

## CHAPTER 238

### CABLE COMMUNICATIONS

238.02	DEFINITIONS.	238.24	CONDITIONS FOR ACCESS.
238.03	APPLICABILITY.	238.241	CONDITIONS FOR ACCESS BY ALTERNATIVE PROVIDER.
238.08	FRANCHISE REQUIREMENT.	238.242	REIMBURSEMENT.
238.081	FRANCHISE PROCEDURE.	238.25	PROCEDURE.
238.083	SALE OR TRANSFER OF FRANCHISE.	238.26	SUBSEQUENT TAKING.
238.084	REQUIRED CONTENTS OF FRANCHISE ORDINANCE.	238.27	INTERFERENCE WITH FACILITIES.
238.086	FRANCHISE HOLDER EXEMPTION.	238.35	USE OF EXISTING EASEMENT; RESTRICTIONS.
238.11	CENSORSHIP PROHIBITED.	238.37	SCOPE; POLE, DUCT, AND CONDUIT AGREEMENTS.
238.115	CABLE PROVIDER COMPLAINTS.	238.38	PERMIT TO ATTACH TO POLE OR CONDUIT SYSTEM.
238.15	FINANCIAL INTEREST OF MEMBER.	238.39	LEGAL AUTHORITY.
238.16	GROSS MISDEMEANOR.	238.40	LIABILITY; INDEMNIFY PUBLIC UTILITY.
238.17	SERVICE TO EXTENSION AREA.	238.41	INSURANCE.
238.18	UNFAIR PREFERENCE.	238.42	ADDITIONAL CONTRACT TERMS.
238.22	DEFINITIONS.	238.43	REGIONAL CHANNEL.
238.23	ACCESS REQUIRED.		

**238.01** [Repealed, 2004 c 261 art 7 s 29]

#### **238.02 DEFINITIONS.**

Subdivision 1. **Scope.** The words and phrases used in this chapter have the following meanings unless a different meaning clearly appears in the text.

Subd. 1a. **Access.** "Access" means entrance onto the premises of the property owner and an easement for purposes of surveying, designing, installing, inspecting, maintaining, operating, repairing, replacing, or removing equipment used in the construction and operation of a cable communications system.

Subd. 1b. **Affiliated company.** "Affiliated company" means a person, company, corporation, or other entity in which the utility has an affiliated interest as defined under section 216B.48, subdivision 1.

Subd. 1c. **Alternative providers.** "Alternative providers" means other providers of television programming or cable communications services.

Subd. 1d. **Association member.** "Association member" means an individual owner of a cooperatively owned multiple dwelling complex.

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 [Repealed, 2004 c 261 art 7 s 29]

Subd. 3. **Cable communications system.** (a) "Cable communications system" means a system that (1) provides the service of receiving and amplifying (i) programs broadcast by one or more television or radio stations and (ii) other programs originated by a person operating a cable communications system or by another person, and (2) distributes those programs by wire, cable, microwave, or other means, regardless of whether the means are owned or leased, to persons who subscribe to the service.

(b) This definition does not include:

(1) a system that serves fewer than 50 subscribers or a system that serves more than 50 but fewer than 1,000 subscribers if the governing bodies of all political subdivisions served by the system, vote, by resolution, to remove the system from the provisions of this chapter; provided that:

(i) no part of a system, nor any area within the municipality served by the system, may be removed from the provisions of this chapter if more than 1,000 subscribers are served by the system; and

(ii) any system serving more than 50 but fewer than 1,000 subscribers that has been removed from the provisions of this chapter becomes subject to the provisions of this chapter if the governing bodies of 50 percent or more of the political subdivisions served by the system vote, by resolution, in favor of the return;

(2) a master antenna television system;

(3) a specialized closed-circuit system that does not use the public rights-of-way for the construction of its physical plant; and

(4) a translator system that receives and rebroadcasts over-the-air signals.

Subd. 3a. **Cable communications system's equipment.** "Cable communications system'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. 4. [Repealed, 1985 c 285 s 54]

Subd. 5. [Renumbered subd 24]

Subd. 6. [Renumbered subd 25]

Subd. 7. [Renumbered subd 27]

Subd. 8. [Renumbered subd 29]

Subd. 9. [Renumbered subd 32]

Subd. 10. [Renumbered subd 33]

Subd. 11. [Renumbered subd 30]

Subd. 12. [Renumbered subd 31]

Subd. 13. [Renumbered subd 26]

Subd. 14. [Renumbered subd 21]

Subd. 15. [Renumbered subd 22]

Subd. 16. [Renumbered subd 23]

Subd. 17. [Repealed, 2004 c 261 art 7 s 29]

Subd. 18. [Repealed, 2004 c 261 art 7 s 29]

Subd. 19. [Repealed, 2004 c 261 art 7 s 29]

Subd. 20. [Renumbered subd 28]

Subd. 20a. **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. 21. **Core service unit.** "Core service unit" means 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.

Subd. 21a. **Dwelling unit.** "Dwelling unit" means a single unit providing complete, independent, living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Subd. 22. **Extension area.** "Extension area" means a municipality or municipalities located outside the franchise boundaries of the core service unit.

Subd. 23. **Extension permit.** "Extension permit" means any authorization granted by an extension area in the form of a franchise, privilege, permit, license or other municipal authorization to construct, operate, maintain, or manage a cable communications system within the boundaries of the extension area.

Subd. 24. **Franchise.** "Franchise" means 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. 25. [Repealed, 2004 c 261 art 7 s 29]

Subd. 26. **Head end.** "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.

Subd. 27. **Master antenna television system.** "Master antenna television system" means 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. 28. **Metropolitan area.** "Metropolitan area" is that area defined under section 473.121, subdivision 2.

Subd. 28a. **Multiple dwelling complex.** "Multiple dwelling complex" means a site, lot, field, or tract of land or water, other than a common interest community or mobile home park, whether occupied or under construction, containing more than four dwelling units.

Subd. 29. **Municipality.** "Municipality" means any organized town, city, or county with respect to the unorganized territory within its boundaries.

Subd. 29a. **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).

Subd. 30. **Person.** "Person" means any individual, trustee, partnership, municipality, association, corporation or other legal entity.

Subd. 31. **Program.** "Program" means any broadcast-type program, signal, message, graphics, data, or communication content service.

Subd. 31a. **Property owner.** "Property owner" means any person with a recorded interest in a multiple dwelling complex, or person known to the person operating a cable communications system to be an owner, or the authorized agent of the person.

Subd. 31b. **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.

Subd. 31c. **Regional channel entity or entity.** "Regional channel entity" or "entity" means an independent, nonprofit corporation to govern the operation of the regional channel.

Subd. 31d. **Resident.** "Resident" means a person or entity paying rent to a property owner.

Subd. 32. **State.** "State" means the state of Minnesota.

Subd. 33. **State agency.** "State agency" means any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of the state.

Subd. 34. **Utility.** "Utility" means a person, corporation, or other entity that operates, maintains, or controls equipment or facilities in this state for furnishing at retail electric service to the public.

**History:** 1973 c 568 s 2; 1974 c 506 s 1,2; 1975 c 271 s 6; 1976 c 249 s 1; 1978 c 771 s 1-3; 1980 c 509 s 86,87; 1982 c 514 s 11; 1982 c 515 s 1; 1983 c 329 s 2,3; 1985 c 285 s 11-15,30-32,36,43; 1988 c 568 s 1,3; 1999 c 11 art 3 s 7; 2004 c 261 art 7 s 1,11,24,27,28

### 238.03 APPLICABILITY.

This chapter applies to every cable communications system, as defined in section 238.02, operating within the state, including a cable communications system comprised in whole or in part of facilities subject to regulation under chapter 237. 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:** 1973 c 568 s 3; 1980 c 509 s 88; 1982 c 514 s 12; 1985 c 285 s 16; 2004 c 261 art 7 s 2

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

Subd. 2. [Repealed, 1985 c 285 s 54]

Subd. 2a. [Repealed, 1985 c 285 s 54]

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

Subd. 4. [Repealed, 1976 c 134 s 79; 1985 c 285 s 54]

Subd. 5. [Repealed, 1976 c 134 s 79; 1985 c 285 s 54]

Subd. 5a. [Repealed, 1985 c 285 s 54]

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

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

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

Subd. 9. [Repealed, 1985 c 285 s 54]

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

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

**238.07** [Repealed, 1984 c 525 s 4]

### **238.08 FRANCHISE REQUIREMENT.**

Subdivision 1. **Requirement; conditions.** (a) A municipality shall require a franchise or extension permit of any cable communications system providing service within the municipality.

(b) No municipality shall grant an additional franchise for cable service for an area included in an existing franchise on terms and conditions more favorable or less burdensome than those in the existing franchise pertaining to: (1) the area served; (2) public, educational, or governmental access requirements; or (3) franchise fees. The provisions of this paragraph shall not apply when the area in which the additional franchise is being sought is not actually being served by any existing cable communications system holding a franchise for the area. Nothing in this paragraph prevents a municipality from imposing additional terms and conditions on any additional franchises.

(c) An area for an additional cable franchise is not more favorable or less burdensome if the franchisee is a telephone company, as defined in section 237.01, subdivision 7, and the area of the franchise is no less than the area within the municipality in which the telephone company offers local exchange telephone service. This paragraph is in addition to and not a limit to the authority of a municipality to grant an additional franchise for cable service.

Subd. 2. **Other requirements.** 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. **Municipal operation.** Unless otherwise prohibited by applicable law, any municipality may construct, purchase, and operate cable communications systems or operate facilities and channels for community television, including, but not limited to, public, educational, and governmental access and local origination programming. Any municipal system, including the operation of community television by a municipality, is subject to this chapter to the same extent as any nonpublic cable communications system.

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

Subd. 5. **Joint commission.** Municipalities may by ordinance or resolution create a joint cable communications commission under section 471.59, to which each member municipality may delegate authority vested in the municipality by statute or charter to prepare, adopt, grant, administer, and enforce a cable communications franchise, and establish rates thereunder. The adoption, granting, administration and enforcement of a cable communications franchise, and the establishment of rates thereunder by a joint cable communications commission, pursuant to this subdivision is deemed to comply with procedural requirements of a statute or charter for the adoption, granting, administration and enforcement of a franchise, and establishment of rates. A member of the commission may, by ordinance adopted in the manner provided by section 412.191, subdivision 4, adopt by reference the joint cable communication franchise in the manner provided by section 471.62. The members and governing body of the joint commission shall consist of two

representatives appointed by each municipality, at least one of whom shall be a member of the council of that municipality or its designee and the other a qualified voter residing within that municipality.

**History:** 1973 c 568 s 8; 1975 c 271 s 6; 1976 c 249 s 10-12; 1978 c 771 s 4; 1980 c 509 s 91; 1980 c 614 s 124; 1981 c 317 s 1; 1984 c 377 s 1; 1985 c 285 s 17-19; 1988 c 568 s 2; 2000 c 455 art 2 s 1; 2004 c 261 art 7 s 3,4,28; 2010 c 247 s 4

### **238.081 FRANCHISE PROCEDURE.**

Subdivision 1. **Publication of notice.** 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 consider an application for a franchise other than a franchise renewal pursuant to United States Code, title 47, section 546.

Subd. 2. **Required information in notice.** 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 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; and
- (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.** (a) 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.

(b) Upon submission of a proposal, the municipality and applicant may negotiate franchise terms.

Subd. 5. **Time limit to submit application.** 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 adoption of a franchise ordinance.

Subd. 7. **Award of franchise.** Franchises may be awarded by ordinance or other official action by the franchising authority.

Subd. 8. **Costs of awarding franchise.** Nothing in this section prohibits a franchising authority from recovering from an applicant the entire reasonable and necessary costs of processing a 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 any duties, responsibilities, privileges, or activities described in this section, if the delegation is proper according to state and local law.

**History:** *1985 c 285 s 20; 2004 c 261 art 7 s 5*

**238.082** [Repealed, 2004 c 261 art 7 s 29]

### **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.

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

Subd. 4. **Approval or denial of transfer request.** The franchising authority shall approve or deny in writing the sale or transfer request. The approval must not be unreasonably withheld.

Subd. 5. [Repealed, 2004 c 261 art 7 s 29]

Subd. 6. **Transfer of stock; controlling interest defined.** 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; 2004 c 261 art 7 s 6,7*

### **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

**238.085** [Repealed, 1987 c 336 s 47]

#### **238.086 FRANCHISE HOLDER EXEMPTION.**

If there is a conflict in language between the franchise of a person holding a franchise agreement with a local unit of government and an ordinance regulating use of public rights-of-way, the terms of the franchise shall prevail.

**History:** 1997 c 123 s 8

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

Subd. 2. [Repealed, 1976 c 249 s 18; 1985 c 285 s 54]

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

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

Subd. 5. [Repealed, 1985 c 285 s 54]

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

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

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

Subd. 9. [Repealed, 1985 c 285 s 54]

Subd. 10. [Repealed, 1985 c 285 s 54]

Subd. 11. [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. **Access channel.** No cable communications system 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 person operating a cable communications system 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 system and shown on any public access channel, education access channel, government access channel, leased access channel, or regional channel.

**History:** 1973 c 568 s 11; 1975 c 271 s 6; 1982 c 514 s 17; 1985 c 285 s 25; 2004 c 261 art 7 s 9

**238.115 CABLE PROVIDER COMPLAINTS.**

A cable communications system holding a franchise to provide cable communications services in any area of this state must immediately provide a consumer complaint telephone number to any person who calls the system or its agent and asks for a consumer complaint number. The number provided must be the telephone number of a person or agency that is unaffiliated with the cable communications system and that is organized to provide assistance to complaining consumers.

**History:** 2004 c 261 art 7 s 10,28

**238.12** Subdivision 1. [Repealed, 1982 c 515 s 8]

Subd. 1a. [Repealed, 2004 c 261 art 7 s 29]

Subd. 2. [Repealed, 1982 c 515 s 8]

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 MEMBER.**

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 system, bidding on such franchise, or the cable communications system granted the franchise, or their subsidiaries, major equipment or program suppliers shall abstain from participation in the franchising of a cable communications system or the administration of such franchise.

**History:** 1973 c 568 s 15; 1975 c 271 s 6; 1976 c 249 s 16; 1985 c 285 s 26; 2004 c 261 art 7 s 28

**238.16 GROSS MISDEMEANOR.**

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

Subd. 2. **Gross misdemeanor; corporate violation.** Any person violating the provisions of this chapter is guilty of a gross misdemeanor. Any sentence imposed for any violation by a corporation shall be served by the senior resident officer of the corporation.

**History:** 1973 c 568 s 16; 1975 c 271 s 6; 1980 c 509 s 93; 1985 c 285 s 27; 1993 c 326 art 13 s 13

**238.17 SERVICE TO EXTENSION AREA.**

Subdivision 1. **Conditions for extension.** 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.

Subd. 2. **Exemption.** Notwithstanding any law to the contrary, a cable communications system with less than 50 subscribers in a municipality shall be exempt from obtaining a permit from that municipality, unless the municipality chooses to require a permit.

Subd. 3. **Municipal permit.** Any extension permit awarded pursuant to this section shall be issued at a regular or special meeting of the governing body affording reasonable notice and reasonable opportunity to be heard. Such extension permits shall include:

(a) A schedule of the rates to be charged to the subscribers and the procedure to be used to change subscriber rates;

(b) A stipulation that the parties to the extension permit agree, to the extent applicable, to abide by those terms of the franchise of the core service unit which pertain to systemwide channel capacity, access channels, equipment for production and reproduction or playback of programming, two-way communications capability, standards for system installation, maintenance and operation, indemnification of the franchisor, liability insurance, abandonment of service, removal of equipment and termination or cancellation of the franchise; and

(c) A statement to the effect that the expiration date of the extension permit shall be coincident with that of the franchise of the core service unit, provided that a change in the expiration date of the core service unit franchise, by way of either renewal or amendment of the franchise, shall automatically apply to the extension permit unless the municipality with jurisdiction over the extension area elects otherwise.

Subd. 4. **Joint exercise of powers.** Nothing in this section shall be construed to prevent a municipality having jurisdiction over an extension area from becoming a party to the franchise of the core service unit under an agreement for the joint exercise of powers executed pursuant to section 471.59.

Subd. 5. **Extension permit, excess requirements.** 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:** *1978 c 771 s 5; 1985 c 285 s 28,29*

### **238.18 UNFAIR PREFERENCE.**

Subdivision 1. MS 2002 [Paragraph (a) renumbered subdivision 1]

[Paragraph (b) renumbered 238.02, subd 1b]

[Paragraph (c) renumbered 238.02, subd 34]

Subdivision 1. **Definitions.** For the purpose of this section the terms defined in section 238.02, subdivisions 1b and 34, have the meanings given them.

Subd. 2. **Unfair preference prohibited.** No utility may make or give a preference or advantage to:

(1) a person as an accommodation or inducement to contract with or take cable television service from an affiliated company if the affiliated company provides cable television service within a part of the service area of the utility; or

(2) an affiliated company that provides cable television service to persons within a part of the service area of the utility over an entity that is not an affiliated company that also provides cable television service to persons within the service area of the utility.

Subd. 3. **Remedies.** On a finding by a court of competent jurisdiction that either a utility or an affiliated company of the utility providing cable television service within a part of the service area of the utility has violated a provision of this section, the court may grant injunctive relief and may award actual damages to an entity that is not an affiliated company of a utility providing cable television service to persons within a part of the service area of the utility. In an action under this section, the court may award the costs of the action, including reasonable attorney fees, to the prevailing party.

**History:** *1988 c 568 s 3; 2004 c 261 art 7 s 28*

### **238.22 DEFINITIONS.**

Subdivision 1. **Scope.** The terms used in sections 238.22 to 238.27 have the meanings given them in section 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d.

Subd. 2. [Renumbered subd 10]

Subd. 3. [Renumbered subd 11]

Subd. 4. [Renumbered subd 13]

Subd. 5. [Renumbered subd 14]

Subd. 6. [Renumbered 238.02, subd 1a]

Subd. 7. [Renumbered 238.02, subd 1c]

Subd. 8. [Renumbered 238.02, subd 1d]

Subd. 9. [Renumbered subd 12]

Subd. 10. [Renumbered 238.02, subd 21a]

Subd. 11. [Renumbered 238.02, subd 28a]

Subd. 12. [Renumbered 238.02, subd 29a]

Subd. 13. [Renumbered 238.02, subd 31a]

Subd. 14. [Renumbered 238.02, subd 31d]

**History:** 1983 c 329 s 3; 1985 c 285 s 30-32; 1999 c 11 art 3 s 7; 2004 c 261 art 7 s 11,28

### **238.23 ACCESS REQUIRED.**

Subdivision 1. **Provision of access.** A property owner or other person controlling access shall provide a cable communications system access to the property owner's multiple dwelling complex. The access provided must be perpetual and freely transferable by one person operating a cable communications system to another. A cable communications system granted access, and its successors in interest, must fully comply with sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27.

Subd. 2. **Resident's rights.** The intent of sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27 is to give residents the freedom to choose among competing cable communications services and nothing in sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27 requires residents to hook up or subscribe to any services offered by any cable communications system or alternative provider of cable communications services.

**History:** 1983 c 329 s 4; 2004 c 261 art 7 s 12,28

### **238.24 CONDITIONS FOR ACCESS.**

Subdivision 1. **In general.** An installation of cable communications facilities under sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27 must conform to reasonable conditions necessary to protect the safety, functioning, and aesthetic appearance of the premises, and the convenience and well-being of the property owner and residents.

Subd. 2. **Owner approval.** A property owner may require from a cable communications system before installation or modification of cable communications facilities, diagrams showing plans for the placement and securing of the facilities. A property owner may approve or disapprove installation plans. Approval of plans may not be unreasonably withheld.

Subd. 3. **Installation; bond.** The facilities must be installed in an expeditious and workmanlike manner, must comply with applicable codes, and must be installed parallel to utility lines when economically feasible. A property owner may require a person operating a cable communications system to post a bond or equivalent security in an amount not exceeding the estimated cost of installation of the cable communications facilities on the premises. Any bond filed by a cable communications system with a municipality that would provide coverage to the property owner as provided under this subdivision fulfills the requirements of this subdivision.

Subd. 4. **Indemnify for damage.** A person operating a cable communications system shall indemnify a property owner for damage caused by the company in the installation, operation, maintenance, or removal of its facilities.

Subd. 5. **Relocation.** A property owner may require a cable communications system, after reasonable written notice, to promptly relocate cable communications facilities on or within the premises of the property owner for the purpose of rehabilitation, redecoration, or necessary maintenance of the premises by the property owner.

Subd. 6. **Master antenna television system.** Nothing in sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27 precludes a property owner from entering into an agreement for use of a master antenna television system by a person operating a cable communications system or other television communications service.

Subd. 7. **Cost allocated.** A cable communications system shall bear the entire cost of the installation, operation, maintenance, and removal of a cable communications facility within the initial franchise service area.

Subd. 8. **Compensation for access.** (a) A cable communications system shall:

(1) compensate the property owner for the diminution in fair market value of the premises resulting directly from the installation of the nonexclusive cable communications system; and

(2) reimburse the property owner in an amount not to exceed \$100 for premises containing less than ten dwelling units, and \$200 for other premises, for actual costs incurred by the property owner with respect to the professional review of the plans and drawings regarding installation or modification of the cable communications system, associated contractual materials, and other documentation.

(b) With respect to paragraph (a), clause (1), any party appearing in a proceeding as provided under section 238.25 may introduce evidence of damages, if any, and special benefits, if any, to the property occurring by reason of the installation of the cable communications system.

Subd. 9. **Not retroactive.** Nothing in sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27 affects the validity of an agreement effective before June 15, 1983 between a property owner, a person operating a cable communications system, or any other person providing cable communications services on or within the premises of the property owner.

Subd. 10. **Channel capacity.** (a) A property owner must provide access to a franchised person operating a cable communications system, as required under section 238.23, only if that cable system 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 system 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 system that installed the equipment must be reimbursed by the other providers for the cost of equipment and installation on the property on a pro rata basis that 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 must 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:** 1983 c 329 s 5; 1985 c 285 s 33; 2004 c 261 art 7 s 13-17,28

#### **238.241 CONDITIONS FOR ACCESS BY ALTERNATIVE PROVIDER.**

Subdivision 1. **Channel capacity.** Cable systems 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 system 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 system is not required to provide equipment for connecting more than one television receiver in one dwelling unit within the multiple dwelling complex. However, the system may provide duplicate connections at its discretion.

**History:** 1985 c 285 s 34; 2004 c 261 art 7 s 28

### 238.242 REIMBURSEMENT.

Subdivision 1. **Providing alternative service.** Other providers of television programming or cable communications services shall notify the person operating a cable communications system 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 system 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 person operating a cable communications system, upon written request, shall make available to the alternative provider financial records supporting the reimbursement cost requested.

**History:** 1985 c 285 s 35; 2004 c 261 art 7 s 18,19

### 238.25 PROCEDURE.

Subdivision 1. **Applicable provisions.** The procedure for acquiring access under sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27 must be as provided under this section, notwithstanding any provisions of chapter 117.

Subd. 2. **Notice and offer; manner of service.** (a) To obtain access to property under sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27, a cable communications system shall serve written notice on all property owners. The notice shall contain the following:

- (1) the name and address of the cable communications system;
- (2) the name of the property owners and address of the premises to which access is sought;
- (3) the date of the franchise and city granting the franchise;
- (4) the amount of compensation offered by the cable communications system to the property owner or owners; and
- (5) the anticipated date on which access is to commence.

(b) If a property owner does not accept the offer made by the cable communications system, the property owner shall, within 45 days of the service of the notice and offer, notify the cable communications system

of the refusal. Failure to notify the cable communications system within 45 days as provided under this paragraph constitutes a refusal of the offer and a denial of access.

(c) The notice and offer must be served on the property owner or owners by certified mail or in the same manner as a summons in a civil action.

**Subd. 3. Initiation.** (a) A cable communications system which has been denied access to a multiple-dwelling complex may initiate proceedings under this section to obtain access.

(b) The cable communications system shall pay all costs of the proceedings including compensation to the property owner.

**Subd. 4. Petition for access.** (a) To obtain access to the property owner's premises, as required under section 238.23, the cable communications system shall file with the district court in the county in which the premises is located, a petition:

(1) stating that the cable communications system has served the property owners with the notice and offer required under subdivision 2 and that the offer has not been accepted;

(2) requesting a determination of the damages, if any, which may result from the access; and

(3) stating the legal description of the property owner's premises to which access is sought.

(b) Upon filing the petition with the district court, the cable communications system shall pay the property owner or deposit with the district court an amount equal to the system's offer of compensation as provided under subdivision 2, paragraph (a), clause (4).

(c) Upon filing of the petition with the district court, the cable communications system may file for record with the county recorder a notice of the pendency of the proceeding, describing with reasonable certainty the premises affected and the purposes of the petition.

**Subd. 5. Service of petition.** The petition must be served upon all persons named in the petition as property owners in the same manner as a summons in a civil action; except that, service may be made upon a property owner by three weeks' published notice if the person operating a cable communications system, or the person's agent or attorney, files an affidavit stating on belief that the property owner is not a resident of the state and that the system has mailed a copy of the notice to the property owner at the property owner's place of residence, or that after diligent inquiry the property owner's place of residence cannot be ascertained by the system. If the state is a property owner, the notice must be served upon the attorney general. Any property owner not served as provided under this paragraph is not bound by the proceeding unless the property owner voluntarily appears in the proceeding.

**Subd. 6. Order granting access.** Upon the filing of the petition and proof of service as provided under this section, and prior to making a determination of damages under this section, the court shall enter an order granting access 30 days after the filing of the petition.

**Subd. 7. Entry for survey and access.** For the purpose of making surveys and examinations to accomplish all necessary preliminary purposes or for other purposes relative to any proceedings under this section, the cable communications system may lawfully enter a property owner's premises, doing no unnecessary damage and being liable only for actual damage done.

**Subd. 8. Judgment; dismissal of action.** (a) The court shall enter judgment no sooner than ten days after it has filed its determination of damages.

(b) The cable communications system may at any time up to ten days after the filing of the court's determination of the damages dismiss any proceeding under this section against any property owner's premises by notifying the property owner and the court. When the proceeding is dismissed, the property owner may recover from the cable communications system reasonable costs and expenses and temporary damages, if any.

Subd. 9. **Appeal.** Either party to the district court proceeding may appeal the court's determination within 90 days after the filing of that determination.

Subd. 10. **Final certificate.** Upon completion of the proceedings, the attorney for the person operating the cable communications system shall make a certificate describing the access acquired and the purpose or purposes for which acquired, and reciting the fact of final payment of all awards or judgments in relation thereto. The certificate must be filed with the court administrator and a certified copy thereof recorded with the county recorder. The record is notice to all parties of the access to the premises described in the petition.

Subd. 11. **No relocation benefits.** Neither sections 117.50 to 117.56 nor the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 may be construed as applying to any persons affected by these proceedings.

**History:** 1983 c 329 s 6; 1Sp1986 c 3 art 1 s 82; 2004 c 261 art 7 s 20,21,28; 2005 c 4 s 33

#### **238.26 SUBSEQUENT TAKING.**

In the event the premises upon which cable communications equipment has been installed is subsequently condemned by the state or by another entity empowered under state law to condemn by exercise of the power of eminent domain, the cable communications system's measure of damages for the taking shall be limited to the actual compensation originally paid by the cable communications system to the property owner under sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27.

**History:** 1983 c 329 s 7; 2004 c 261 art 7 s 28

#### **238.27 INTERFERENCE WITH FACILITIES.**

No person may interfere with the installation, operation, inspection, maintenance, or removal of cable communications facilities or activities of a cable communications system under sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27.

**History:** 1983 c 329 s 8; 2004 c 261 art 7 s 28

#### **238.35 USE OF EXISTING EASEMENT; RESTRICTIONS.**

Subdivision 1. **Legislative findings.** There is a long-standing legislative policy in the state of Minnesota to provide for the dedication or other provision of easements and public rights-of-way required by public utilities and cable communications systems. Except for applicable governmental rules, these easements do not include any limitation on the type, number, or size of cables or related cable communication system components. There is a public understanding and acceptance of the need of public utilities and cable communications systems to have the ability to use existing utility easements and public rights-of-way in order to provide new and improved cable communications services made possible by technological developments and to make changes to the cables or related cable communication systems components. Changing technology has caused and will continue to cause over time the development of new cable communications services requiring changing uses of existing utility easements and public rights-of-way. Cable communications systems have a need to use existing utility easements and public rights-of-way in

order to deliver their services to the public. The addition of cable communications system components does not constitute an unanticipated or added burden on the real estate subject to the easements or public rights-of-way.

Subd. 2. **Utility easement defined.** For purposes of this section, the term "utility easement" includes all utility easements or general purpose easements dedicated on a recorded plat to the public or to the state or to any political subdivision thereof; all deeded easements to the public or to the state or to any political subdivision thereof which are for general or utility purposes; all easements acquired by condemnation or prescription by the state or any political subdivision thereof which are for general or utility purposes; and all easements in favor of any public service corporation for telephone or electric transmission purposes.

Subd. 3. **Authorization to use existing utility easement.** The state or any county, city, township, agency, or political subdivision thereof, or any individual, partnership, venture, or corporation which is licensed, franchised, or authorized thereby to establish and operate a cable communications system may utilize any existing utility easement in accordance with the provisions of this section to install, maintain, and remove cable communications system components without the payment of additional compensation to the owners or occupants of the real estate subject to the easement, other than the owner of the utility easement or its successors or assigns.

Subd. 4. **Restrictions on use.** (a) As a condition of using any utility easement, a cable communications system is subject to any burdens, duties, or obligations specified in the easement of the grantee of the easement.

(b) Subject to any applicable rights and obligations of sections 237.162 and 237.163 and any local right-of-way ordinance adopted under those statutes, a person operating a cable communications system shall restore the real estate, and any landscaping or improvements thereon, to the condition they were in prior to entry within 30 days of completing the installation of the cables and related cable communications system components upon that real estate and to make changes to the cables or related cable communication systems components. Changing technology has caused and will continue to cause over time the development of new cable communications services requiring changing uses of existing utility easements. Restoration which cannot be completed during the winter months must be accomplished as promptly as weather conditions permit.

**History:** 1983 c 329 s 9; 1985 c 248 s 70; 2004 c 261 art 7 s 22,23,28

**238.36** Subdivision 1. [Repealed, 2004 c 261 art 7 s 29]

Subd. 2. [Renumbered 238.02, subd 3a]

Subd. 3. [Renumbered 238.02, subd 20a]

Subd. 4. [Renumbered 238.02, subd 31b]

### **238.37 SCOPE; POLE, DUCT, AND CONDUIT AGREEMENTS.**

Sections 238.02, subdivisions 3a, 20a, and 31b, and 238.37 to 238.42 only apply to pole, duct, and conduit agreements entered into or renewed between public utilities and cable communications systems 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 system enter into an agreement regarding only pole attachments, sections 238.02, subdivisions 3a, 20a, and 31b, and 238.37 to 238.42 relating to conduit systems are applicable to that agreement and if a public utility company and a cable communications system enter into an agreement regarding only use of

a conduit system, sections 238.02, subdivisions 3a, 20a, and 31b, and 238.37 to 238.42 relating to pole attachments are not applicable to that agreement.

**History:** 1985 c 285 s 37; 2004 c 261 art 7 s 28; 2005 c 10 art 1 s 36

### **238.38 PERMIT TO ATTACH TO POLE OR CONDUIT SYSTEM.**

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 system shall apply and receive a permit for that purpose on a form provided by the public utility company. If the cable communications system 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 238.02, subdivisions 3a, 20a, and 31b, and 238.37 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; 2004 c 261 art 7 s 28; 2005 c 10 art 1 s 37

### **238.39 LEGAL AUTHORITY.**

Every pole, duct, and conduit agreement must contain a provision that the cable communications system shall submit to the public utility company evidence of the cable communications system'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 that 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 that 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; 2004 c 261 art 7 s 25

### **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

#### **238.41 INSURANCE.**

The cable communications system 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 system 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; 2004 c 261 art 7 s 28

#### **238.42 ADDITIONAL CONTRACT TERMS.**

Nothing contained in sections 238.02, subdivisions 3a, 20a, and 31b, and 238.37 to 238.42 in any way prohibits a public utility company from including in its pole, duct, and conduit agreements with cable communications systems additional terms which do not conflict with sections 238.02, subdivisions 3a, 20a, and 31b, and 238.37 to 238.42.

**History:** 1985 c 285 s 42; 2004 c 261 art 7 s 28; 2005 c 10 art 1 s 38

#### **238.43 REGIONAL CHANNEL.**

Subdivision 1. [Renumbered 238.02, subd 31c]

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 system 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; 2004 c 261 art 7 s 27,28