

CHAPTER 238

CABLE COMMUNICATIONS

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238.01 DECLARATION OF LEGISLATIVE FINDINGS AND INTENT.

Upon investigation of the public interest associated with cable communications, the legislature of the state of Minnesota has determined that while cable communications serve in part as an extension of interstate broadcasting, that their operations also involve public rights-of-way, municipal franchising, and vital business and community service, which are of state concern; that while said operations must be subject to state oversight, they also must be protected from undue restraint and regulation so as to assure development of cable systems with optimum technology and maximum penetration in this state as rapidly as economically and technically feasible; that the municipalities and the state would benefit from valuable educational and public services through cable communications systems; that the cable communications industry must provide the opportunity for minority participation and benefit which its diversity promises; that the public and the business community would benefit if served by cable channels sufficient to meet the needs of producers and distributors of program and other communication content services; that the cable communications industry is in a period of rapid growth and corporate consolidation and should proceed in accord with regional and statewide service objectives; that these objectives should encourage area-wide service where consistent with the public interest and discourage concentration of control and ownership when not in the public interest; and that many municipalities lack the necessary resources and expertise to plan for and secure these benefits and to protect subscribers and other parties to the public interest in franchise negotiations.

There is, therefore, a need for a state agency to develop a state cable communications policy; to promote the rapid development of the cable communications industry responsive to community and public interest and consonant with policies, regulations and statutes of the federal government; to assure that cable communications companies provide adequate, economical and efficient service to their subscribers, the municipalities within which they are franchised and other parties to the public interest; to encourage the endeavors of public and private institutions, municipalities, associations and organizations in developing programming for public interest; and to provide minorities with the fullest opportunity to make effective use of the medium.

It is the intent of the legislature in sections 238.01 to 238.17 to vest authority in a board to oversee development of the cable communications industry in Minnesota in accordance with the statewide service plan; to review the suitability to practices for franchising cable communications companies to protect the public interest; to set standards for cable communications systems and franchise practices; to assure channel availability for municipal services, educational television, program diversity,

local expression and other program and communications content services; to assure that municipal franchising results in communication across metropolitan areas and in neighborhood communities in larger municipalities; to provide consultant services to community organizations and municipalities in franchise negotiations; and, to stimulate the development of diverse instructional, educational, community interest and public affairs programming with full access thereto by cable communications companies, educational broadcasters and public and private institutions operating closed circuit television systems and instructional television fixed services.

History: 1973 c 568 s 1; 1975 c 271 s 6; 1980 c 509 s 85

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.

Subd. 2. "Cable communications company" shall mean any person owning, controlling, operating, managing or leasing a cable communications system within the state.

Subd. 3. "Cable communications system" means a system which operates the service of receiving and amplifying programs broadcast by one or more television or radio stations and other programs originated by a cable communications company or by another party, and distributing those programs by wire, cable, microwave or other means, whether the means are owned or leased, to persons who subscribe to the service. This definition does not include:

(a) a system which serves fewer than 50 subscribers or a system which 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. Any system which serves more than 50 but fewer than 1,000 subscribers that has been removed from the provisions of this chapter shall be returned 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;

(b) a master antenna television system;

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

(d) a translator system which receives and rebroadcasts over-the-air signals.

Subd. 4. "Board" shall mean the cable communications board created by section 238.04.

Subd. 5. "Franchise" shall mean 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. 6. "Gross annual receipts" shall mean all compensation received directly or indirectly by a cable communications company from its operations within the state, limited to sums received from subscribers in payment for programs received.

Gross annual receipts shall not include any taxes on services furnished by a cable communications company imposed directly on any subscriber or user by any municipality, state, or other governmental unit and collected by the company for such governmental unit.

Subd. 7. "Master antenna television system" shall mean 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. 8. "Municipality" shall mean any organized town, city, or county with respect to the unorganized territory within its boundaries.

Subd. 9. "State" shall mean the state of Minnesota.

Subd. 10. "State agency" shall mean any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of the state.

Subd. 11. "Person" shall mean any individual, trustee, partnership, municipality, association, corporation or other legal entity.

Subd. 12. "Program" shall mean any broadcast-type program, signal, message, graphics, data, or communication content service.

Subd. 13. "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. 14. "Core service unit" shall mean 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 approved by the board.

Subd. 15. "Extension area" shall mean a municipality or municipalities located outside the franchise boundaries of the core service unit.

Subd. 16. "Extension permit" shall mean 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.

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

238.03 APPLICATION.

Sections 238.01 to 238.17 apply to every cable communications system and every cable communications company as defined in section 238.02, operating within the state, including a cable communications company which constructs, operates and maintains a cable communications system in whole or in part through the facilities of a person franchised to offer common or contract carrier services. Persons possessing franchises for any of the purposes of sections 238.01 to 238.17 are subject to sections 238.01 to 238.17 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

238.04 BOARD CREATED.

Subdivision 1. A cable communications board is hereby created within the department of administration and shall consist of seven members.

The members of the board shall be representative of the broad range of interests related to telecommunication needs and concerns.

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.

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Subd. 2a. The membership terms, compensation, removal of members, and filling of vacancies on the board shall be as provided in section 15.0575.

Subd. 3. The governor shall designate one of the members to be chairman who shall be the chief executive officer of the board. The members shall elect one of their number as vice-chairman of the board.

Subd. 4. [Repealed, 1976 c 134 s 79]

Subd. 5. [Repealed, 1976 c 134 s 79]

Subd. 5a. The chairman and other members of the board shall receive their ordinary and necessary expenses in the same manner and amount as state employees.

Subd. 6. A majority of the members of the board then in office shall constitute a quorum for the transaction of any business or the exercise of any power or function of the board. The board may delegate to one or more of its members, or its officers, agents, or employees, such powers and duties as it may deem appropriate.

Subd. 7. The department of administration may appoint an executive director and such other officers, employees, agents, and consultants as it may deem necessary, and prescribe their duties.

The attorney general shall appoint a counsel for the board.

Subd. 8. The executive director shall serve in the unclassified service of the state. All other employees shall serve in the classified service of the state.

Subd. 9. The board shall be established within three months of May 24, 1973. The board shall adopt the regulations required by sections 238.01 to 238.17 necessary for franchising and certification no later than April 1, 1975.

History: 1973 c 568 s 4; 1974 c 506 s 3; 1975 c 204 s 100; 1975 c 271 s 6; 1976 c 134 s 52,53; 1976 c 249 s 2; 1976 c 331 s 40; 1977 c 414 s 14; 1977 c 444 s 16; 1980 c 509 s 89; 1983 c 216 art 1 s 34

238.05 DUTIES OF THE BOARD.

Subdivision 1. The board shall develop and maintain a statewide plan for development of cable communications services, setting forth the objectives which the board deems to be of regional and state concern.

Subd. 2. The board shall, to the extent permitted by, and not contrary to, applicable federal and state law, rules and regulations:

(a) prescribe procedures and practices which municipalities shall follow in granting franchises, including those providing for issuance of a public invitation to compete for the franchise, said invitation containing the outlines for the municipality's cable system and the desired services, as well as the criteria and priorities the municipality has developed to review franchise applications;

(b) prescribe minimum standards for inclusion in franchises, including maximum initial, renegotiation and renewal periods; length of residential subscriber contracts; provisions for municipal purchase; prohibitions against the invasion of privacy through a cable communications system; provisions covering construction, operation and abandonment of cable communications systems; and a requirement that no such franchise may be exclusive. Taking into account the size of the cable communications system, the board shall also prescribe minimum standards for performance bond requirements; for channel capacity; for two-way capability; for access to, and facilities to make use of, channels for education, government, and the general public; and for construction and operation of the cable communications system;

(c) prescribe standards for: franchises awarded in the twin cities metropolitan area which designate a uniform regional channel; the interconnection of all cable

systems within this area; and the designation of a single entity to schedule programs and facilitate use of this channel;

(d) designate the entity referred to in clause (c) and prescribe rules for its operation and practice which rules shall insure that priority is given to public use of the uniform regional channel.

Subd. 3. The board shall provide advice and assistance to the cable communications industry; federal, state and local governments; members of the citizenry not commercially involved in cable communications activities; community organizations; and other private and public agencies interested in matters relating to cable communications and services.

Subd. 4. The board shall issue certificates of confirmation in accordance with the standards prescribed by the board.

Subd. 5. The board shall represent the interests of the people of the state before the federal communications commission.

Subd. 6. The board shall adopt, after consulting with either the metropolitan council or regional development commissions of the state as appropriate, a set of minimum standards for the establishment of cable territories within which a franchise may be awarded, and procedures to be followed for alteration of cable service territory boundaries.

Subd. 7. The board shall approve or reject boundaries for specific territories upon receipt of proposals from municipalities or cable communications operator applicants, after consultation with the metropolitan council or the affected regional planning commission. If the proposed boundaries, in whole or part, are within the seven county metropolitan area, the metropolitan council shall be allowed 45 days to review and comment on the proposed boundaries.

Subd. 8. The board shall prohibit invasion of privacy.

Subd. 9. The board shall insure that minorities and all other groups have the fullest access to cable communications at all levels, including the establishment of an affirmative action regulation and compliance mechanism consistent with Federal Executive Order No. 11246, of the President, as amended by Executive Order No. 11375 and Executive Order No. 11478.

Subd. 10. The board shall establish standards pertaining to transfer, renewal, termination or amendment of franchises.

Subd. 11. The board shall establish standards pertaining to ownership and control of cable communications companies.

Subd. 12. The board shall prescribe standards for interconnection and compatibility of cable communications systems.

Subd. 13. The board shall establish provisions pertaining to liability for obscenity and defamation.

Subd. 14. The board shall encourage experimental, innovative approaches to the building and operation of cable communications systems.

Subd. 15. The board shall encourage the establishment of nonprofit corporations to facilitate production for the access channels.

Subd. 16. The board shall establish standards covering the construction, operation and abandonment of cable communications systems.

Subd. 17. The board shall also promulgate rules pertaining to cable transmission line extension by cable communications companies.

Subd. 18. The board shall adopt rules to ensure that all cable communications systems as defined in section 238.02, subdivision 3, and all systems which would meet that definition but for the number of subscribers served, provide adequate access for educational and governmental programming. In adopting the rules, the

board shall give consideration to both the needs of the community and the capability of the system.

Subd. 19. The board may adopt rules to ensure reasonable access by cable systems to multiple unit dwellings and any site, lot, field, or tract of land and water upon which two or more occupied mobile or immobile dwelling units are located.

History: 1973 c 568 s 5; 1974 c 506 s 4-7; 1975 c 271 s 6; 1976 c 249 s 3-6; 1982 c 514 s 13; 1982 c 515 s 2,3

238.06 POWERS OF BOARD.

Subdivision 1. The board may promulgate, issue, amend, rescind, and provide for the enforcement of such rules and regulations as it may find necessary or appropriate to carry out the provisions of this chapter in accordance with chapter 14. The board may also issue any necessary and appropriate orders. Such orders, rules and regulations may classify persons and matters within the jurisdiction of the board and prescribe different requirements for different classes of persons or matters. A copy of any order, rule or regulation promulgated hereunder shall be subject to public inspection during reasonable business hours.

Subd. 2. The board or other aggrieved party shall have the right to institute or to intervene as a party in any action in any court of competent jurisdiction seeking mandamus, injunctive or other relief to compel compliance with any provision of sections 238.01 to 238.17 or any rules, regulations or orders issued thereunder.

Subd. 3. The board may subpoena witnesses, administer oaths, take testimony, and require the production of such books, records, papers, or documents as are material in a contested case and designated in the subpoena. The board may authorize hearing officers to exercise the authority conferred by this subdivision. Disobedience of a subpoena issued by the board or a hearing officer pursuant to this subdivision shall be punishable in like manner as a contempt of the district court in proceedings instituted upon application of the board or a hearing officer made to the district court of Ramsey county or the county in which the person who was subpoenaed resides or has his principal place of business.

Subd. 4. The board may by rule prescribe a schedule of filing fees for matters heard by it pursuant to section 238.14, provided the amount of the fee charged may not exceed the fee charged by the district court for hearings on a similar matter.

Subd. 5. The board may, upon a suitable showing of need in individual instances, order the interconnection of cable communications systems.

Subd. 6. The board may require from a cable communications system granted a certificate of confirmation information and supporting documentation in the form the board deems appropriate on an annual basis, or on sale, transfer or other major activity within a cable communications company. The board shall not release economic data of the cable communications company, including operating revenues and profitability, to the general public or to other cable communication companies except in furtherance of specific duties or obligations of the board.

History: 1973 c 568 s 6; 1974 c 506 s 8,9; 1975 c 271 s 6; 1976 c 249 s 7-9; 1980 c 509 s 90; 1982 c 424 s 130; 1982 c 514 s 14

238.07 [Repealed, 1984 c 525 s 4]

238.08 FRANCHISE REQUIREMENT.

Subdivision 1. A municipality shall require a franchise or extension permit of any cable communications system providing service within the municipality.

Subd. 2. Nothing in this chapter shall be construed to prevent franchise requirements in excess of those prescribed by the board, unless such requirement is inconsistent with this chapter or any regulation of the board.

Subd. 3. Nothing in this chapter shall be construed to limit any municipality from the right to construct, purchase, and operate a cable communications system. Any municipal system shall be subject to the laws, rules and regulations of the board to the same extent as would any nonpublic cable communications system.

Subd. 4. Nothing in sections 238.01 to 238.17 shall be construed to limit the power of any municipality to impose upon any cable communications company a fee, tax or charge.

Subd. 5. 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

238.09 CERTIFICATE OF CONFIRMATION.

Subdivision 1. Except as provided in subdivisions 4, 5 and 10, after May 24, 1973, no person shall exercise a franchise, and no such franchise shall be effective, until the board has confirmed such franchise.

Subd. 2. [Repealed, 1976 c 249 s 18]

Subd. 3. Any cable communications company which, pursuant to an existing franchise was lawfully engaged in actual operations on May 24, 1973, may continue to exercise said franchise pursuant to the terms thereof, provided such company files with the board by such date as the board shall set, an application in such form and containing such information and supporting documentation as the board may require. The board shall issue a certificate of confirmation to such a cable communications company valid for five years without further proceedings.

Subd. 4. Cable communications companies which have been granted a franchise prior to April 1, 1973, and which were not in operation prior to May 24, 1973, shall be given a ten year certificate of confirmation provided such company files with the board by such date as the board shall set, an application in such form and containing such information and supporting documentation as the board may require, and further provided such companies have commenced substantial construction, indicated by erection of the "head end" and stringing of no less than five miles of trunk and distribution cable, by January 1, 1974.

Subd. 5. Notwithstanding the provisions of subdivision 6, a municipality may issue a franchise by September 15, 1973, if done so pursuant to a municipal enabling ordinance on cable communications enacted by April 1, 1973, containing detailed

specifications for the construction and operation of a cable communications system. Any cable communications company so franchised may exercise its franchise pursuant to the terms thereof, provided such company files with the board an application in such form and containing such information and supporting documentation as the board may require. The board shall issue a certificate of confirmation to such a cable communications company valid for ten years.

Subd. 6. Except as provided in subdivision 3, a cable communications company shall secure a certificate of confirmation from the board before becoming operational. Except as provided in subdivisions 3, 4, 5 and 9, a certificate issued after the effective date of subdivision 4 may be granted after full board proceedings and shall be for the same number of years as the franchise to be confirmed. A renewal certificate of confirmation may be issued prior to the expiration of an existing certificate.

Subd. 7. A renewal of a certificate of confirmation shall be for the same number of years as the renewal franchise period. A renewal certificate of confirmation may be issued prior to the expiration of an existing certificate.

Subd. 8. Nothing in this section shall be deemed to validate a franchise not granted in accordance with law or affect any claims in litigation on May 24, 1973. No confirmation under this section shall preclude invalidation of any franchise illegally obtained.

Subd. 9. Notwithstanding the provisions of subdivision 6, the board may issue an interim certificate of confirmation after its acceptance of an application in a form containing the information and supporting documentation the board requires, the certificate to be valid for not more than five years, to an operating company having a franchise approved by the board to erect a community antenna and establish cable television service for any municipality having a population not greater than 15,000 according to the 1970 federal census; provided that the system shall be constructed and ready for operation by July 1, 1975, in full compliance with all applicable regulations of the federal communications commission and with any special terms or conditions set by the Minnesota board to apply in any individual situation to include stipulations regarding minimum channel capacity; extent of two-way capability; means for interconnection; and availability of facilities for public access cablecasting and for local program origination. The special terms and conditions are exempt from the administrative procedure act but, to the extent authorized by law to adopt rules, the board may use the provisions of section 14.38, subdivisions 5 to 9.

Subd. 10. Any cable communications company which, pursuant to an existing franchise was lawfully engaged in actual operations and which was providing extension of service to an area or areas outside of its franchise boundaries on May 1, 1977 may, notwithstanding any other law to the contrary, continue to provide such extension of service until May 1, 1978 or such time as the commission adopts line extension rules, whichever date is earlier.

Subd. 11. Upon expiration of the certificate issued pursuant to subdivisions 3, 4, 5 and 9, or upon the renewal of a certificate prior to its expiration pursuant to subdivision 7, a certificate shall not be renewed unless the franchise is, or is amended to be, in compliance with the franchise requirements and procedures prescribed by the board.

History: 1973 c 568 s 9; 1974 c 506 s 10; 1975 c 271 s 6; 1976 c 249 s 13,14; 1977 c 396 s 3,4; 1981 c 253 s 28; 1982 c 424 s 130; 1982 c 514 s 16; 1982 c 515 s 4-6

NOTE: Subdivision 6 was also amended by Laws 1982, Chapter 514, Section 15 to read as follows:

"Subd. 6. Except as provided in subdivision 3, a cable communications company shall secure a certificate of confirmation from the board before becoming operational. Except as provided in subdivisions 3, 4, 5 and 9, the certificate may be granted after full board proceedings and shall be for the same number of years as the initial franchise period. A renewal certificate of confirmation may be issued prior to the expiration of an existing certificate."

238.10 REGIONAL DEVELOPMENT COMMISSIONS.

For the purposes of assisting in the implementation of sections 238.01 to 238.17, the metropolitan council and regional development commissions of the state may engage in a program of research and study concerning interconnection, cable territories, regional use of cable communications and all other aspects which may be of regional concern.

History: 1973 c 568 s 10; 1980 c 509 s 92

238.11 CENSORSHIP PROHIBITED.

Subdivision 1. The board may not promulgate any regulation or condition which would interfere with the right of free speech by means of cable communications.

Subd. 2. No cable communications company 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. The cable communications company is not liable for programming content.

History: 1973 c 568 s 11; 1975 c 271 s 6; 1982 c 514 s 17

238.12 RATES.

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

Subd. 1a. The procedures for establishing all rates shall be set forth in the franchise ordinance. Rates charged by a cable communication company may be set forth in the franchise ordinance by the municipality. The franchise ordinance shall specify the current rates or in the alternative shall provide that the current rates and charges be available for public inspection in the municipality.

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

Subd. 3. The board shall provide assistance regarding rates and related economic matters to interested municipalities and their citizens. The board shall study, or cause to be studied, the desirability of regulation of all rates and charges of cable communications system.

History: 1973 c 568 s 12; 1975 c 271 s 6; 1982 c 515 s 7

NOTE: Subdivisions 1 and 2 were also amended by Laws 1982, Chapter 514, Sections 18 and 19 to read as follows:
"Subdivision 1. The rates charged by a cable communications company may be established in the franchise by the municipality."

"Subd. 2. Procedures for rate changes may be established in the approved franchise by the municipality."

238.13 POLES, DUCTS AND CONDUITS.

The board may adopt appropriate rules specifying necessary regulations for contractual agreements between cable communications operators and any public utilities with respect to the use of poles, ducts, conduits, and other appurtenances related to the cable communications transmission lines.

History: 1973 c 568 s 13; 1974 c 506 s 11; 1975 c 271 s 6; 1976 c 249 s 15

238.14 APPEALS TO THE BOARD.

Any franchised cable communications company, who is aggrieved by action of any franchise authority in modifying, suspending, cancelling, revoking, or declaring forfeited the franchise, may appeal to the board within 30 days following notice of such action by a petition in writing, setting forth all the material facts in the case. Any municipality which is aggrieved by the failure of its franchisee to perform according to the municipal ordinance may appeal to the board for assistance in

gaining franchisee compliance with the municipal ordinance by a petition in writing, setting forth all the material facts in the case.

The board at its discretion shall hold a hearing upon such appeals, requiring due notice to be given to all interested parties.

If the board approves the action of the municipality it shall issue notice to it to that effect, but if the board disapproves of its action it shall issue a decision in writing advising the municipality of the reasons for its decision and ordering the municipality to conform with such decision. If the board approves the action of the cable communications company it shall issue notice to it to that effect, but if the board disapproves of its action it shall issue a decision in writing advising the cable communications company of the reasons for its decision and ordering the cable communications company to conform with the decision.

Upon request, or upon its own initiative, the board may investigate the renewal or assignment of such franchise or the conduct of the business being done thereunder, and may, after hearing, modify, suspend, revoke or cancel such license for cause.

If the municipality fails to suspend, revoke, cancel or declare forfeited a license or to perform any other disciplinary act when lawfully ordered so to do by the board upon appeal or otherwise, within such reasonable time as it may prescribe, the board may itself revoke such license or perform such act with the same force and effect as if performed by the municipality.

History: 1973 c 568 s 14; 1975 c 271 s 6

238.15 FINANCIAL INTEREST OF MEMBERS.

No member of the board or person appointed pursuant to section 238.04, subdivision 7 shall be employed by, or shall knowingly have any financial interest in any cable communications company or its subsidiaries, major equipment or programming suppliers, or in any broadcasting company holding an operating license issued by the federal communications commission or its subsidiaries. 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 company, bidding on such franchise, or the cable communications company granted the franchise, or their subsidiaries, major equipment or program suppliers shall abstain from participation in the franchising of a cable communications company or the administration of such franchise.

History: 1973 c 568 s 15; 1975 c 271 s 6; 1976 c 249 s 16

238.16 FINES AND PENALTIES.

Subdivision 1. The board may seek such injunctive relief as is necessary to prevent violations of the orders, rules or regulations of the board.

Subd. 2. Any person violating the provisions of sections 238.01 to 238.17 or any rules or regulations made pursuant thereto, is guilty of a gross misdemeanor. Any term of imprisonment 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

238.17 PROVISION OF SERVICE TO EXTENSION AREAS.

Subdivision 1. **Conditions for extensions.** Notwithstanding the provisions of section 238.09 or any other law to the contrary, a cable communications system may extend service outside the boundaries of a core service unit if: (1) the extension area is not within the seven county metropolitan area, as defined in section 473.121,

subdivision 4; (2) the board first approves, in accordance with procedures set forth in the board's rules, the inclusion of the extension area in the same cable service territory which contains the core service unit; and (3) the cable communications system obtains and files with the board 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 system-wide 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. Excess extension permits. 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 or with any rule of the board.

Subd. 6. Waiver or modification. The board shall liberally construe this section and may, upon petition by either of the parties to an extension permit, waive or modify requirements to abide by the terms of the franchise of the core service unit if the terms are found to be unique to the core service unit and either inapplicable or inoperable in the extension area.

Subd. 7. Transitional provisions. Notwithstanding the provisions of section 238.08 or any other law to the contrary, any cable communications system which, pursuant to the terms of an existing franchise, was lawfully engaged in actual operations and which was providing extension of service to an area or areas outside of its franchise boundaries on April 6, 1978, may continue to provide service within the boundaries of the municipality or municipalities into which service was previously extended, but not to any new subscribers in any other municipality. Any such system shall have until April 30, 1979 to obtain approval of revised cable service territory boundaries which include the extension area being served, and until March 31, 1980 to obtain an extension permit or extension permits from the municipality or

municipalities having jurisdiction in the extension area. If the franchise of the core service unit is being exercised pursuant to section 238.09, subdivisions 3, 4, 5, or 9, the franchisee may continue to provide service in the extension area without further proceedings until such time as the certificate of confirmation currently in effect is required to be renewed. The franchisee shall, thereafter, be required to have established a cable service territory approved by the board which includes all areas to be served by the cable communications system and to have obtained an extension permit from each municipality in the cable service territory, except where two or more municipalities agree upon the joint exercise of powers pursuant to section 471.59. Nothing in this subdivision shall be construed to prevent a municipality from requiring an extension permit prior to the time required by this subdivision.

Subd. 8. **Rules.** The board may promulgate such rules as it deems necessary to effectuate the purposes and provisions of this section.

History: 1978 c 771 s 5

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

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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