

CHAPTER 238

CABLE COMMUNICATIONS

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238.02 DEFINITIONS.

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

[For text of subds 2 to 16, see M.S.1982]

History: 1983 c 329 s 2

238.04 BOARD CREATED.

[For text of subd 1, see M.S.1982]

Subd. 2. Members shall be appointed by the governor with the advice and consent of the senate. No more than four members shall be from the same political party.

[For text of subds 2a to 9, see M.S.1982]

History: 1983 c 216 art 1 s 34

238.22 DEFINITIONS.

Subdivision 1. **Scope.** The terms used in sections 238.22 to 238.27 have the meanings given them in this section.

Subd. 2. **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. 3. **Multiple dwelling complex.** "Multiple dwelling complex" means a site, lot, field, or tract of land or water, other than a condominium, cooperative, or mobile home park, whether occupied or under construction, containing more than four dwelling units.

Subd. 4. **Property owner.** "Property owner" means any person with a recorded interest in a multiple dwelling complex, or person known to the cable communications company to be an owner, or the authorized agent of the person.

Subd. 5. **Resident.** "Resident" means a person or entity paying rent to a property owner.

Subd. 6. **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.

History: 1983 c 329 s 3

238.23 ACCESS REQUIRED.

Subdivision 1. **Provision of access.** A property owner or other person controlling access shall provide a cable communications company access to the

property owner's multiple dwelling complex. The access provided must be perpetual and freely transferable by one cable communications company to another. A cable communications company granted access, and its successors in interest, must fully comply with sections 238.22 to 238.27.

Subd. 2. **Resident's rights.** The intent of sections 238.22 to 238.27 is to give residents the freedom to choose among competing cable communications services and nothing in sections 238.22 to 238.27 shall be interpreted to require residents to hook up or subscribe to any services offered by any cable communications company or alternative provider of cable communications services.

History: 1983 c 329 s 4

238.24 CONDITIONS FOR ACCESS.

Subdivision 1. **In general.** An installation of cable communications facilities under sections 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 company 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 cable communications company 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 company with a municipality which would provide coverage to the property owner as provided under this subdivision shall be considered to fulfill the requirements of this subdivision.

Subd. 4. **Indemnify for damage.** A cable communications company 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 company, 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 238.22 to 238.27 precludes a property owner from entering into an agreement for use of a master antenna television system by a cable communications company or other television communications service.

Subd. 7. **Cost allocated.** A cable communications company 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 company 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 238.22 to 238.27 affects the validity of an agreement effective before June 15, 1983 between a property owner, a cable communications company, 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 by a franchised cable communications company, as required under section 238.23, only if that cable company 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 company 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 company that installed the equipment shall be reimbursed by the other providers for the cost of equipment and installation on the property on a pro rata basis which 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 shall 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.

(c) The board shall promulgate rules by January 1, 1984 to implement the provisions of this subdivision.

(d) Paragraphs (a) and (b) come into effect after rules have been promulgated and adopted in accordance with paragraph (c).

History: 1983 c 329 s 5

238.25 PROCEDURE.

Subdivision 1. **Applicable provisions.** The procedure for acquiring access under sections 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 238.22 to 238.27, a cable communications company shall serve written notice on all property owners. The notice shall contain the following:

- (1) the name and address of the cable communications company;
- (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 company 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 company, the property owner shall, within 45 days of the service of the notice and offer, notify the cable communications company of the refusal. Failure to notify the cable communications company 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 company which has been denied access to a multiple-dwelling complex may initiate proceedings under this section to obtain access.

(b) The cable communications company 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 company shall file with the district court in the county in which the premises is located, a petition:

(1) stating that the cable communications company 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 company shall pay the property owner or deposit with the district court an amount equal to the company'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 company 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 cable communications company, its agent or attorney, files an affidavit stating on belief that the property owner is not a resident of the state and that the company 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 company. 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 therein.

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 surveys 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 company 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 company 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 company 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 cable communications company 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 clerk of court and a certified copy thereof filed for record 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

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 company's measure of damages for the taking shall be limited to the actual compensation originally paid by the cable communications company to the property owner under sections 238.22 to 238.27.

History: 1983 c 329 s 7

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 company under sections 238.22 to 238.27.

History: 1983 c 329 s 8

238.35 USE OF EXISTING EASEMENTS; 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 required by public utilities and cable communications companies. Except for applicable governmental regulations, 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 companies to have the ability to use existing utility easements 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. Cable communications companies have a need to use existing utility easements 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.

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 easements. 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 company 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 company shall be subject to any burdens, duties, or obligations specified in the easement of the grantee of the easement.

(b) A cable communications company 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