

**CHAPTER 2315
CABLE COMMUNICATIONS BOARD
FRANCHISE STANDARDS**

2315.0100 DEFINITIONS; CLASSIFICATIONS.
2315.0200 RECLASSIFICATION OF SYSTEMS.
2315.0300 REQUIRED CONTENTS OF FRANCHISE
ORDINANCE.
2315.0400 REQUIRED FRANCHISE PROVISIONS
FOR A CLASS B CABLE SYSTEM.

2315.0500 REQUIRED FRANCHISE PROVISIONS
FOR A CLASS C CABLE SYSTEM.
2315.0600 ADDITIONAL TERMS AND
CONDITIONS PERMITTED.

2315.0100 DEFINITIONS; CLASSIFICATIONS.

Subpart 1. **Scope.** As used in parts 2315.0100 to 2315.0600, the following classifications shall have the meaning given herein, unless a different meaning clearly appears in the text.

Subp. 2. **Class A cable systems.** "Class A cable systems" means all systems that are located outside of the twin city metropolitan area, are located in a franchise area having a population of 4,000 or fewer persons, and are serving fewer than 1,000 subscribers.

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

Subp. 4. **Class C cable systems.** "Class C cable systems" means all systems that are located in the twin city metropolitan area, or are located in a franchise area having a population of 15,000 or more persons or serving 3,500 or more subscribers.

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

2315.0200 RECLASSIFICATION OF SYSTEMS.

A franchise shall be amended by the franchising authority when the number of subscribers served by the cable communications system in the franchise area changes so as to result in reclassification of the system pursuant to part 2315.0100. Such amendments shall include provisions consistent with the requirements of that class of cable communications systems.

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

2315.0300 REQUIRED CONTENTS OF FRANCHISE ORDINANCE.

When a cable communications franchise is awarded or renewed after April 1, 1973, except as provided in Minnesota Statutes, section 238.09, subdivisions 3, 4, 5, and 9, a regular or renewal of a certificate of confirmation will be issued only if the franchise ordinance contains recitations and provisions consistent with the following requirements. The following requirements apply to all classes of systems (A, B, and C) unless hereafter provided otherwise.

A. A provision that the franchise complies with the Minnesota Cable Communications Board's franchise standards.

B. A provision requiring the franchisee and the franchising authority to conform to all state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to all federal laws and regulations regarding cable as they become effective.

C. A provision that the franchise shall cease to be of any force and effect if the franchisee fails to obtain either a regular certificate of confirmation or renewal of a certificate of confirmation from the board, provided however,

MINNESOTA RULES 1983

1579

FRANCHISE STANDARDS 2315.0300

that the franchisee may operate his cable communications system while the board is considering the application for the renewal of his certificate of confirmation.

D. A provision limiting the initial and renewal franchise term to not more than fifteen years each.

E. A provision specifying renegotiation periods mutually agreed to between the franchising authority and the company, such renegotiation periods to occur not less than one year before the end of any franchise term, unless the franchising authority determines not to reissue the franchise to the franchisee or desires to consider additional applicants for a franchise.

F. A provision specifying that the franchise is nonexclusive.

G. A provision prohibiting sale or transfer of the franchise or sale or transfer of stock so as to create a new controlling interest pursuant to part 2310.2200 or 2310.2300, except at the approval of the franchising authority, which approval shall not be unreasonably withheld, and that such sale or transfer is completed pursuant to part 2310.2200 or 2310.2300.

H. 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.

I. Provisions specifying:

(1) all 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 all subscriber charges are established, unless such a provision is contrary to state or federal law.

J. A provision indicating by title the office or officer of the franchising authority that is responsible for the continuing administration of the franchise.

K. A provision requiring the franchisee to indemnify and hold harmless the franchising authority at all times during the term of the franchise, and to maintain throughout the term of the franchise, liability insurance in such amount as the franchising authority may require insuring both the franchising authority and the franchisee with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the franchise.

L. A provision that at the time the franchise becomes effective and at all times 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 any other type of instrument approved by the franchising authority in such 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, in its sole discretion, reduce the amount of the performance bond or instrument.

M. A provision that nothing contained in the franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the franchisee's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

N. Approval by franchising authority. 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 pursuant to part 2310.0500, subpart 1, which afforded reasonable notice and a reasonable opportunity to be heard.

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

P. A provision in initial franchises that there be a full description of the system proposed for construction and a schedule showing:

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

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

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

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

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

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

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

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

(d) that the requirement of this part be waived by the franchising authority only upon occurrence of unforeseen events or acts of God.

Q. 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 any cable communications system, including the opening or disturbance of any street, sidewalk, driveway, or public place. Such provision shall specify remedies available to the franchising authority in cases where the franchisee fails to meet the conditions of the permit.

R. Unless otherwise already provided for by local law, a provision that all wires, conduits, cable, and other property and facilities of the franchisee be located, constructed, installed, and maintained in compliance with applicable codes. Such provision shall also specify that the franchisee keep and maintain all of 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 lives or property of any person.

S. 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 said street, right-of-way, or public place whenever

the franchising authority undertakes public improvements which affect the cable equipment.

T. 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 Commission 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 any tests required by the Federal Communications Commission shall be filed within ten days of the conduct of such tests with the franchising authority and the board.

U. A provision establishing how the franchising authority and the cable communications company shall determine who is to bear the costs of any required special testing.

V. A provision pertaining to the franchisee's construction and maintenance of a cable communications system having the technical capacity for nonvoice return communications which, for purposes of this part, shall mean the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary nonvoice communications electronic modules.

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

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

W. 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 such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewed at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revokable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of class IV cable communications activity planned for the purpose.

(1) No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of the subscribers or any lists that identify the viewing habits of subscribers, may be sold or otherwise made available to any party other than to the company and its employees for internal business use, or to the subscriber 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 shall 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 such information shall be subject to the provision set forth in subitem (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.

X. A provision specifying the procedure for the investigation and resolution by the franchisee of all complaints regarding quality of service, equipment malfunction, billing disputes, and other matters.

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

Z. A provision granting the franchising authority the right to terminate and cancel the franchise and all rights and privileges of the franchise if the franchisee substantially violates any provision of the franchise ordinance, attempts to evade any of the provisions of the franchise ordinance, or practices any 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 shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the franchise. In the event that the municipality determines to terminate the franchise, the franchisee has 30 days from the date of the conclusion of the public hearing at which the termination of the franchise was considered within which to file an appeal with the board, pursuant to Minnesota Statutes, section 238.14. During the 30-day period and until the board determines the appeal, if an appeal is taken, the franchise remains in full force and effect unless the term of the franchise ends sooner. If the board approves of the action of the municipality, the franchise terminates immediately; if the board disapproves of the action of the municipality, the franchise remains in full force and effect during its term unless it is sooner terminated in accordance with law or chapters 2300 to 2350. Any appeal to the board is a contested case to which the board is not a party.

AA. A provision that no cable communications company, notwithstanding any provision in a franchise, may abandon any cable communications service or any portion thereof without having given three months prior written notice to the franchising authority and the board. No cable communications company may abandon any cable communications service or any portion thereof without compensating the franchising authority for damages resulting to it from such abandonment.

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

CC. A provision that when a franchise or cable system is offered for sale, the franchising authority shall have the right to purchase the system.

DD. A provision establishing the minimum number of access channels that the franchisee shall make available.

The provision must require that the franchisee shall provide to each of its subscribers who receive some or all of the services offered on the system, reception on at least one specially designated access channel. The specially designated access channel may be used by local educational authorities and local government on a first-come, first-served, nondiscriminatory basis. During those

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

The provision must also require that the franchisee shall establish rules for the administration of the specially designated access channel. The franchisee shall file the operating rules governing the specially designated access channel with the board within 90 days after any access channels are put into use.

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

Statutory Authority: *MS s 238.05 subd 2; 238.06; 238.08 subd 1*

2315.0400 REQUIRED FRANCHISE PROVISIONS FOR A CLASS B CABLE SYSTEM.

Franchises for class B cable systems must contain statements and provisions consistent with part 2315.0300, unless hereafter provided otherwise, and statements and provisions consistent with the following requirements:

A. A provision establishing the minimum number of access channels that the franchisee shall make available. Franchisees subject to requirement of this provision are not subject to part 2315.0300, item DD.

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

(2) The provision must also require that the franchisee shall establish rules for the administration of the specially designated access channel. The franchisee shall file the operating rules governing the specially designated access channel with the board within 90 days after any access channels are put into use.

(3) The provision shall require that whenever the specially designated access channel required in subitem (1) is in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive 3-hour period for six weeks running, and there is a demand for use

2315.0400 FRANCHISE STANDARDS

1584

of an additional channel for the same purpose, the franchisee has six months in which to provide a new specially designated access channel for the same purpose, provided that provision of the additional channel or channels does not require the cable system to install converters. Nothing in this part precludes the installation of converters by the system on a voluntary basis, as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

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

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

Statutory Authority: *MS s 238.05 subd 2; 238.06; 238.08 subd 1*

2315.0500 REQUIRED FRANCHISE PROVISIONS FOR A CLASS C CABLE SYSTEM.

Franchises for class C cable systems must contain statements and provisions consistent with part 2315.0300, unless this part provides otherwise, and statements and provisions consistent with the following requirements:

A. A provision establishing the minimum number of public, educational, governmental, and leased access channels that the franchisee shall make available. Franchisees subject to this provision are not subject to part 2315.0300, item DD.

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

(2) The provision shall require that whenever the specially designated noncommercial public access channel, the specially designated education access channel, the specially designated local government access channel, or the specially designated leased access channel required in subitem (1) is in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive three-hour period for six weeks running, and

MINNESOTA RULES 1983

1585

FRANCHISE STANDARDS 2315.0500

there is demand for use of an additional channel for the same purpose, the franchisee shall then have six months in which to provide a new specially designated access channel for the same purpose, provided that provision of such additional channel or channels shall not require the cable system to install converters. However, nothing in this part shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

(3) The provision shall also require that the franchisee shall establish rules pertaining to the administration of the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel required in this part. The operating rules established by the franchisee governing the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel required in this part shall be filed with the Minnesota Cable Communications Board within 90 days after any such channels are put into use.

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

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

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

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

C. A provision establishing the minimum system-wide channel capacity that the franchisee shall make available. Franchisees subject to the requirement of this provision shall not be subject to the requirements of part 2315.0300, item DD.

MINNESOTA RULES 1983

2315.0500 FRANCHISE STANDARDS

1586

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

(2) Systems that are already constructed pursuant to a pre-existing franchise requiring fewer than 120 MHz of bandwidth (the equivalent of fewer than 20 television broadcast channels) shall have until June 21, 1986 to increase the system's channel capacity to a minimum of 120 MHz of bandwidth. However, nothing in this part shall be construed so as to preclude the parties to a franchise from negotiating an agreement calling for an increase to a minimum of 120 MHz of bandwidth prior to June 21, 1986.

(3) For the purposes of this part, a cable system with a channel capacity, available for immediate or potential use, equal to a minimum of 120 MHz of bandwidth shall mean: the provision of a distribution system designed and constructed so that a minimum of 120 MHz of bandwidth (the equivalent of 20 television broadcast channels) can be put into use with only the addition of the appropriate headend and subscriber terminal equipment.

D. In Twin Cities metropolitan area franchises, a provision designating the standard VHF channel 6 for uniform regional channel usage as required in part 2330.0400.

Statutory Authority: *MS s 238.05 subd 2; 238.06; 238.08 subd 1*

2315.0600 ADDITIONAL TERMS AND CONDITIONS PERMITTED.

Any franchise may contain such additional terms and conditions as the municipality and the franchisee deem appropriate, provided such additional terms and conditions are consistent with all federal and state laws, rules, regulations, and orders. The board shall make itself available to municipalities who desire assistance in the development of a franchise ordinance and the awarding of a franchise.

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