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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE No. 2351

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The bill was read for the first time and referred to the Committee on Commerce and Labor

1.1 A bill for an act
1.2 relating to telecommunications; amending regulation of cable communications
1.3 systems; providing regulation of state-authorized video service providers;
1.4 amending Minnesota Statutes 2006, sections 238.02, by adding subdivisions;
1.5 238.03; proposing coding for new law in Minnesota Statutes, chapter 238.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2006, section 238.02, is amended by adding a
1.8 subdivision to read:

1.9 Subd. 3b. Commission. "Commission" means the Minnesota Public Utilities
1.10 Commission.

1.11 Sec. 2. Minnesota Statutes 2006, section 238.02, is amended by adding a subdivision
1.12 to read:

1.13 Subd. 33a. State-authorized video provider. "State-authorized video provider"
1.14 means an entity authorized by the commission under sections 238.50 to 238.64 to
1.15 provide video service. Cable communications system providers operating under the
1.16 provisions of sections 238.02 to 238.43 and other providers of television programming
1.17 or cable communications systems as defined in section 238.02, subdivision 29a, are not
1.18 state-authorized video providers and are not governed by sections 238.50 to 238.64.

1.19 Sec. 3. Minnesota Statutes 2006, section 238.02, is amended by adding a subdivision
1.20 to read:

1.21 Subd. 35. Video service. "Video service" means the provision of: (1) the service
1.22 of receiving and amplifying (i) programs broadcast by one or more television or radio
1.23 stations and (ii) other programs originated by a person operating a cable communications

2.1 system, by a state-authorized video provider, or by another person; and (2) distributing
2.2 those programs by wire, cable, microwave, or other means, regardless of whether the
2.3 means are owned or leased, to persons who subscribe to the service.

2.4 Sec. 4. Minnesota Statutes 2006, section 238.03, is amended to read:

2.5 **238.03 APPLICABILITY.**

2.6 This chapter applies to every cable communications system, as defined in section
2.7 238.02, operating within the state, including a cable communications system comprised in
2.8 whole or in part of facilities subject to regulation under chapter 237, but not including
2.9 a state-authorized video provider, as defined in section 238.02, unless provided for
2.10 elsewhere. Persons possessing franchises for any of the purposes of this chapter are
2.11 subject to this chapter although no property has been acquired, business transacted, or
2.12 franchises exercised.

2.13 Sec. 5. **[238.44] INTERCONNECTION.**

2.14 Where technically feasible, a cable communications system provider must use
2.15 reasonable efforts to interconnect its system with the system of a state-authorized
2.16 video service provider for the purpose of providing programs over access channels.
2.17 Interconnection may be accomplished by direct cable, microwave link, satellite, or other
2.18 reasonable method of connection. A cable communications systems provider and a
2.19 state-authorized video service provider must negotiate in good faith with respect to
2.20 interconnection of access channels. A cable communications system provider may not
2.21 withhold interconnection of access channels.

2.22 Sec. 6. **[238.45] PROMOTION; ADVERTISING.**

2.23 Subdivision 1. **Prohibition of promotion.** A cable communications system may not
2.24 place logos, advertisements, promotions, or any other marketing materials that would have
2.25 the effect of favoring or promoting any cable communications system over other video
2.26 service providers on any access channels.

2.27 Subd. 2. **Advertising.** A cable communications system provider may not refuse to
2.28 carry advertising requested by any other provider of video service on advertising space
2.29 owned and controlled by the provider of the cable service or the video service. A cable
2.30 communications system ensures that no less than ten percent of all advertising space
2.31 owned and controlled by the cable communications system provider is made available to
2.32 all video service providers. A cable communications system has a private right of action
2.33 in a court of competent jurisdiction with regard to these requirements.

3.1 Sec. 7. **[238.46] LIMITING CONTENT; LIABILITY.**

3.2 A cable communications system may not prohibit or limit a program or class or type
3.3 of program presented over a leased channel or a channel made available for public access,
3.4 governmental, or educational purposes. Neither a cable communications system nor
3.5 its officers, directors, or employees is liable for any penalties or damages arising from
3.6 programming content not originating from or produced by the cable communications
3.7 system and shown on any public access channel, governmental access channel, leased
3.8 access channel, or regional channel.

3.9 Sec. 8. **[238.50] STATE AUTHORIZATION TO PROVIDE VIDEO SERVICE.**

3.10 Subdivision 1. **Application required.** A person seeking to provide video service
3.11 in this state after August 1, 2007, must file an application for authorization with the
3.12 commission as required by this section.

3.13 Subd. 2. **Application contents.** An application for authority to provide
3.14 state-authorized video service must include:

3.15 (1) the applicant's full legal name; the applicant's address, including the address of
3.16 the applicant's place of business; and the names, titles, and telephone numbers of the
3.17 applicant's principal officers;

3.18 (2) a copy of the applicant's articles of incorporation and a list of shareholders,
3.19 partners, or members owning ten percent or more of a financial interest in the business;

3.20 (3) a list of the applicant's affiliates, subsidiaries, and parent organizations, if any;

3.21 (4) the nature of the applicant's business, including a list of the services it provides;

3.22 (5) a description of the applicant's business history, including:

3.23 (i) the date the business was first organized; the dates of subsequent reorganizations,
3.24 acquisitions, and divestitures; and the date the applicant started providing video service;
3.25 and

3.26 (ii) the applicant's experience providing video service in this state and other
3.27 states, including the types of service provided, the dates and nature of state or federal
3.28 authorization to provide the service, the length of time it has provided the service, and
3.29 pending or completed criminal, civil, or administrative action taken against the applicant
3.30 by a state or federal authority, including any settlements, in connection with the applicant's
3.31 provision of video service;

3.32 (6) the applicant's financial statement for the most recent fiscal year, including
3.33 a balance sheet, income statement, notes to the financial statement, and, if available, an
3.34 annual report;

4.1 (7) a statement regarding whether the applicant seeks authority to offer video service
 4.2 to businesses and residences;

4.3 (8) all local units of government in which the applicant is seeking to provide video
 4.4 service;

4.5 (9) the date by which the applicant expects to offer video service to the area for
 4.6 which the applicant is seeking certification;

4.7 (10) a description of the applicant's policies, personnel, and equipment maintenance,
 4.8 including information demonstrating the applicant's ability to respond to customer
 4.9 inquiries promptly;

4.10 (11) a copy of the applicant's certificate to conduct business issued by the Minnesota
 4.11 secretary of state; and

4.12 (12) other information that demonstrates the applicant's managerial, technical, and
 4.13 financial ability to provide the services it intends to offer consistent with the requirements
 4.14 of this section.

4.15 Subd. 3. **Issuance of certificate.** The commission must grant an applicant a
 4.16 certificate to provide video service if the commission determines that the applicant has
 4.17 demonstrated the financial, technical, and managerial capability to provide the services
 4.18 described in its application. In making its determination, the commission must consider:

4.19 (1) the applicant's experience providing video service in this state and other states;

4.20 (2) the applicant's personnel, staffing, equipment, and procedures, and the extent
 4.21 to which these are adequate to ensure compliance with the applicable requirements
 4.22 of state or federal laws;

4.23 (3) the extent to which the applicant has had any civil, criminal, or administrative
 4.24 action taken against it in connection with the applicant's provision of video service;

4.25 (4) the applicant's cash reserves and the extent to which those reserves or cash
 4.26 equivalent are adequate to meet the applicant's startup costs and expenses;

4.27 (5) the applicant's business or owner equity, which must be positive;

4.28 (6) the applicant's plan and facilities for receiving and responding to customer
 4.29 inquiries and complaints, which must include a toll-free telephone number providing
 4.30 access to the applicant's place of business during regular business hours; and

4.31 (7) any other factors relevant to determining the applicant's technical, managerial,
 4.32 and financial capability to provide the services described in its application.

4.33 Subd. 4. **Application fee.** An application to the commission for authority to
 4.34 provide state-authorized video service must be accompanied by a fee, determined by the
 4.35 commission, not exceeding \$2,000. The application fee may not exceed the commission's

5.1 direct and indirect costs of processing an application. The commission will review the
 5.2 application fee annually and adjust it as necessary.

5.3 Subd. 5. **Service area.** (a) No person authorized to provide state-authorized
 5.4 video service may do so in any area for which it has not received authorization from
 5.5 the commission.

5.6 (b) An applicant for an amended authorization must file a notice of the expansion or
 5.7 acquisition with the commission, indicating the additional local units of governments to
 5.8 be served. Notice of the filing must be served on any affected municipality and shall be
 5.9 considered approved 20 days after the date of filing with the commission. No additional
 5.10 fee or payment to the commission for an expansion of authority to offer video service is
 5.11 required.

5.12 Subd. 6. **Final determination.** The commission must make a final determination
 5.13 regarding a state-authorized video service provider application within 30 calendar days
 5.14 after its receipt.

5.15 Subd. 7. **Termination.** An authorization to provide video service issued by the
 5.16 commission under this section may be terminated by the state-authorized video provider
 5.17 by filing notice with the commission.

5.18 **Sec. 9. [238.52] PROVISION OF PUBLIC ACCESS REQUIRED.**

5.19 Subdivision 1. **Number of PEG channels.** Not later than 180 days after a request
 5.20 by a municipality in which a state-authorized video service provider is providing video
 5.21 service, a state-authorized video service provider must designate a sufficient amount of
 5.22 capacity on its communications network to allow the provision of an equal number of
 5.23 public, educational, and governmental access channels as provided by the existing cable
 5.24 communications system provider to subscribers in that municipality.

5.25 Subd. 2. **Content format.** A municipality must ensure that all transmissions,
 5.26 content, or programming to be transmitted by a state-authorized video service provider
 5.27 are provided to the state-authorized video service provider in a manner or form that
 5.28 the state-authorized video service provider is capable of accepting and transmitting
 5.29 over its network without requiring alteration in content by the state-authorized video
 5.30 service provider, and which is compatible with the technology or protocol utilized by the
 5.31 state-authorized video service provider to deliver services.

5.32 Subd. 3. **PEG fees.** If a cable communications system provider collects for and
 5.33 remits a monthly fee to a municipality for public, educational, and governmental access
 5.34 channels, any state-authorized video service provider providing video service in the
 5.35 municipality must pay this monthly fee at the same rate. Revenues collected under this

6.1 subdivision must be used only to support public, educational, and governmental access
6.2 channels.

6.3 Sec. 10. **[238.54] MUNICIPAL PROVIDER FEE.**

6.4 Subdivision 1. **Provider fee requirement.** A state-authorized video service
6.5 provider must pay a provider fee to any municipality in which it provides video service.
6.6 The provider fee must be paid quarterly, within 45 days after the close of the quarter,
6.7 and must be calculated as a percentage of gross revenues. The first payment is due 45
6.8 days after the close of the quarter during which a state-authorized video service provider
6.9 initiates video service in that municipality.

6.10 Subd. 2. **Provider fee amount.** A state-authorized video service provider must
6.11 pay the municipality a provider fee equal to the lesser of: (1) five percent of its gross
6.12 revenues collected for video services provided under sections 238.50 to 238.64 within the
6.13 municipality, less all costs, fees, and any other mandatory payments or compensation the
6.14 state-authorized video service provider is required to pay by the municipality; or (2) the
6.15 percentage of gross revenues paid to the municipality by a cable communications system
6.16 provider providing video service in the municipality.

6.17 Subd. 3. **Definition.** For purposes of this subdivision, "gross revenues" means all
6.18 revenues derived directly or indirectly by a state-authorized video service provider from
6.19 the provision of video service within a municipality. Gross revenues include revenues
6.20 from basic video service, other video service tiers, monthly fees for programming offered
6.21 on a per-channel or per-program basis, installation and reconnection fees, leased channel
6.22 fees, converter rentals, studio rental, production equipment and personnel fees, interactive
6.23 video service, advertising, video store sales, late payment service fees, and fees for other
6.24 services offered over the system. If a state-authorized video service provider's service is
6.25 bundled with other services and sold at a single, nonitemized price, gross revenues include
6.26 only those revenues attributable to state-authorized video service based on the provider's
6.27 books and records. Gross revenues do not include any taxes on services furnished by the
6.28 state-authorized video service provider that are imposed directly upon a subscriber by
6.29 the state or other governmental unit and collected by the state-authorized video service
6.30 provider on behalf of a governmental unit. A video provider fee is not such a tax.

6.31 Subd. 4. **Billing treatment.** A state-authorized video service provider may identify
6.32 the amount of the video provider fee or a tax or monthly charge for public, educational,
6.33 and governmental channels collected for a governmental unit as a separate line item on
6.34 a subscriber's bill.

7.1 Sec. 11. **[238.56] RED-LINING PROHIBITED.**

7.2 A state-authorized video service provider may not deny access to service to any
7.3 group of subscribers because of the income, racial, or ethnic characteristics in the local
7.4 area in which the subscribers reside.

7.5 Sec. 12. **[238.58] CUSTOMER SERVICE.**

7.6 A state-authorized video service provider must comply with customer service
7.7 requirements consistent with, but not exceeding, Code of Federal Regulations, title 47,
7.8 section 76.309 (c), as amended, and emergency alert requirements established by the
7.9 Federal Communications Commission.

7.10 Sec. 13. **[238.60] RESOLUTION OF DISPUTES.**

7.11 Subdivision 1. **Resolution process.** A state-authorized video service provider must
7.12 implement a process to respond to inquiries made by a subscriber or a municipality
7.13 regarding the provision of video service. If an inquiry is not resolved through this process,
7.14 a subscriber or municipality may request to enter a confidential nonbinding mediation with
7.15 the state-authorized video service provider.

7.16 Subd. 2. **Enforcement.** If the procedures under subdivision 1 do not resolve
7.17 municipal or subscriber inquiries, sections 238.50 to 238.64 may be enforced in an action
7.18 brought exclusively in district court for an injunction or action to compel performance.

7.19 Sec. 14. **[238.62] APPLICABILITY OF OTHER LAW.**

7.20 Subdivision 1. **Governance.** Notwithstanding any other provision of this chapter,
7.21 a state-authorized video service provider is exclusively governed by the provisions of
7.22 sections 238.50 to 238.64, except that the provisions of sections 238.02, subdivisions 3b,
7.23 33a, and 35; and 238.35 to 238.46 apply to a state-authorized video provider.

7.24 Subd. 2. **Municipal requirements.** A municipality may require fee payments
7.25 and the provisioning of public, educational, and governmental access channels only as
7.26 specified in sections 238.50 to 238.64.

7.27 Sec. 15. **SEVERABILITY.**

7.28 The provisions of sections 1 to 14 are severable. If any provision of sections 1 to 14
7.29 or its application to any person or circumstance is held invalid for any reason in a court
7.30 of competent jurisdiction, the invalidity does not affect other provisions or any other
7.31 application of sections 1 to 14 which can be given effect without the invalid provision
7.32 or application.