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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. 3212

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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; providing for arbitration concerning competing
1.3 video programming; requiring rulemaking; proposing coding for new law in
1.4 Minnesota Statutes, chapter 238.

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

1.6 Section 1. **[238.45] COMPETING VIDEO PROGRAMMING.**

1.7 (a) As used in this section:

1.8 (1) "Affiliated video programming" means video programming owned in whole or in
1.9 part by a cable operator;

1.10 (2) "Cable operator" means a cable communications system. Cable operator
1.11 includes any affiliate or subsidiary of a cable operator or multichannel video programming
1.12 distributor;

1.13 (3) "Commissioner" means the commissioner of commerce;

1.14 (4) "Provider of competing video programming" means a person engaged in the
1.15 production, creation, or wholesale distribution of video programming that is not affiliated
1.16 with a cable operator and that offers video programming that competes in the same
1.17 programming category as video programming owned by a cable operator;

1.18 (5) "Extended basic cable service" means a category of cable service provided by a
1.19 cable operator that is immediately superior in terms of price and the number of available
1.20 channels to the basic cable service offered by the cable operator; and

1.21 (6) "Programming category" means video programming that predominantly contains
1.22 one of the following types of information: sports, news and public affairs, entertainment,
1.23 or any other category provided for in rules adopted by the commissioner under this section.

2.1 (b) A cable operator that offers affiliated video programming on its extended basic
2.2 cable service shall treat in a fair, reasonable, and nondiscriminatory manner the provider
2.3 of competing video programming that competes in the same programming category with
2.4 the cable operator's affiliated video programming.

2.5 (c) If the provider of competing video programming has reason to believe it has not
2.6 been treated in a fair, reasonable, and nondiscriminatory manner by a cable operator
2.7 concerning carriage of the provider's competing video programming by the cable operator,
2.8 it may submit a request for commercial arbitration with the cable operator not later than
2.9 90 days after an initial request made by the provider or renewal of an agreement between
2.10 the cable operator and provider leads to a dispute.

2.11 (d) If the dispute remains unresolved ten days after submission of the request for
2.12 arbitration under paragraph (c), either party may file with the Department of Commerce a
2.13 formal demand for arbitration. The formal demand must be made in a form and manner
2.14 prescribed by the department in rules adopted under paragraph (g). The formal demand
2.15 must include a final offer. Once a formal demand for arbitration is made, the department
2.16 shall notify the other party of the demand for arbitration. The responding party shall
2.17 submit its final offer not later than five days after receipt of notice from the department.

2.18 (e) The arbitration must be conducted by a single arbitrator designated by the
2.19 commissioner under the expedited procedures for arbitration rules adopted by the
2.20 commissioner under paragraph (g). The arbitrator shall examine the final offer and
2.21 response provided under paragraph (d) and shall make an award in favor of the party
2.22 whose offer most closely approximates the fair market value of the programming carriage
2.23 rights at issue. The arbitrator shall use the terms and conditions and form of the contract
2.24 of the initiating party.

2.25 To determine fair market value, the arbitrator may consider any relevant evidence
2.26 and may require the parties to submit, under confidentiality safeguards imposed by the
2.27 arbitrator, any relevant evidence within their control, including the following:

2.28 (1) current or previous contracts between the provider of competing video
2.29 programming and other cable operators in which the cable operator does or does not have
2.30 an interest, including offers made during negotiation of those contracts;

2.31 (2) current or previous contracts for the carriage of the cable operator's affiliated
2.32 video programming by the cable operator and other cable operators, including related and
2.33 integrated carriage or other arrangements for the affiliated video programming;

2.34 (3) price, terms, conditions, and relationships that the provider of competing video
2.35 programming has regarding carriage with other cable operators;

3.1 (4) evidence of the relative value, including ratings or advertising rates, of the
3.2 competing video programming compared to the affiliated video programming being
3.3 carried by the cable operator;

3.4 (5) the extent of national carriage of the competing video programming; and

3.5 (6) whether the cable operator's affiliated video programming and the competing
3.6 video programming have, in the past five years, pursued the same programming content
3.7 from third parties.

3.8 The arbitrator may not consider offers made prior to the arbitration made between
3.9 the cable operator or the provider of competing video programming.

3.10 (f)(1) The award made in an arbitration under paragraph (e) must be in writing and
3.11 signed by the arbitrator within 90 days after the initiation of the formal arbitration. A copy
3.12 of the award must be delivered to each of the parties.

3.13 (2) A copy of the award and any penalty assessment made under this paragraph
3.14 must be filed with the district court designated by the parties, or, if no such designation
3.15 has been made, in the district court of any county in which a party in interest resides or
3.16 may be summoned, or if any party in interest is a corporation, in any county in which the
3.17 corporation is situated or has or had its principal office or place of business, or in which
3.18 the corporation has an office or agent, or in any county in which a summons may be
3.19 served upon the president, chairperson, or president of the board of directors or trustees,
3.20 or other chief officer of the corporation.

3.21 (3) The court with which the copy of the award and penalty assessment is filed
3.22 may enforce the award and assessment.

3.23 (4) If the arbitrator finds that one party's conduct during the course of the arbitration
3.24 has been unreasonable, the arbitrator may assess all or a portion of the other party's costs
3.25 and expenses, including attorney fees, against the offending party.

3.26 (g) The commissioner shall adopt rules establishing:

3.27 (1) the form and manner of a formal demand for arbitration;

3.28 (2) rules of arbitration, in particular the rules for an expedited arbitration process;

3.29 (3) any additional programming categories to those provided in paragraph (a); and

3.30 (4) other rules necessary to implement this section.