238.084 REQUIRED CONTENTS OF FRANCHISE ORDINANCE.

Subdivision 1. **All systems.** The following requirements apply to all cable communications systems unless provided otherwise:

(a) a provision that the franchise shall comply 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 must be 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 conditioned 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 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 that 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 in initial franchises identifying the system capacity and technical design and a schedule showing:

(1) that construction of the cable communications system must commence no later than 240 days after the granting of the franchise;

(2) that construction of the cable communications system must proceed at a reasonable rate of not less than 50 plant miles constructed per year of the franchise term;

(3) that construction throughout the authorized franchise area must be substantially completed within five years of the granting of the franchise; and

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

(n) 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;

(o) 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;

(p) 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 that affect the cable equipment;

(q) 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;

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

(s) 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;

(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 person 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;

(t) 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;

(u) 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 shall maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. A provision must also state who will bear the costs included in making these repairs, adjustments, or installations;

(v) 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;

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

(x) a provision requiring that upon termination or forfeiture of a franchise, unless otherwise required by applicable law, the franchisee shall 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;

(y) a provision that when a franchise or cable system is to be transferred or sold, the franchising authority has the right to purchase the system;

(z) 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 provision may require the franchisee to provide separate public access channels available for use by the general public on a first-come, first-served, nondiscriminatory basis; local educational access channels; local governmental access channels; and channels available for lease on a first-come, first-served, nondiscriminatory basis by commercial and noncommercial users. The provision may require that whenever the specially designated access channel required by this paragraph is in use during 80 percent of the weekdays, Monday through 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, the provision of the additional channel or channels does not require the cable system to install converters. The VHF spectrum must be used for one of the public, educational, or governmental specially designated access channels required in this paragraph. The provision must also require that the franchisee shall establish rules for the administration of the specially designated access channel, unless such channel is administered by a municipality;

(aa) a provision specifying the minimum equipment that the franchisee shall make available for public use. The provision may require the franchisee to make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the access channels. The provision may require that, upon request, the franchisee, at minimum, shall also make readily available the minimum equipment necessary to make it possible to record programs at remote locations with battery-operated portable equipment; and

(bb) for a franchise in the metropolitan area, as defined in section 473.121, a provision designating the standard VHF channel 6 for uniform regional channel usage as required in sections 238.02, subdivision 31c, and 238.43.

Subd. 2. [Repealed, 2004 c 261 art 7 s 29]

Subd. 3. [Repealed, 2004 c 261 art 7 s 29]

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. [Repealed, 2004 c 261 art 7 s 29]

History: *1985 c 285 s 23; 2004 c 261 art 7 s 8,28*