

## CHAPTER 2310 CABLE COMMUNICATIONS BOARD FRANCHISING

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### INITIAL FRANCHISE PROCEDURES

#### 2310.0200 INITIAL FRANCHISE PROCEDURE.

Subpart 1. **Scope.** Except as provided in parts 2310.1000 to 2310.1900, the procedure described in parts 2310.0200 to 2310.0600 of this chapter shall be observed by all franchising authorities before and during the awarding of any cable communications franchise.

Subp. 2. **Cable service territory approval.** The proposed boundaries for all cable service territories must be approved by the board in accordance with parts 2305.0500 to 2305.1200 before the needs assessment is completed and the request for proposals is issued.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05*

#### 2310.0300 INITIAL FRANCHISE; NEEDS ASSESSMENT REPORT.

Subpart 1. **Compile report.** The franchising authority or a group of two or more individuals appointed by the franchising authority shall compile a needs assessment report on cable communications for the proposed area to be served within the cable service territory.

Subp. 2. **Compilers.** The individuals compiling the report shall not be employed by or shall knowingly have any financial interest in any cable communications company bidding on such franchise, or their subsidiaries, and major equipment or program suppliers.

The group making the needs assessment report shall inform itself about cable communications through at least a review of the published information, state and federal statutes, rules and regulations, and the experiences of other municipalities that have studied cable communications.

Subp. 3. **Area communications needs.** The report must include an assessment of the communications needs of the persons residing within the proposed area to be served within the cable service territory and recommendations on the means to satisfy those needs.

Subp. 4. **Public report.** The franchising authority shall make such report publicly available. In cases of joint powers agreements, the report may be a joint undertaking of more than one municipality as long as at least two representatives from each municipality which is a party to the agreement participate in making the needs assessment report.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05; 238.06*

**2310.0400 INITIAL FRANCHISE; REQUEST FOR PROPOSALS.**

Subpart 1. **Required information.** After approval of the cable service territory by the Minnesota Cable Communications Board, and consideration of the recommendations of the needs assessment report, the franchising authority shall determine the advisability of continuing the franchising process. If the franchising authority determines that the franchising process should continue, then the franchising authority shall officially adopt in a public hearing, affording reasonable notice and a reasonable opportunity to be heard, the request for proposals for a cable communications franchise, which shall include but not necessarily be limited to, the following items:

A. the desired system design and services for the franchising authority including statements with respect to at least the following items: channel capacity, requirements for access channels and related staff and facilities, construction requirements, and two-way capability;

B. criteria and priorities which the franchising authority has developed to review franchise applications;

C. information regarding applications for the cable communications franchise including: the closing date for submission of applications; a statement of the application fee, if any, and the method for its submission; and the name, address, and telephone number of an individual who may be contacted for further information; and

D. a list of the information required to be contained in each submitted proposal, as set forth in subpart 5.

Subp. 2. **Availability of request.** The franchising authority shall mail a copy of the request to the board and make a copy available for public inspection at the city office (or in the case of joint powers, offices) during normal business hours within ten days after adoption of a request for proposals of a cable communications franchise. The franchising authority shall also mail copies of the request for proposals for a cable communications franchise to any persons it has identified as being potential candidates for the franchise.

Subp. 3. **Consultation.** The franchising authority shall consult with the board and may consult with the appropriate regional development commission.

Subp. 4. **Public notice.** The franchising authority shall give public notice of the availability of the request for proposals for a cable communications franchise at least 45 days before the public hearing awarding the franchise. The notice must be published at least once in a newspaper of general circulation within the boundaries of the franchising authority. A copy of the notice must be provided to the board on the date of initial publication, together with proof of publication. The notice must also be published at least once in at least two publications contained in a list approved by the board and on file with the executive director of the board. The published notice must contain, at a minimum, the following information:

A. the name(s) of the municipalities within the area requested to be served in the request for proposals;

B. the date by which all proposals must be submitted;

C. the name, address, and telephone number of the individual(s) from whom the request for proposals for a cable communications franchise must be obtained;

D. the amount of any application fee;

E. a statement that applicant proposals for a cable communications franchise must be submitted taking into account the system design and services outlined by the franchising authority in its request for proposals for a cable communications franchise.

Subp. 5. **Contents of proposal.** The franchising authority shall require that all proposals for a cable communications franchise be notarized and contain, but not necessarily be limited to, the following information:

A. 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;

B. A statement of the television and radio broadcast signals for which permission to carry will be requested from the Federal Communications Commission;

C. a description of the proposed system design and planned operation, including at least the following items:

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

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

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

(4) the number of channels and services to be made available for access cablecasting; and

(5) a schedule of charges for facilities and staff assistance for access cablecasting;

D. the terms and conditions under which particular service is to be provided to governmental and educational entities;

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

F. 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.

G. a statement indicating the applicant's qualifications and/or experience in the cable communications field, if any;

H. an identification of the municipalities in which the applicant either owns or operates any cable communications system, directly or indirectly, or has outstanding franchises for which no system has been built;

I. plans for financing the proposed system, which shall indicate every significant anticipated source of capital and any significant limitations and/or conditions with respect to the availability of the indicated sources of capital;

J. 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

K. a notation and explanation of any 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 a certificate of confirmation has been granted.

**Statutory Authority:** *MS s 238.02 subd 2; 238.04 subd 9; 238.05 subd 2; 238.06*

### 2310.0500 AWARD OF INITIAL FRANCHISE.

Subpart 1. **Public hearing.** Any public hearing before the franchising authority affording reasonable notice and a reasonable opportunity to be heard with respect to all proposals for the franchise must be completed at least 27 days prior to the introduction of the franchise ordinance in the proceedings of the franchising authority. At the hearing the franchising authority must consider the franchisee's technical ability, financial condition, and legal qualifications as required in part 2315.0300, item N.

Subp. 2. **Franchise grant.** Franchises may be granted only by ordinance. The board shall review the validity of each franchise ordinance and the franchising authority's compliance with the criteria and priorities contained in the request for proposals. No franchise is effective until the board has confirmed the franchise pursuant to Minnesota Statutes, section 238.09 and the franchisee has obtained a certificate of confirmation.

Subp. 3. **Cost recovery.** Parts 2310.0200 to 2310.2100 do not prohibit a franchising authority from recovering the reasonable and necessary costs of the entire process of awarding, renewing, and amending the cable communications franchise from the successful applicant.

Subp. 4. **Initial franchising of nonprofit or municipally owned system.** The board may not by rule prohibit a franchising authority from franchising a nonprofit or municipally operated system provided that it is granted pursuant to Minnesota Statutes, sections 238.09 to 238.16.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05 subd 11; 238.06; 238.09*

### **2310.0600 INITIAL FRANCHISE; JOINT POWERS.**

In the cases of municipalities acting in concert, such municipalities may delegate to another entity such duties, responsibilities, privileges, or activities described in these rules, if such delegation is proper according to state and local law.

**Statutory Authority:** *MS s 238.04 subd 9; 238.08; 238.17*

### **ALTERNATIVE FRANCHISING PROCEDURES**

#### **2310.1000 ALTERNATIVE INITIAL FRANCHISING PROCEDURES.**

Subpart 1. **Eligibility.** The procedure described in parts 2310.1000 to 2310.1900 may be used by a franchising authority if it meets the eligibility requirements of part 2310.1700.

Subp. 2. **Procedures.** No franchising authority determined eligible for the use of parts 2310.1000 to 2310.1900 shall award a cable communications franchise, unless the procedures of parts 2310.1000 to 2310.1900 have been followed as required.

Subp. 3. **Application.** Before a franchising authority may use this procedure, it must submit to the board a complete application containing such information as the board may deem necessary, for determining eligibility to use the procedures of parts 2310.1000 to 2310.1900. Within ten days after receipt, the board's executive director shall review each application and give a written determination of eligibility to the requesting franchising authority.

Subp. 4. **Cable service territory approval.** The proposed boundaries of all cable service territories must be approved by the board in accordance with the rules of the board pertaining to cable service territories before a franchising authority shall publish notice of intent to franchise as described in part 2310.1100.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05 subd 2*

#### **2310.1100 NOTICE OF INTENT TO FRANCHISE.**

Subpart 1. **Publication.** The franchising authority shall cause to be 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 such franchise.

Subp. 2. **Required information.** Such notice shall include at least the following information:

- A. the name of the municipality making the request;
- B. the closing date for submission of applications;
- C. a statement of the application fee, if any, and the method for its submission;

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D. a statement by the franchising authority of the desired system design and services to be offered;

E. a statement by the franchising authority of criteria and priorities against which the applicants for the franchise shall be evaluated;

F. a statement that all applications for the franchise must contain at least the information required by part 2310.0400;

G. date, time, and place for the public hearing, to hear proposals from franchise applicants;

H. the name, address, and telephone number of the individual(s) who may be contacted for further information.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05; 238.08*

**2310.1200 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. A copy of the notice must be provided to the board on the date of initial publication together with proof of publication.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05; 238.08*

**2310.1300 TIME LIMITS FOR SUBMISSION OF ALTERNATIVE FRANCHISE APPLICATIONS.**

The franchising authority shall allow at least 20 days from the first date of published notice to the closing date for submitting applications.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05; 238.08*

**2310.1400 PUBLIC HEARING ON ALTERNATIVE 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 shall be completed at least seven days prior to the introduction of the franchise ordinance in the proceedings of the franchising authority.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05; 238.08*

**2310.1500 AWARD OF THE ALTERNATIVE FRANCHISE.**

Franchises may be awarded only by ordinance.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05; 238.08 subd 2*

**2310.1600 COSTS OF AWARDED ALTERNATIVE FRANCHISE.**

Nothing in parts 2310.0200 to 2310.2100 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.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05; 238.08*

**2310.1700 ELIGIBILITY FOR ALTERNATIVE FRANCHISING PROCEDURES.**

Subpart 1. **Population.** The procedures described in parts 2310.1000 to 2310.1900 may be used if:

A. at least one municipality within the cable service territory has a population of less than 4,000;

B. no one municipality within the cable service territory has a population over 4,000, except in a change in an already approved cable service territory; and

C. the aggregate population of all municipalities within the cable service territory does not exceed 9,000 except in the expansion of an already approved cable service territory.

Subp. 2. **Public interest; undue hardship.** The board may also allow the use of the procedures in parts 2310.1000 to 2310.1900 in cases in which it determines that the requiring of a franchising authority to comply with the procedures in parts 2310.0200 to 2310.0600 would not be in the public interest or would bring undue hardship to any of the parties involved.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05; 238.08*

### **2310.1800 ALTERNATIVE FRANCHISING OF NONPROFIT OR MUNICIPALLY OWNED SYSTEM.**

Nothing contained in any rule of the board shall prohibit a franchising authority from franchising a nonprofit or municipally owned system. The municipality or nonprofit entity shall be considered an applicant for purposes of chapters 2300 to 2350.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05; 238.08 subd 3*

### **2310.1900 ALTERNATIVE FRANCHISE; JOINT POWERS.**

In the cases of municipalities acting in concert, such municipalities may delegate to another entity such duties, responsibilities, privileges, or activities described in these rules, if such delegation is proper according to state and local law.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05; 238.08 subd 5; 471.59*

### **RENEWING OR AMENDING FRANCHISES**

#### **2310.2000 FRANCHISE RENEWAL.**

Subpart 1. **Procedure.** For purposes of these rules, a franchise is renewed whenever the franchising authority awards a subsequent franchise to the same cable communications company or its successor in interest which extends the franchise term beyond its previous termination date. Upon renewal of a cable communications franchise, the franchisee shall obtain a renewal of its certificate of confirmation pursuant to part 2320.0700.

Subp. 2. **Renewal report.** Three months prior to the expiration of a franchise, the franchising authority shall submit a renewal report to the cable communications system operator and the board. Franchising authorities that franchised or would be eligible to franchise under the provision of parts 2310.1000 to 2310.1900, alternative initial franchising procedures, shall be exempt from the report requirement of this part.

The franchising authority or a group of two or more individuals appointed by the franchising authority shall compile a renewal report. The individuals compiling the report shall not be employed by or shall 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, and major equipment or program suppliers.

The renewal report shall assess the performance of the franchisee according to the terms of the franchise and make recommendations to the franchising authority regarding the apparent or likely need for upgrading the system to meet the current state of the art. The report shall also include recommendations for revised or additional provisions of the franchise, considering at least the following items: channel capacity; channels for access cablecasting; facilities and staff assistance available for access cablecasting; two-way capability; and the need for further service to be extended within the franchise area based upon a reassessment of the communications needs of the persons residing within the franchise area in relation to the services generally offered by the cable industry.

In cases of joint powers agreements, the report may be a joint undertaking of more than one municipality as long as at least two representatives from each municipality who is a party to the agreement participate in making the report.

Subp. 3. **Renegotiation period.** The franchising authority shall commence renegotiation of the franchise at least one year prior to the expiration of the franchise pursuant to part 2315.0300, item E, and may proceed with a renewal of the franchise unless the franchising authority determines not to reissue the franchise to the franchisee or desires to consider additional applicants for a franchise.

Subp. 4. **Public hearing.** The renewal shall be granted only after holding a public hearing thereon with reasonable notice and reasonable opportunity to be heard. Unless otherwise already provided for by local law, notice of any such hearing shall be given by publishing two notices in a newspaper of general circulation within the boundaries of the franchising authority. First publication shall appear not less than 15 days prior to the hearing. The notice shall contain the date, time, and place of the hearing and shall briefly state the substance of the action to be considered by the franchising authority.

Subp. 5. **Additional applicants.** If the franchising authority determines that additional applicants are to be sought, the franchising authority shall follow the procedure of parts 2310.0200 to 2310.0600, or 2310.1000 to 2310.1900 (alternative initial) provided the eligibility requirements of part 2310.1700 are satisfied.

Subp. 6. **Joint powers.** In the cases of municipalities acting in concert, such municipalities may delegate to another entity such duties, responsibilities, privileges, or activities described in these rules, if such delegation is proper according to state and local law.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05 subd 10*

### 2310.2100 FRANCHISE AMENDMENTS.

The franchising authority shall act pursuant to local law pertaining to ordinance amendment procedures. The franchising authority shall file the franchise amendments with the board.

**Statutory Authority:** *MS s 238.04 subd 9*

### SALE OR TRANSFER OF FRANCHISE; SALE OR TRANSFER OF STOCK

#### 2310.2200 SALE OR TRANSFER OF FRANCHISE.

Subpart 1. **Fundamental corporate change.** For purposes of this provision, *fundamental corporate change* means the sale or transfer of all of a majority of a corporation's assets, merger (including any parent and its subsidiary corporation), consolidation, or creation of a subsidiary corporation.

Subp. 2. **Written approval of franchising authority.** Any 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. Any sale or transfer of a franchise shall be subject to the provisions of part 2335.1000. The parties to the sale or transfer of a franchise shall make a written request to the franchising authority for its approval of a sale or transfer of a franchise. 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 such determination.

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

Subp. 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.

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**Subp. 5. Notification to board by franchising authority.** Any sale or transfer of a franchise, including a sale or transfer by means of a fundamental corporate change requires notification to the board by the franchising authority. The notification shall be accompanied by the written certification of the transferee that it meets all of the requirements with respect to technical ability and financial stability demanded of the original franchisee. The franchising authority shall cause to be sent to the board a copy of all public documents related to sale or transfer of the franchise.

**Subp. 6. Sale or transfer of franchise only without inclusion of cable communications systems.** 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 be required to establish that the sale or transfer of a franchise only will be in the public interest.

**Statutory Authority:** *MS s 238.04 subd 9; 238.05 subd 10; 238.06 subd 6*

## **2310.2300 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 shall be subject to the requirements of parts 2335.1000 and 2310.2200.

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

**Statutory Authority:** *MS s 238.04 subd 9; 238.05 subd 10*