

**238.40 LIABILITY; INDEMNIFY PUBLIC UTILITY.**

(a) Every pole, duct, and conduit agreement must contain a provision that the cable communications system 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:

(1) by the erection, maintenance, presence, use, or removal of the cable communications system's cable, equipment, and facilities or by the proximity of the cables, equipment, and facilities of the parties to the agreement; or

(2) by any act of the cable communications system 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.

(b) The cable communications system shall also indemnify, protect, and save harmless the public utility:

(1) from any and all claims and demands that arise directly or indirectly from the operation of the cable communications system's facilities including taxes, special charges by others, claims, and demands (i) for damages or loss for infringement of copyright, (ii) for libel and slander, (iii) for unauthorized use of television broadcast programs, and (iv) for unauthorized use of other program material; and

(2) 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.

(c) 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; 2004 c 261 art 7 s 26