
WEST VIRGINIA CODE CHAPTER 24D
ARTICLE 2

WV Legislature

§24D-2-1. Legislative findings.

The Legislature finds and declares as follows:

(a) Cable television has become an important medium of public communication and entertainment.

(b) It is in the public interest to assure apartment residents and other tenants of leased residential dwellings access to cable television service of a quality and cost comparable to service available to residents living in personally owned dwellings.

(c) It is in the public interest to afford apartment residents and other tenants of leased residential dwellings the opportunity to obtain cable television service of their choice and to prevent landlords from treating such residents and tenants as a captive market for the sale of television reception services selected or provided by the landlord.

§24D-2-2. Definitions.

As used in this article:

(a) "Cable operator" means any person or group of persons: (1) Who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in the cable system; or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

(b) "Cable service" or "cable television service" means: (1) The one-way transmission to subscribers of video programming or other programming service; and (2) subscriber interaction, if any, which is required for the selection of video programming or other programming service.

(c) "Cable system" means any facility within this state consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but does not include: (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless that facility or facilities uses any public right-of-way; or (3) a facility of a public utility subject, in whole or in part, to the provisions of chapter twenty-four of this code, except to the extent that those facilities provide video programming directly to subscribers.

(d) "Cable television facilities" includes all antennas, poles, supporting structures, wires, cables, conduits, amplifiers, instruments, appliances, fixtures and other personal property used by a cable operator in providing service to its subscribers.

(e) "Commission" or "Public Service Commission" shall mean the Public Service Commission of West Virginia.

(f) "Landlord" means a person owning, controlling, leasing, operating or managing the multiple dwelling premises.

(g) "Multiple dwelling premises" means any area occupied by dwelling units, appurtenances thereto, grounds and facilities, which dwelling units are intended or designed to be occupied or leased for occupation, or actually occupied, as individual homes or residences for three or more households. The term includes mobile home parks.

(h) "Person" means an individual, partnership, associate, joint stock company, trust, corporation or governmental agency.

(i) "Tenant" means a person occupying single or multiple dwelling premises owned or controlled by a landlord but does not include an inmate or any person incarcerated or housed within any state institution.

§24D-2-3. Landlord-tenant relationship.

(a) A landlord may not:

(1) Interfere with the installation, maintenance, operation or removal of cable television facilities upon his property or multiple dwelling premises, except that a landlord may require:

(A) That the installation of cable television facilities conform to such reasonable conditions as are necessary to protect the safety, functioning and appearance of the multiple dwelling premises and the convenience and well-being of other tenants;

(B) That the cable operator or the tenant or a combination thereof bear the entire cost of the installation or removal of such facilities; and

(C) That the cable operator agrees to indemnify the landlord for any damage caused by the installation, operation or removal of such facilities;

(2) Demand or accept any payment from any tenant, in any form, in exchange for permitting cable television service on or within his property or multiple dwelling premises, or from any cable operator in exchange therefor except as may be determined to be just compensation in accordance with this article;

(3) Discriminate in rental charges, or otherwise, between tenants who receive cable television service and those who do not.

(b) Provisions relating to cable television service or satellite master antenna systems contained in rental agreements and leases executed prior to the effective date of this article may be enforced notwithstanding this section.

(c) A cable operator may not enter into any agreement with the owners, lessees or persons controlling or managing the multiple dwelling premises served by a cable television, or do or permit any act, that would have the effect, directly or indirectly, of diminishing or interfering with existing rights of any tenant or other occupant of such building to use or avail himself of master or individual antenna equipment.

(d) The cable operator shall retain ownership of all wiring and equipment used in any installation or upgrade of a cable system within any multiple dwelling premises.

§24D-2-4. Prohibition.

Except as provided in this article, no landlord may demand or accept any payment from any cable operator in exchange for permitting cable television service or facilities on or within the landlord's property or multiple dwelling premises.

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§24D-2-5. Just compensation.

Every landlord is entitled to a single payment of just compensation for property taken by a cable operator for the installation of cable television service or facilities. The amount of just compensation, if not agreed between the landlord and cable operator, shall be determined by the commission in accordance with this article upon application by the landlord pursuant to section eight of this article. A landlord is not entitled to just compensation in the event of a rebuild, upgrade or rewiring of cable television service or facilities by a cable operator.

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§24D-2-6. Right of entry.

A cable operator, upon receiving a request for service by a tenant or landlord, has the right to enter property of the landlord for the purpose of making surveys or other investigations preparatory to the installation. Before such entry, the cable operator shall serve notice upon the landlord and tenant, which notice shall contain the date of the entry, the name and address of the cable operator, the name and address of the landlord, from whom the request for service was received, and a citation to this act. The cable operator is liable to the landlord for any damages caused by such entry but such damages shall not duplicate damages paid by the cable operator pursuant to section eight of this article.

§24D-2-7. Notice of installation.

(a) Every cable operator proposing to install cable television service or facilities upon the property of a landlord shall serve upon said landlord and tenant, or an authorized agent, written notice of intent thereof at least fifteen days prior to the commencement of such installation. Verbal notice to the tenant shall be legally sufficient if the date and time of entry is communicated to the tenant by either the landlord or cable operator at least twenty-four hours prior to entry.

(b) The commission shall prescribe the procedure for service of such notice, and the form and content of such notice, which shall include, but need not be limited to:

- (1) The name and address of the cable operator;
- (2) The name and address of the landlord;
- (3) The approximate date of the installation; and
- (4) A citation to this act.

(c) Where the installation of cable service or facilities is not effected pursuant to a notice served in accordance with this section, for whatever reason including denial of entry by the landlord, the cable operator may file with the board a petition, verified by an authorized person from the cable operator, setting forth:

- (1) Proof of service of a notice of intent to install cable television service upon the landlord;
- (2) The specific location of the real property;
- (3) The resident address of the landlord, if known;
- (4) A description of the facilities and equipment to be installed upon the property, including the type and method of installation and the anticipated costs thereof;
- (5) The name of the individual or officer responsible for the actual installation;
- (6) A statement that the cable operator shall indemnify the landlord for any damage caused in connection with the installation, including proof of insurance or other evidence of ability to indemnify the landlord;
- (7) A statement that the installation shall be conducted without prejudice to the rights of the landlord to just compensation in accordance with section eight of this article;
- (8) A summary of efforts by the cable operator to effect entry of the property for the installation; and
- (9) A statement that the landlord is afforded the opportunity to answer the petition within

ten days from the receipt thereof, which answer must be responsive to the petition and may set forth any additional matter not contained in the petition.

If no answer is filed within the time permitted, the commission shall grant the petitioning cable operator an order of entry and installation, which order constitutes a ruling that the petitioning cable operator has complied with the requirements of this article. If the landlord files a written answer to the petition, the cable operator shall have ten days within which to reply to the answer. The commission may grant or deny the petition, schedule an administrative hearing on any factual issues presented thereby or direct such other procedures as may be consistent with the installation of cable television service or facilities in accordance with this article. The only basis upon which the commission may deny a petition by the cable operator is that the cable operator has not complied with the requirements of this article.

Within thirty days of the date of grant or denial of the petition, or issuance of any other order by the commission following a hearing or other procedure, the cable operator or landlord may appeal such grant or denial or order of the commission to the circuit court of Kanawha County. Any order issued by the commission pursuant to this section may be enforced by an action seeking injunctive or mandamus relief in circuit court where the property is located.

§24D-2-8. Application for just compensation.

(a) If the landlord and cable operator have not reached agreement on the amount of just compensation, a landlord may file with the commission an application for just compensation within four months following the service by the cable operator of the notice described in section eight of this article, or within four months following the completion of the installation of the cable television facilities, whichever is later.

(b) An application for just compensation shall set forth specific facts relevant to the determination of just compensation. Such facts should include, but need not be limited to, a showing of:

(1) The location and amount of space occupied by the installation;

(2) The previous use of such space;

(3) The value of the applicant's property before the installation of cable television facilities and the value of the applicant's property subsequent to the installation of cable television facilities; and

(4) The method or methods used to determine such values. The commission may, upon good cause shown, permit the filing of supplemental information at any time prior to final determination by the commission.

(c) A copy of the application filed by the landlord for just compensation shall be served upon the cable operator making the installation and upon either the mayor or county commission of the municipality or county, respectively, in which the real property is located when the municipality or county is the franchise authority.

(d) Responses to the application, if any, shall be served on all parties and on the commission within twenty days from the service of the application.

(e)(1) The commission shall within sixty days of the receipt of the application, make a preliminary finding of the amount of just compensation for the installation of cable television facilities.

(2) Either party may, within twenty days from the release date of the preliminary finding by the commission setting the amount of just compensation, file a written request for a hearing. Upon timely receipt of such request, the commission shall conduct a hearing on the issue of compensation.

(3) In determining just compensation, the commission may consider evidence introduced including, but not limited to, the following:

(A) Evidence that a landlord has a specific alternative use for the space occupied or to be occupied by cable television facilities, the loss of which will result in a monetary loss to the

owner;

(B) Evidence that installation of cable facilities upon such multiple dwelling premises will otherwise substantially interfere with the use and occupancy of such premises to the extent which causes a decrease in the resale or rental value; or

(C) Evidence of increase in the value of the property occurring by reason of the installation of the cable television facilities.

(4) For purposes of this article, the commission shall presume that a landlord has received just compensation from a cable operator for the installation within a multiple dwelling premises if the landlord receives compensation in the amount of \$1 for each dwelling unit within the multiple dwelling premises or \$100 for the entire multiple dwelling premises, whichever amount is more.

(5) If, after the filing of an application, the cable operator and the applicant agree upon the amount of just compensation, a hearing shall not be held on the issue.

(6) Within thirty days of the date of the notice of the decision of the commission, either party may appeal the decision of the commission in the circuit court of Kanawha County regarding the amount awarded as compensation.

§24D-2-9. Existing cable services protected.

Cable services being provided to tenants on the effective date of this article may not be prohibited or otherwise prevented so long as the tenant continues to request such services.

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§24D-2-10. Exception.

Notwithstanding any provision in this article to the contrary, a landlord and cable operator may by mutual agreement establish the terms and conditions upon which cable television facilities are to be installed within a multiple dwelling premises without having to comply with the provisions of this article.

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