are located in a franchise area having a population of fewer than 15,000 persons, and are serving fewer than 3,500 subscribers.

Subd. 19. **Class C cable systems.** "Class C cable systems" means systems that are located in the metropolitan area, or are located in a franchise area having a population of 15,000 or more persons or serving 3,500 or more subscribers.

Subd. 20. **Metropolitan area.** "Metropolitan area" is that area defined under section 473.121, subdivision 2.

**History:** 1985 c 285 s 11-15

## 238.03 APPLICATION.

This chapter applies 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 of this chapter are subject to this chapter although no property has been acquired, business transacted or franchises exercised.

**History:** 1985 c 285 s 16

**238.04** [Repealed, 1985 c 285 s 54]

**238.05** [Repealed, 1985 c 285 s 54]

**238.06** [Repealed, 1985 c 285 s 54]

**238.08 FRANCHISE REQUIREMENT.**

*[For text of subd 1, see M.S.1984]*

Subd. 2. Nothing in this chapter shall be construed to prevent franchise requirements in excess of those prescribed unless such requirement is inconsistent with this chapter.

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 this chapter to the same extent as would any nonpublic cable communications system.

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

*[For text of subd 5, see M.S.1984]*

**History:** 1985 c 285 s 17-19

**238.081 FRANCHISE PROCEDURE.**

Subdivision 1. **Publication.** The franchising authority shall have published once each week for two successive weeks in a newspaper of general circulation in each municipality within the cable service territory, a notice of intent to franchise, requesting applications for the franchise.

Subd. 2. **Required information.** The notice must include at least the following information:

- (1) the name of the municipality making the request;
- (2) the closing date for submission of applications;
- (3) a statement of the application fee, if any, and the method for its submission;
- (4) a statement by the franchising authority of the desired system design and services to be offered;
- (5) a statement by the franchising authority of criteria and priorities against which the applicants for the franchise must be evaluated;
- (6) a statement that applications for the franchise must contain at least the information required by subdivision 4;
- (7) the date, time, and place for the public hearing, to hear proposals from franchise applicants;
- (8) the name, address, and telephone number of the individuals who may be contacted for further information.

Subd. 3. **Other recipients of notice.** In addition to the published notice, the franchising authority shall mail copies of the notice of intent to franchise to any person it has identified as being a potential candidate for the franchise.

Subd. 4. **Contents of franchising proposal.** The franchising authority shall require that proposals for a cable communications franchise be notarized and contain, but not necessarily be limited to, the following information:

- (1) plans for channel capacity, including both the total number of channels capable of being energized in the system and the number of channels to be energized immediately;

(2) a statement of the television and radio broadcast signals for which permission to carry will be requested from the Federal Communications Commission;

(3) a description of the proposed system design and planned operation, including at least the following items:

(i) the general area for location of antennae and the head end, if known;

(ii) the schedule for activating two-way capacity;

(iii) the type of automated services to be provided;

(iv) the number of channels and services to be made available for access cable broadcasting; and

(v) a schedule of charges for facilities and staff assistance for access cable broadcasting;

(4) the terms and conditions under which particular service is to be provided to governmental and educational entities;

(5) a schedule of proposed rates in relation to the services to be provided, and a proposed policy regarding unusual or difficult connection of services;

(6) a time schedule for construction of the entire system with the time sequence for wiring the various parts of the area requested to be served in the request for proposals;

(7) a statement indicating the applicant's qualifications and experience in the cable communications field, if any;

(8) an identification of the municipalities in which the applicant either owns or operates a cable communications system, directly or indirectly, or has outstanding franchises for which no system has been built;

(9) plans for financing the proposed system, which must indicate every significant anticipated source of capital and significant limitations or conditions with respect to the availability of the indicated sources of capital;

(10) a statement of ownership detailing the corporate organization of the applicant, if any, including the names and addresses of officers and directors and the number of shares held by each officer or director, and intracompany relationship including a parent, subsidiary or affiliated company; and

(11) a notation and explanation of omissions or other variations with respect to the requirements of the proposal.

Substantive amendments may not be made in a proposal after a proposal has been submitted to the franchising authority and before award of a franchise.

**Subd. 5. Time limits to submit applications.** The franchising authority shall allow at least 20 days from the first date of published notice to the closing date for submitting applications.

**Subd. 6. Public hearing on franchise.** A public hearing before the franchising authority affording reasonable notice and a reasonable opportunity to be heard with respect to all applications for the franchise must be completed at least seven days before the introduction of the franchise ordinance in the proceedings of the franchising authority.

**Subd. 7. Award of franchise.** Franchises may be awarded only by ordinance.

**Subd. 8. Costs of awarding franchise.** Nothing in this section prohibits a franchising authority from recovering from a successful applicant the reasonable and necessary costs of the entire process of awarding the cable communications franchise.

**Subd. 9. Franchising nonprofit or municipally-owned system.** Nothing contained in this section prohibits a franchising authority from franchising a nonprofit

or municipally-owned system. The municipality or nonprofit entity is considered an applicant for purposes of this section.

Subd. 10. **Franchise; joint powers.** In the cases of municipalities acting in concert, the municipalities may delegate to another entity such duties, responsibilities, privileges, or activities described in this section, if such delegation is proper according to state and local law.

**History:** 1985 c 285 s 20

## **238.082 FRANCHISE AMENDMENTS.**

The franchising authority shall act pursuant to local law pertaining to ordinance amendment procedures.

**History:** 1985 c 285 s 21

## **238.083 SALE OR TRANSFER OF FRANCHISE.**

Subdivision 1. **Fundamental corporate change defined.** For purposes of this section, "fundamental corporate change" means the sale or transfer of a majority of a corporation's assets; merger, including a parent and its subsidiary corporation; consolidation; or creation of a subsidiary corporation.

Subd. 2. **Written approval of franchising authority.** A sale or transfer of a franchise, including a sale or transfer by means of a fundamental corporate change, requires the written approval of the franchising authority. The parties to the sale or transfer of a franchise shall make a written request to the franchising authority for its approval of the sale or transfer. The franchising authority shall reply in writing within 30 days of the request and shall indicate its approval of the request or its determination that a public hearing is necessary if it determines that a sale or transfer of a franchise may adversely affect the company's subscribers. The franchising authority shall conduct a public hearing on the request within 30 days of that determination.

Subd. 3. **Notice of hearing.** Unless otherwise already provided for by local law, notice of the hearing must be given 14 days before the hearing by publishing notice of it once in a newspaper of general circulation in the area being served by the franchise. The notice must contain the date, time, and place of the hearing and must briefly state the substance of the action to be considered by the franchising authority.

Subd. 4. **Approval or denial of sale or transfer request.** Within 30 days after the public hearing, the franchising authority shall approve or deny in writing the sale or transfer request. The approval must not be unreasonably withheld.

Subd. 5. **Sale or transfer of franchise without system.** The parties to the sale or transfer of a franchise only, without the inclusion of a cable communications system in which at least substantial construction has commenced, shall establish that the sale or transfer of only the franchise will be in the public interest.

Subd. 6. **Sale or transfer of stock.** Sale or transfer of stock in a corporation so as to create a new controlling interest in a cable communication system is subject to the requirements of this section.

The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

**History:** 1985 c 285 s 22

**238.084 REQUIRED CONTENTS OF FRANCHISE ORDINANCE.**

Subdivision 1. **All systems.** The following requirements apply to all classes A, B, and C systems unless provided otherwise:

(a) a provision that the franchise complies with the Minnesota franchise standards contained in this section;

(b) a provision requiring the franchisee and the franchising authority to conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective;

(c) a provision limiting the initial and renewal franchise term to not more than 15 years each;

(d) a provision specifying that the franchise is nonexclusive;

(e) a provision prohibiting sale or transfer of the franchise or sale or transfer of stock so as to create a new controlling interest under section 238.083, except at the approval of the franchising authority, which approval must not be unreasonably withheld, and that the sale or transfer is completed pursuant to section 238.083;

(f) a provision granting the franchising authority collecting a franchise fee the authority to audit the franchisee's accounting and financial records upon reasonable notice, and requiring that the franchisee file with the franchising authority annually reports of gross subscriber revenues and other information as the franchising authority deems appropriate;

(g) provisions specifying:

(1) current subscriber charges or that the current charges are available for public inspection in the municipality;

(2) the length and terms of residential subscriber contracts, if they exist, or that the current length and terms of residential subscriber contracts are available for public inspection in the municipality; and

(3) the procedure by which subscriber charges are established, unless such a provision is contrary to state or federal law;

(h) a provision indicating by title the office or officer of the franchising authority that is responsible for the continuing administration of the franchise;

(i) a provision requiring the franchisee to indemnify and hold harmless the franchising authority during the term of the franchise, and to maintain throughout the term of the franchise, liability insurance in an amount as the franchising authority may require insuring both the franchising authority and the franchisee with regard to damages and penalties which they may legally be required to pay as a result of the exercise of the franchise;

(j) a provision that at the time the franchise becomes effective and thereafter until the franchisee has liquidated all of its obligation with the franchising authority, the franchisee shall furnish a performance bond, certificate of deposit, or other type of instrument approved by the franchising authority in an amount as the franchising authority deems to be adequate compensation for damages resulting from the franchisee's nonperformance. The franchising authority may, from year to year and in its sole discretion, reduce the amount of the performance bond or instrument;

(k) a provision that nothing contained in the franchise relieves a person from liability arising out of the failure to exercise reasonable care to avoid injuring the franchisee's facilities while performing work connected with grading, regrading, or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system;

(l) a provision that the franchisee's technical ability, financial condition, and legal qualification were considered and approved by the franchising authority in a full public proceeding that afforded reasonable notice and a reasonable opportunity to be heard;

(m) a provision requiring the construction of a cable system with a channel capacity available for immediate or potential use, equal to a minimum of 72 MHz of bandwidth, the equivalent of 12 television broadcast channels. For purposes of this section, a cable system with a channel capacity, available for immediate or potential use, equal to a minimum of 72 MHz of bandwidth means: the provision of a distribution system designed and constructed so that a minimum of 72 MHz of bandwidth, the equivalent of 12 television broadcast channels, can be put into use with only the addition of the appropriate headend equipment;

(n) a provision in initial franchises that there be a full description of the system proposed for construction and a schedule showing:

(1) that for franchise areas which will be served by a system proposed to have fewer than 100 plant miles of cable:

(i) that within 90 days of the granting of the franchise, the franchisee shall apply for the necessary governmental permits, licenses, certificates, and authorizations;

(ii) that energized trunk cable must be extended substantially throughout the authorized area within one year after receipt of the necessary governmental permits, licenses, certificates, and authorizations and that persons along the route of the energized cable will have individual "drops" as desired during the same period of time; and

(iii) that the requirement of this section may be waived by the franchising authority only upon occurrence of unforeseen events or acts of God; or

(2) that for franchise areas which will be served by a system proposed to have 100 plant miles of cable or more, a provision:

(i) that within 90 days of the granting of the franchise, the franchisee shall apply for the necessary governmental permits, licenses, certificates, and authorizations;

(ii) that engineering and design must be completed within one year after the granting of the franchise and that a significant amount of construction must be completed within one year after the franchisee's receipt of the necessary governmental permits, licenses, certificates, and authorizations;

(iii) that energized trunk cable must be extended substantially throughout the authorized area within five years after commencement of construction and that persons along the route of the energized cable will have individual "drops" within the same period of time, if desired; and

(iv) that the requirement of this section be waived by the franchising authority only upon occurrence of unforeseen events or acts of God;

(o) unless otherwise already provided for by local law, a provision that the franchisee shall obtain a permit from the proper municipal authority before commencing construction of a cable communications system, including the opening or disturbance of a street, sidewalk, driveway, or public place. The provision must specify remedies available to the franchising authority in cases where the franchisee fails to meet the conditions of the permit;

(p) unless otherwise already provided for by local law, a provision that wires, conduits, cable, and other property and facilities of the franchisee be located, constructed, installed, and maintained in compliance with applicable codes. The

provision must also specify that the franchisee keep and maintain its property so as not to unnecessarily interfere with the usual and customary trade, traffic, or travel upon the streets and public places of the franchise area or endanger the life or property of any person;

(q) unless otherwise already provided for by local law, a provision that the franchising authority and the franchisee shall establish a procedure in the franchise for the relocation or removal of the franchisee's wires, conduits, cables, and other property located in the street, right-of-way, or public place whenever the franchising authority undertakes public improvements which affect the cable equipment;

(r) a provision incorporating by reference as a minimum the technical standards promulgated by the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations relating to cable communications systems and found in Code of Federal Regulations, title 47, sections 76.601 to 76.617. The results of tests required by the Federal Communications Commission must be filed within ten days of the conduct of the tests with the franchising authority;

(s) a provision establishing how the franchising authority and the cable communications company shall determine who is to bear the costs of required special testing;

(t) a provision pertaining to the franchisee's construction and maintenance of a cable communications system having the technical capacity for nonvoice return communications which, for purposes of this section, means the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary nonvoice communications electronic modules.

In cases where an initial franchise is granted, the franchisee shall provide a cable communications system having the technical capacity for nonvoice return communications.

When a franchise is renewed, sold, or transferred and is served by a system that does not have the technical capacity for nonvoice return communications, the franchising authority shall determine when and if the technical capacity for nonvoice return communications is needed after appropriate public proceedings at the municipal level giving reasonable notice and a reasonable opportunity to be heard;

(u) a provision stating that no signals of a class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for permission must be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one year which is renewable at the option of the subscriber. No penalty may be invoked for a subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the subscriber without penalty of any kind. The permission must be required for each type or classification of class IV cable communications activity planned for the purpose;

(1) No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of the subscribers or lists that identify the viewing habits of subscribers, may be sold or otherwise made available to any party other than to the company and its employees for internal business use, or to the subscriber who is the subject of that information, unless the company has received specific written authorization from the subscriber to make the data available;



(2) Written permission from the subscriber must not be required for the systems conducting systemwide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to clause (1);

(3) For purposes of this provision, a "class IV cable communications channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the communications system;

(v) a provision specifying the procedure for the investigation and resolution by the franchisee of complaints regarding quality of service, equipment malfunction, billing disputes, and other matters;

(w) a provision requiring that at least a toll-free or collect telephone number for the reception of complaints be provided to the subscriber and that the franchisee maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. The provision must also state who will bear the costs included in making these repairs, adjustments, or installations;

(x) a provision granting the franchising authority the right to terminate and cancel the franchise and the rights and privileges of the franchise if the franchisee substantially violates a provision of the franchise ordinance, attempts to evade the provisions of the franchise ordinance, or practices fraud or deceit upon the franchising authority.

The municipality shall provide the franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the franchisee a minimum of 30 days after service of the notice in which to correct the violation.

The franchisee must be provided with an opportunity to be heard at a public hearing before the governing body of the municipality before the termination of the franchise;

(y) a provision that no cable communications company, notwithstanding any provision in a franchise, may abandon a cable communications service or a portion of it without having given three months prior written notice to the franchising authority. No cable communications company may abandon a cable communications service or a portion of it without compensating the franchising authority for damages resulting to it from the abandonment;

(z) a provision requiring that upon termination or forfeiture of a franchise, the franchisee remove its cable, wires, and appliances from the streets, alleys, and other public places within the franchise area if the franchising authority so requests, and a procedure to be followed in the event the franchisee fails to remove its cable, wires, and appliances from the streets, alleys, and other public places within the franchise area;

(aa) a provision that when a franchise or cable system is offered for sale, the franchising authority shall have the right to purchase the system;

(bb) a provision establishing the minimum number of access channels that the franchisee shall make available. This provision must require that the franchisee shall provide to each of its subscribers who receive some or all of the services offered on the system, reception on at least one specially designated access channel. The specially designated access channel may be used by local educational authorities and local government on a first-come, first-served, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the local educational authorities or local government, the franchisee shall lease time to

commercial or noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for that time arises. The franchisee may also use this specially designated access channel for local origination during those hours when the channel is not in use by local educational authorities, local government, or commercial or noncommercial users who have leased time. The VHF spectrum must be used for the specially designated access channel required in this paragraph.

The provision must also require that the franchisee shall establish rules for the administration of the specially designated access channel.

Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers.

**Subd. 2. Required provisions for class B system.** Franchises for class B cable systems must contain statements and provisions consistent with subdivision 1, unless hereafter provided otherwise, and statements and provisions consistent with the following requirements:

(a) a provision establishing the minimum number of access channels that the franchisee shall make available. Franchisees subject to this provision are not subject to subdivision 1, paragraph (bb).

(1) The provision must require that the franchisee provide to each of its subscribers who receive all or a part of the total services offered on the system, reception on at least one specially designated access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis. Channel time and playback of prerecorded programming on this specially designated access channel must be provided without charge to the general public, except that personnel, equipment, and production costs may be assessed for live studio presentations exceeding five minutes in length. Charges for production costs must be consistent with the goal of affording the public a low-cost means of television access. The specially designated access channel may be used by local education authorities and local government on a first-come, first-served, nondiscriminatory basis during those hours when the channel is not in use by the general public. During those hours that the specially designated access channel is not being used by the general public, local educational authorities, or local government, the franchisee shall lease time to commercial or noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for that time arises. The franchisee may also use this specially designated access channel for local origination during those hours when the channel is not in use by the general public, local educational authorities, local government, or commercial or noncommercial users who have leased time. The VHF spectrum must be used for the specially designated access channel required in this paragraph.

(2) The provision must also require that the franchisee establish rules for the administration of the specially designated access channel.

(3) The provision must require that whenever the specially designated access channel required in clause (1) is in use during 80 percent of the weekdays, Monday to Friday, for 80 percent of the time during a consecutive three-hour period for six weeks running, and there is a demand for use of an additional channel for the same purpose, the franchisee has six months in which to provide a new specially designated access channel for the same purpose, provided that provision of the additional channel or channels does not require the cable system to install converters. Nothing in this section precludes the installation of converters by the system on a voluntary basis, as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

(4) Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers.

(b) A provision establishing the minimum equipment that the franchisee shall make available for public use. The provision shall require that the franchisee make readily available for public use upon need being shown, at least the minimal equipment necessary to perform good quality playback of prerecorded programming, and to make it possible to record programs at remote locations with battery-operated portable equipment. Need within the meaning of this section must be determined by subscriber petition. The petition must contain the signatures of at least ten percent of the subscribers of the system, but in no case more than 350 nor fewer than 100 signatures.

**Subd. 3. Required provisions for class C system.** Franchises for class C cable systems must contain statements and provisions consistent with subdivision 1, unless this section provides otherwise, and statements and provisions consistent with the following requirements:

(a) a provision establishing the minimum number of public, educational, governmental, and leased access channels that the franchisee shall make available. Franchisees subject to this provision are not subject to subdivision 1, paragraph (bb).

(1) The provision must require that the franchisee shall, to the extent of the system's available channel capacity, provide to each of its subscribers who receives some or all of the services offered on the system, reception on at least one specially designated noncommercial public access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel available for local government use; and at least one specially designated access channel available for lease on a first-come, first-served, nondiscriminatory basis by commercial and noncommercial users. The VHF spectrum must be used for at least one of the specially designated noncommercial public access channels required in this paragraph. The provision must require that no charges may be made for channel time or playback of prerecorded programming on at least one of the specially designated noncommercial public access channels required by this paragraph. Personnel, equipment, and production costs may be assessed, however, for live studio presentations exceeding five minutes in length. Charges for those production costs and fees for use of other public access channels must be consistent with the goal of affording the public a low-cost means of television access.

(2) The provision must require that whenever the specially designated noncommercial public access channel, the specially designated education access channel, the specially designated local government access channel, or the specially designated leased access channel required in clause (1) is in use during 80 percent of the weekdays, Monday to Friday, for 80 percent of the time during any consecutive three-hour period for six weeks running, and there is demand for use of an additional channel for the same purpose, the franchisee shall then have six months in which to provide a new specially designated access channel for the same purpose, provided that provision of the additional channel or channels must not require the cable system to install converters. However, nothing in this section precludes the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

(3) The provision must also require that the franchisee establish rules pertaining to the administration of the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel required in this section.

(4) Those systems which offer subscribers the option of receiving programs on one or more special service channels without also receiving the regular subscriber services may comply with this section by providing the subscribers who receive the special service only, at least one specially designated composite access channel composed of the programming on the specially designated noncommercial public access channel, the specially designated education access channel, and the specially designated local government access channel required in this section.

(5) On those systems without sufficient available channel capacity to allow for activation of all specially designated access channels required in this section, or when demand for use of the channels does not warrant activation of all specially designated access channels required in this section, public, educational, governmental, and leased access channel programming may be combined on one or more cable channels. To the extent time is available, access channels may also be used for other broadcast and nonbroadcast services, provided that these services are subject to immediate displacement if there is demand to use the channel for its specially designated purpose. The system shall, in any case, provide at least one full channel on the VHF spectrum for shared access programming.

(6) Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers.

(b) a provision establishing the minimum equipment that the franchisee shall make available for public use. The provision shall require that the franchisee shall make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the specially designated noncommercial public access channel required by paragraph (a), clause (1). The franchisee shall also make readily available, upon need being shown, the minimum equipment necessary to make it possible to record programs at remote locations with battery-operated portable equipment. Need within the meaning of this section must be determined by subscriber petition. The petition must contain the signatures of at least ten percent of the subscribers of the system, but in no case more than 500 nor fewer than 100 signatures.

(c) a provision establishing the minimum systemwide channel capacity that the franchisee shall make available. Franchisees subject to the requirement of this provision are not subject to the requirements of subdivision 1, paragraph (bb).

(1) The provision must require the construction of a cable system with a channel capacity, available for immediate or potential use, equal to a minimum of 120 MHz of bandwidth, the equivalent of 20 television broadcast channels.

(2) Systems that are already constructed pursuant to a preexisting franchise requiring fewer than 120 MHz of bandwidth, the equivalent of fewer than 20 television broadcast channels, shall have until June 21, 1986, to increase the system's channel capacity to a minimum of 120 MHz of bandwidth. However, nothing in this section precludes the parties to a franchise from negotiating an agreement calling for an increase to a minimum of 120 MHz of bandwidth before June 21, 1986.

(3) For purposes of this section, a cable system with a channel capacity, available for immediate or potential use, equal to a minimum of 120 MHz of bandwidth means: the provision of a distribution system designed and constructed

so that a minimum of 120 MHz of bandwidth, the equivalent of 20 television broadcast channels, can be put into use with only the addition of the appropriate headend and subscriber terminal equipment.

(d) In Twin Cities metropolitan area franchises, a provision designating the standard VHF channel 6 for uniform regional channel usage as required in section 238.43.

**Subd. 4. Additional terms and conditions permitted.** A franchise may contain additional terms and conditions as the municipality and the franchisee deem appropriate, provided the additional terms and conditions are consistent with federal and state law.

**Subd. 5. Reclassification of systems.** A franchise must be amended by the franchising authority when the number of subscribers served by the cable communications system in the franchise area changes so as to result in reclassification of the system under this section. Amendments must include provisions consistent with the requirements of that class of cable communications systems.

**History:** 1985 c 285 s 23

## **238.085 COMMISSIONER OF COMMERCE.**

**Subdivision 1. Documentation to the commissioner of commerce.** Upon the granting of a franchise, the extension of a franchise for a term, the renewal of a franchise, or the sale or transfer of a franchise, the franchising authority and the franchisee shall submit documentation to the commissioner of commerce certifying that the franchise and the process followed conform to this chapter, to the extent that these sections are not inconsistent with federal law.

**Subd. 2. Actions by commissioner.** (a) Within 30 days of receipt of the certificate, the commissioner of commerce shall:

- (1) approve the certificate;
- (2) disapprove the certificate, indicating in writing to the applicants why the franchise or the process does not conform to this chapter; or
- (3) request that the applicants provide additional information within 30 days of the receipt of the request.

(b) If the commissioner of commerce fails to act within 30 days of receiving a certificate or the requested additional documentation, the certificate is approved. If the commissioner of commerce fails to issue a final approval or disapproval within 180 days of the initial receipt of a certificate, the certificate is approved.

**Subd. 3. When certificate disapproved.** If the certificate is disapproved, the applicants may either (1) take the steps as may be necessary to bring the franchise or the process into conformance and reapply to the commissioner of commerce, or (2) within 30 days of receiving the disapproval appeal the decision to the Minnesota court of appeals.

**Subd. 4. Operation continues during review or appeal.** While the commissioner of commerce is reviewing a certificate concerning a franchise extension or renewal and during an appeal of the commissioner of commerce's decision, the franchisee must be allowed to continue the operation of the affected cable system.

**Subd. 5. Rights under other law.** Nothing in this section prohibits a franchisee from exercising its legal rights under federal or state law upon the denial by a franchising authority of an extension, renewal, transfer, or sale of a franchise.

**History:** 1985 c 285 s 24

**238.09** [Repealed, 1985 c 285 s 54]

**238.10** [Repealed, 1985 c 285 s 54]

### **238.11 CENSORSHIP PROHIBITED.**

Subdivision 1. [Repealed, 1985 c 285 s 54]

Subd. 2. No cable communications company may prohibit or limit a program or class or type of program presented over a leased channel or a channel made available for public access, governmental or educational purposes. Neither the cable communications company nor the officers, directors, or employees of the cable communications system is liable for any penalties or damages arising from programming content not originating from or produced by the cable communications company and shown on any public access channel, education access channel, government access channel, leased access channel, or regional channel.

**History:** 1985 c 285 s 25

### **238.12 RATES.**

*[For text of subd 1a, see M.S.1984]*

Subd. 3. [Repealed, 1985 c 285 s 54]

**238.13** [Repealed, 1985 c 285 s 54]

**238.14** [Repealed, 1985 c 285 s 54]

### **238.15 FINANCIAL INTEREST OF MEMBERS.**

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.

**History:** 1985 c 285 s 26

### **238.16 FINES AND PENALTIES.**

Subdivision 1. [Repealed, 1985 c 285 s 54]

Subd. 2. Any person violating the provisions of this chapter 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.

**History:** 1985 c 285 s 27

### **238.17 PROVISION OF SERVICE TO EXTENSION AREAS.**

Subdivision 1. **Conditions for extensions.** Notwithstanding the provisions of any other law to the contrary, a cable communications system may extend or provide service outside the boundaries of a core service unit if the cable communications system obtains an extension permit issued by the municipality or municipalities which have jurisdiction over the extension area.

*[For text of subds 2 to 4, see M.S.1984]*

Subd. 5. **Excess extension permits.** Nothing in this section shall be construed to prevent a municipality having jurisdiction over an extension area from prescribing extension permit requirements which are in excess of those required by this section, unless such requirements are inconsistent with this chapter.

Subd. 6. [Repealed, 1985 c 285 s 54]

Subd. 7. [Repealed, 1985 c 285 s 54]

Subd. 8. [Repealed, 1985 c 285 s 54]

**History:** 1985 c 285 s 28,29

## 238.22 DEFINITIONS.

*[For text of subds 1 to 6, see M.S.1984]*

Subd. 7. **Alternative providers.** "Alternative providers" means other providers of television programming or cable communications services.

Subd. 8. **Association member.** "Association member" means an individual owner of a cooperatively owned multiple dwelling complex.

Subd. 9. **Other providers of television programming or cable communications services.** "Other providers of television programming or cable communications services" means operators of master antenna television systems (MATV), satellite master antenna television systems (SMATV), multipoint distributions systems (MDS), and direct broadcast satellite systems (DBS).

**History:** 1985 c 285 s 30-32

## 238.24 CONDITIONS FOR ACCESS.

*[For text of subds 1 to 9, see M.S.1984]*

Subd. 10. **Channel capacity.** (a) A property owner must provide access by a franchised cable communications company, as required under section 238.23, only if that cable company installs equipment with channel capacity sufficient to provide access to other providers of television programming or cable communications services so that residents or association members have a choice of alternative providers of those services. If the equipment is installed, the cable communications company shall allow alternative providers to use the equipment. If some of the residents or association members choose to subscribe to the services of an alternative provider, the cable company that installed the equipment shall be reimbursed by the other providers for the cost of equipment and installation on the property on a pro rata basis which reflects the number of subscribers of each provider on that property to the total number of subscribers on that property. In determining the pro rata amount of reimbursement by any alternative provider, the cost of equipment and installation shall be reduced to the extent of cumulative depreciation of that equipment at the time the alternative provider begins providing service.

(b) If equipment is already installed as of June 15, 1983 with channel capacity sufficient to allow access to alternative providers, the access and pro rata reimbursement provisions of paragraph (a) apply.

**History:** 1985 c 285 s 33

## 238.241 CONDITIONS FOR ACCESS BY ALTERNATIVE PROVIDERS.

Subdivision 1. **Channel capacity.** Cable companies granted access to a multiple dwelling complex under section 238.25 shall provide equipment with sufficient

channel capacity to be used by alternative providers of television programming or cable communications services.

**Subd. 2. Technical plan approval.** The cable communications company shall determine the technical plan best suited for providing the necessary channel capacity sufficient to allow access to other providers. The plan must be submitted to the property owner for approval. The owner's approval may not be unreasonably withheld. No additional compensation for evaluation of the plan may be paid or given to the property owner over and above that permitted under section 238.24, subdivision 8.

**Subd. 3. Duplicate connections.** The cable communications company is not required to provide equipment for connecting more than one television receiver in one dwelling unit within the multiple dwelling complex. However, the company may provide duplicate connections at its discretion.

**History:** 1985 c 285 s 34

## 238.242 REIMBURSEMENT.

**Subdivision 1. Providing alternative service.** Other providers of television programming or cable communications services shall notify the cable communications company when a resident or association member occupying a dwelling unit in a multiple dwelling complex requests the services provided for by this section or section 238.241. After reaching agreement with the alternative service provider for reimbursement to be paid for use of the equipment, the cable communications company shall make available the equipment necessary to provide the alternative service without unreasonable delay.

**Subd. 2. Reimbursement determination.** The amount to be reimbursed must be determined under section 238.24, subdivision 10. The reimbursed amount must be paid in one installment for each instance of requested use. The payment may not be refunded upon subscriber cancellation of the alternative service.

**Subd. 3. Financial records made available.** The cable communications company, upon written request, shall make available to the alternative provider financial records supporting the reimbursement cost requested.

**History:** 1985 c 285 s 35

## 238.36 DEFINITIONS.

**Subdivision 1. Scope.** As used in sections 238.36 to 238.42, the following terms have the meanings given them unless a different meaning clearly appears in the text.

**Subd. 2. Cable communications company's equipment.** "Cable communications company's equipment" means aerial wires, cables, amplifiers, associated power supply equipment, and other transmission apparatus necessary for the proper operation of the cable communications system in a franchised area.

**Subd. 3. Conduit system.** "Conduit system" means a reinforced passage or opening in, on, under, or through the ground capable of containing communications facilities and includes the following: main conduit; underground dips and short sections of conduit under roadways, driveways, parking lots, and similar conduit installations; laterals to poles and into buildings; ducts; and manholes.

**Subd. 4. Public utility company poles.** "Public utility company poles" means poles owned by the public utility and poles owned by others on which the public



utility has the right to permit others to attach in the communications space on the pole.

**History:** 1985 c 285 s 36

### **238.37 SCOPE.**

Sections 238.36 to 238.42 only apply to pole, duct, and conduit agreements entered into or renewed between public utilities and cable communications companies on or after January 1, 1976, and have no application to those agreements executed before January 1, 1976, until those agreements are either renewed or substantially renegotiated. If a public utility company and a cable communications company enter into an agreement regarding only pole attachments, sections 238.36 to 238.42 relating to conduit systems are applicable to that agreement and if a public utility company and a cable communications company enter into an agreement regarding only use of a conduit system, sections 238.36 to 238.42 relating to pole attachments are not applicable to that agreement.

**History:** 1985 c 285 s 37

### **238.38 PERMITS.**

Every pole, duct, and conduit agreement must contain a provision that before attaching to the public utility company's poles or occupying any part of the public utility's conduit system, the cable communications company shall apply and receive a permit for that purpose on a form provided by the public utility company. If the cable communications company accepts the permit, it may attach its equipment to the poles covered by the permit or occupy the conduit system of the public utility to the extent authorized by the permit, subject to sections 238.36 to 238.42 and the terms of the agreement between the contracting parties. In granting or denying a permit, the public utility has the right to determine whether a grant of a permit would adversely affect its public services, duties, and obligations or have an adverse effect on the economy, safety, and future needs of the public utility.

**History:** 1985 c 285 s 38

### **238.39 LEGAL AUTHORITY.**

Every pole, duct, and conduit agreement must contain a provision that the cable communications company shall submit to the public utility company evidence of the cable communications company's lawful authority to place, maintain, and operate its facilities within public streets, highways, and other thoroughfares and shall secure the legally necessary permits and consents from federal, state, county, and municipal authorities to construct, maintain, and operate facilities at the locations of poles or conduit systems of the public utility company which it uses. The parties to the agreement shall at all times observe and comply with, and the provisions of a pole, duct, and conduit agreement are subject to, the laws, ordinances, and rules which in any manner affect the rights and obligations of the parties to the agreement, so long as the laws, ordinances, or rules remain in effect.

**History:** 1985 c 285 s 39

### **238.40 LIABILITY.**

Every pole, duct, and conduit agreement must contain a provision that the cable communications company shall defend, indemnify, protect, and save harmless the public utility from and against any and all claims and demands for damages to property and injury or death to persons, including payments made under any

worker's compensation law or under any plan for employees' disability and death benefits, which may arise out of or be caused by the erection, maintenance, presence, use, or removal of the cable communications company's cable, equipment, and facilities or by the proximity of the cables, equipment, and facilities of the parties to the agreement, or by any act of the cable communications company on or in the vicinity of the public utility company's poles and conduit system, in the performance of the agreement. Nothing contained in this section relieves the public utility company from liability for the negligence of the public utility company or anyone acting under its direction and control. The cable communications company shall also indemnify, protect, and save harmless the public utility from any and all claims and demands which arise directly or indirectly from the operation of the cable communications company's facilities including taxes, special charges by others, claims, and demands for damages or loss for infringement of copyright, for libel and slander, for unauthorized use of television broadcast programs, and for unauthorized use of other program material, and from and against all claims and demands for infringement of patents with respect to the manufacture, use, and operation of the cable communications equipment in combination with the public utility company's poles, conduit system, or otherwise. Nothing contained in this section relieves the public utility company from liability for the negligence of the public utility company or anyone acting under its direction and control.

**History:** 1985 c 285 s 40

#### 238.41 INSURANCE.

The cable communications company shall carry insurance to protect the parties to the agreement from and against any and all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly, from or by reason of the loss, injury, claim, or damage. The amount of the insurance must be agreed to by the parties to this agreement. The cable communications company shall also carry insurance to protect it from all claims under workers' compensation laws in effect that may be applicable to it. Insurance required must remain in effect for the entire term of the agreement.

**History:** 1985 c 285 s 41

#### 238.42 ADDITIONAL TERMS.

Nothing contained in sections 238.36 to 238.42 in any way prohibits a public utility company from including in its pole, duct, and conduit agreements with cable communications companies additional terms which do not conflict with sections 238.36 to 238.42.

**History:** 1985 c 285 s 42

#### 238.43 REGIONAL CHANNEL.

**Subdivision 1. Definition.** For the purposes of this section "regional channel entity" means an independent, nonprofit corporation to govern the operation of the regional channel.

**Subd. 2. Legislative purpose.** The purpose of this section is to facilitate the activation of a metropolitan area interconnected regional channel, to be uniformly carried on VHF channel 6 on cable communications systems operating in the metropolitan area in order to provide a broad range of informational, educational, and public service programs and materials to metropolitan area cable subscribers.

Subd. 3. **VHF channel 6.** Franchises for cable communications systems franchised in whole or in part within the metropolitan area shall contain a provision designating the standard VHF channel 6 for uniform regional channel usage; provided, however, that until the regional channel becomes operational, the designated VHF channel 6 may be utilized by the cable communications company as it deems appropriate. The designated regional channel may be combined with the government access channel until such time as the video programming usage of the government access channel expands to such point as it is in use during 80 percent of the time between 8:00 a.m. and 10:00 p.m. during any consecutive six-week period. Use of time on the regional channel must be made available without charge.

Subd. 4. **Use.** The regional channel will provide a broad range of informational, educational, and public service programs and materials to metropolitan area cable subscribers.

Subd. 5. **Regional channel entity.** The cable communications board may designate a regional channel entity prior to July 1, 1985. If the cable communications board does not designate an entity by June 30, 1985, the metropolitan council shall appoint the governing body of the regional channel entity which must consist of 15 members appointed to three-year terms. In making the initial appointments the metropolitan council shall designate one-third of the appointees to serve one-year terms, one-third to serve two-year terms, and one-third to serve three-year terms. In the case of a vacancy the council shall appoint a person to fill the vacancy for the remainder of the unexpired term. The metropolitan council shall name three appointees from the recommendations received from the association of metropolitan municipalities and three from the recommendations received from the cable communications companies operating in the metropolitan area.

Subd. 6. **Regional channel operator.** The regional channel entity may operate the regional channel or designate the operator of the regional channel. In the event the regional channel entity designates the operator of the regional channel, the designation must be for an initial period not exceeding three years. Before the expiration of the three-year period, the regional channel entity shall review its designation and consider renewal for a term not exceeding three years. Nothing in this section creates any right to renewal for the operator designated by the regional channel entity.

**History:** 1985 c 285 s 43