WEST VIRGINIA CODE CHAPTER 24D

WV Legislature

§24D-1-1. Legislative findings.

The Legislature finds that television is an important source of information and entertainment affecting the welfare and economy of the state, and that cable television services have become widespread, often providing the only access to quality television signals in many areas of the state. The Legislature finds that it is in the public interest to establish uniform standards within the State of West Virginia for the issuance, renewal and transfer of cable television franchises; to establish uniform standards for the provision of cable service; to establish uniform procedures for the investigation and resolution of complaints concerning cable service; and to establish just, reasonable and nondiscriminatory rates and charges for the provision of cable service to the extent that the service is not subject to effective competition. The purpose of the article is to promote such goals by all available means not in conflict with federal law, rules or regulations.

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§24D-1-2. Definitions.

As used in this chapter:

(1) "Applicant" means a person who initiates an application or proposal.

(2) "Application" means an unsolicited filing for a cable franchise.

(3) "Basic cable service" means any service tier which includes the retransmission of local television broadcast signals.

(4) "Cable franchise" or "franchise" means a nonexclusive initial authorization or renewal thereof issued pursuant to this chapter, whether the authorization is designated as a franchise, permit, order, contract, agreement or otherwise, which authorizes the construction or operation of a cable system.

(5) "Cable operator" means any person or group of persons: (A) 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 (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

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

(7) "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: (A) A facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) 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 (C) 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.

(8) "Commission" or "Public Service Commission" means the Public Service Commission of West Virginia.

(9) "County commission" means the commissioners composing the county commission in pursuance of section nine, article IX of the Constitution of this state within whose jurisdiction there exists a cable system or where such cable system is hereafter constructed, operated, acquired or extended.

(10) "Facility" includes all real property, antennas, poles, supporting structures, wires, cables, conduits, amplifiers, instruments, appliances, fixtures and other personal property

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used by a cable operator in providing service to its subscribers.

(11) "Franchising authority" means a municipality, a county commission or the Public Service Commission empowered by federal, state or local law to grant a cable franchise.

(12) "Institution of higher education" means an academic college or university accredited by the north central association of colleges and schools.

(13) "Municipality" means any municipal corporation duly chartered in the State of West Virginia within whose jurisdiction there exists a cable system or where such cable system is hereafter constructed, operated, acquired or extended.

(14) "Other programming service" means information that a cable operator makes available to all subscribers generally.

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

(16)"Proposal" means a filing solicited by the franchising authority for a cable franchise.

(17)"Public, educational or governmental access facilities" means: (A) Channel capacity designated for public, educational or governmental uses; and (B) facilities and equipment for the use of that channel capacity.

(18)"Public place" includes any property, building, structure or water to which the public has a right of access and use.

(19)"School" means an academic and noncollege type regular or special education institution of learning established and maintained by the Department of Education and the arts or licensed and supervised by that department.

(20)"Service area" means that geographic area for which a cable operator has been issued a cable franchise.

(21)"Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

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§24D-1-3. Cable franchise required; franchising authority.

(a) No person may construct, operate or acquire a cable system, or extend an existing cable system outside its designated service area, without first obtaining a cable franchise from a franchising authority as provided in this chapter.

(b) Any person operating a cable system on the effective date of this chapter without a franchise shall, within sixty days of the effective date of this chapter, notify the commission in writing setting forth: (1) The name, business address and telephone number of the cable operator; (2) the principals and ultimate beneficial owners of the cable system or systems; (3) the geographic location and service area of any cable system operated by such person; (4) the number of subscribers within the cable system or systems; and (5) if applicable, the date on which and the franchising authority with which, a formal application for a franchise was filed.

(c) The commission shall, upon receipt of such information, determine the appropriate franchising authority or authorities for the purposes of the consideration of the issuance of a franchise to such cable operator or operators and shall notify the appropriate franchising authority or authorities and any such cable system operator of the franchise application procedures to be followed by the respective parties. Any such cable operator, that has not previously applied for a franchise with the appropriate franchising authority, shall, within sixty days of receipt of such notice from the commission, make formal application to the appropriate franchising authority or authorities for a franchise in accordance with the provisions of this article.

(d) The franchising authority shall be the municipality in which a cable system is to be constructed, operated, acquired or extended, or if there be no such municipality or if the municipality so elects not to act as a franchising authority, then the franchising authority shall be the county commission of the county in which such cable system is to be constructed, operated, acquired or extended: Provided, That nothing herein shall prohibit any county commission of a county in which a municipality acting as a franchising authority is located from also acting as a franchising authority for any cable system to be constructed, operated, acquired or extended within the jurisdiction of such county commission, nor prohibit any county commission of a county acquiring the franchise authority from a municipality from electing to transfer such authority to the commission.

(e) If a county commission elects not to act as the franchise authority, the commission shall become the franchising authority. A county commission acting as a franchising authority for unincorporated areas of the county may elect separately to transfer to the commission any franchise authority acquired from a municipality. If any municipality or county commission so elects not to be the franchising authority, the mayor or president of the county commission shall certify such delegation in writing to the commission. Such election shall be promptly made upon written request of the commission or the cable operator.

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§24D-1-4. Existing cable franchises.

(a) The provisions of any cable franchise in effect on the effective date of this chapter shall remain in effect, subject to the express provisions of this article, and for no longer than the then current remaining term of the franchise as such franchise existed on the effective date.

(b) For purposes of subsection (a) of this section and other provisions of this article, a cable franchise shall be considered in effect on the effective date of this article if such franchise was granted on or before such effective date.

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§24D-1-5. Duties of the Public Service Commission.

In addition to its other duties, the Public Service Commission shall:

(a) To the extent permitted by, and not contrary to applicable federal law, rules and regulations:

(1) Prescribe standards for procedures and practices which franchising authorities shall follow in considering the issuance of cable franchises, which standards shall provide for the forms of applications and proposals, the filing of all franchise applications, proposals and related documents as public records, with reasonable notice to the public that such records are open to inspection and examination during reasonable business hours; the holding of a public hearing, upon reasonable notice to the public, at which the applications or proposals shall be examined and members of the public and interested parties are afforded a reasonable opportunity to express their views thereon; the rendition of a written report by the franchising authority made to the public, setting forth the reasons for its decision in awarding or not awarding the franchise; and such other procedural standards governing the issuance of cable franchises mandated by the provisions of this article or as the commission may otherwise deem necessary or appropriate to assure maximum public participation and competition and to protect the public interest;

(2) Prescribe minimum standards for inclusion in franchises, including maximum initial and renewal terms; minimum channel capacity; provisions regarding public, educational or governmental access facilities; a requirement that no such franchise may be exclusive; standards necessary or appropriate to protect the interests of viewers of free broadcast television and the public generally, which prohibit or limit cable operators from prohibiting or entering into agreements prohibiting the sale or other transfer of rights for the simultaneous or subsequent transmission over free broadcast television; and such other standards for inclusion in franchises as the commission shall deem necessary or appropriate to protect the public interest, including any provision regulating the rates for cable services to the extent that the same is not in conflict with federal law, rules or regulations;

(3) Prescribe standards by which a franchising authority shall determine whether an applicant possesses: (i) The technical ability; (ii) the financial ability; (iii) the good character; and (iv) other qualifications necessary to operate a cable system in the public interest;

(4) Prescribe standards for the construction and operation of cable systems, which standards shall be designed to promote: (i) Safe, adequate and reliable service to subscribers; (ii) the construction and operation of systems consistent with the most advanced state of the art; (iii) a construction schedule providing for maximum penetration as rapidly as possible within the limitations of economic feasibility; (iv) the construction of systems with the maximum practicable channel capacity, facilities for local program origination, facilities to provide service in areas conforming to various community interests, facilities with the technical capacity for interconnection with other systems within regions as established in the commission's statewide plan and facilities capable of transmitting signals from subscribers

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to the cable system or to other points; and (v) the prompt handling of inquiries, complaints and requests for repairs;

(5) Prescribe such standards for the prohibition or limitation of concentration of control over mass media and communication companies and facilities and methods of enforcing such standards, as the commission may determine to be necessary or appropriate to protect the public interest: Provided, That nothing contained herein shall be construed to authorize the impairment of any existing rights of any mass media and communication company or any subsidiary thereof;

(b) Provide advice and technical assistance to other franchising authorities and community organizations in matters relating to cable franchises and services;

(c) Establish minimum specifications for equipment, service and safety of cable;

(d) Represent the interests of citizens of this state before the federal communications commission and make available information to the public on communications developments at the federal level;

(e) Stimulate and encourage cooperative arrangements among organizations, institutions, counties and municipalities in the development of public, educational or governmental access facilities;

(f) Maintain liaison with the communications industry and other parties, both public and private, having an interest therein, other states and political subdivisions of this state to promote the rapid and harmonious development of cable services as set forth in the legislative findings and intent of this article;

(g) Undertake such studies as may be necessary to meet the responsibilities and objectives of this article; and

(h) Implement the provisions of this article in a manner which is cognizant of the differing financial and administrative capabilities of cable systems of different sizes.

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§24D-1-6. Application or proposal for cable franchise; fee; certain requirements.

(a) No cable franchise shall be issued except upon written application or proposal therefor to the franchising authority, accompanied by a fee of $250.

(b) An application for issuance of a cable franchise shall be made on a form prescribed by the commission. The application shall set forth the facts as required by the commission to determine whether a cable franchise should be issued, including facts as to:

(1) The citizenship and character of the applicant;

(2) The financial, technical and other qualifications of the applicant;

(3) The principals and ultimate beneficial owners of the applicant;

(4) The public interest to be served by the requested issuance of a cable franchise; and

(5) Any other matters deemed appropriate and necessary by the commission including the proposed plans and schedule of expenditures for or in support of the use of public, educational and governmental access facilities.

(c) A proposal for issuance of a cable franchise shall be accepted for filing only when made in response to the written request of the franchising authority for the submission of proposals.

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§24D-1-7. Cable franchise application or proposal procedure; public hearing; notice.

An application or proposal for a cable franchise shall be processed as follows:

(1) After the application or proposal and required fee are received by the franchising authority within a time frame established by rule promulgated by the commission, the franchising authority shall notify an applicant in writing of the acceptance or nonacceptance for filing of an application or proposal for issuance of a cable franchise required by this chapter.

(2) After the issuance of a notice of acceptance for filing and within a time frame established by rule promulgated by the commission, the franchising authority shall hold a public hearing on the application or proposal to afford interested persons the opportunity to submit data, views or arguments, orally or in writing. If the franchising authority is the commission, notice thereof shall be given to the city council and mayor of any municipalities affected, the county commission of any counties affected and to any telephone or other utility and cable company in the county or counties in which the proposed service area is located, and a representative of the governing body of a municipality or county commission may appear at the public hearing to represent the interests of the public which will be served by the issuance of a cable franchise. The franchising authority shall also cause notice of the application and hearing to be published at least once in each of two successive weeks in a newspaper of general circulation in the county or counties in which the proposed service area is located. The last published notice shall appear at least fifteen days prior to the date of the hearing.

(3) After holding a public hearing, the franchising authority shall approve the application or proposal, in whole or in part, with or without conditions or modifications, or shall deny the application or proposal, with reasons for denial sent in writing to the applicant. Upon denial of the application or proposal, the applicant may appeal such denial to the circuit court of the county in which the franchise is to be located, which appeal shall be filed and considered in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

(4) The provisions of this article supersede and replace all other state requirements regarding the issuance, notification and terms and conditions of a cable franchise.

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§24D-1-8. Issuance of cable franchise authority; criteria; content.

(a) A franchising authority is exclusively empowered to issue a cable franchise to construct or operate facilities for a cable system upon the terms and conditions provided in this article.

(b) The franchising authority, after a public hearing as provided in this article, shall issue a cable franchise to the applicant when the franchising authority is convinced that it is in the public interest to do so. In determining whether a cable franchise shall be issued, the franchising authority shall take into consideration, among other things, any objections arising from the public hearing, the content of the application or proposal, the public need for the proposed service, the ability of the applicant to offer safe, adequate and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the service for which authority is requested, and any other matters as the franchising authority considers appropriate in the circumstances.

(c) In determining the area which is to be serviced by the applicant, the franchising authority shall take into account the geography and topography of the proposed service area, and the present, planned and potential expansion in facilities or cable services of the applicant's proposed cable system and any of the applicant's existing cable systems.

(d) In issuing a cable franchise under this article, the franchising authority is not restricted to approving or disapproving the application or proposal, but may issue it for only partial exercise of the privilege sought or may attach to the exercise of the right granted by the cable franchise terms, limitations which the franchising authority considers the public interest may require. The cable franchise shall be nonexclusive, shall include a description of the service area in which the cable system is to be constructed, extended or operated and the approximate date on which the service is to commence and shall authorize the cable operator to provide service for a term of fifteen years.

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§24D-1-9. Cable system installation, construction, operation, removal, general provisions.

(a) A cable franchise shall be construed to authorize the construction or operation of a cable system: (i) Over public rights-of-way; and (ii) through easements, which are within the area to be served by the cable system and which have been dedicated for compatible uses.

(b) The technical specifications, general routes of the distribution system and the schedule for construction of the cable system are subject to the approval of the franchising authority.

(c) In installing, operating and maintaining facilities, the cable operator shall avoid all unnecessary damage and injury to any trees, structures and improvements in and along the routes authorized by the franchising authority.

(d) The cable operator shall indemnify and hold the state, county and municipality harmless at all times from any and all claims for injury and damage to persons or property, both real and personal, caused by the installation, operation or maintenance of its cable system, notwithstanding any negligence on the part of the state, county and/or municipality, their employees or agents. Upon receipt of notice in writing from the state, county and/or municipality, the cable operator shall, at its own expense, defend any action or proceeding against the state, county and/or municipality in which it is claimed that personal injury or property damage was caused by activities of the cable operator in the installation, operation or maintenance of its cable system.

(e) The cable operator shall provide a cable drop and basic cable service at no cost to any school or institution of higher education within its service area if service is actually being delivered within a reasonable distance from the school or institution of higher education which may request service.

(f) The cable operator shall be required to designate at least ten percent but not more than three of all of its channels for public, educational or governmental use.

(g) Upon termination of the period of the cable permit or of any renewal thereof, by passage of time or otherwise, the cable operator shall remove its facilities from the highways and other public places in, on, over, under or along which they are installed if so ordered by the franchising authority and shall restore the areas to their original or other acceptable condition or otherwise dispose of its facilities. If removal is not completed within six months of the termination, any property not removed shall be deemed to have been abandoned and the cable operator shall be liable for the cost of its removal.

(h) The use of public highways and other public places shall be subject to:

(l) All applicable state statutes, municipal ordinances and all applicable rules and orders of the commission governing the construction, maintenance and removal of overhead and underground facilities of public utilities;

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(2) For county highways, all applicable rules adopted by the governing body of the county in which the county highways are situated; and

(3) For state or federal-aid highways, all public welfare rules adopted by the secretary of the Department of Transportation.

(i) In the use of easements dedicated for compatible uses, the cable operator shall ensure:

(1) That the safety, functioning and appearance of the property and the convenience and safety of other persons is not adversely affected by the installation or construction of facilities necessary for a cable system;

(2) That the cost of the installation, construction, operation or removal of facilities is borne by the cable operator or subscribers, or a combination of both; and

(3) That the owner of the property is justly compensated by the cable operator for any damages caused by the installation, construction, operation or removal of facilities by the cable operator.

(4) An "easement dedicated for compatible uses" is a public or private easement for electric, gas, telephone or other utility transmission.

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§24D-1-10. Revocation, alteration, or suspension of cable franchise; penalties.

(a) Any cable franchise issued in accordance with the provisions of this chapter may be revoked, altered or suspended by the franchising authority upon the recommendation of the commission to a municipality or county acting as a franchising authority or after a hearing before the franchising authority, for the following reasons:

(1) For making material false or misleading statements in, or for material omissions from, any application or proposal or other filing made with the franchising authority;

(2) For repeated failure to maintain signal quality under the standards prescribed by the commission;

(3) For any sale, lease, assignment or other transfer of its cable franchise without consent of the franchising authority;

(4) Except when commercially impracticable, for unreasonable delay in construction or operation or for unreasonable withholding of the extension of cable service to any person in a service area;

(5) For material violation of the terms of its cable franchise;

(6) For failure to substantially comply with this chapter or any rules, regulations or orders prescribed by the commission;

(7) For substantial violation of its filed schedule of terms and conditions of service; and

(8) For engaging in any unfair or deceptive act or practice.

(b) In lieu of, or in addition to, the relief provided by subsection (a) hereof, the franchising authority may fine a cable operator, for each violation under the provisions of this section, in an amount not less than $50 nor more than $5,000 for each violation. Each day's continuance of a violation may be treated as a separate violation pursuant to rules and regulations adopted by the commission. Any penalty assessed under this section shall be in addition to any other costs, expenses or payments for which the cable operator is responsible under other provisions of this chapter.

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§24D-1-11. Renewal of cable franchise.

(a) Any cable franchise issued pursuant to this chapter may be renewed by the franchising authority upon approval of a cable operator's application or proposal therefor and in accordance with the provisions of 47 U.S.C. §546 as the same is in effect on the effective date of this chapter. The form of the application or proposal shall be prescribed by the commission. The application or proposal fee shall be the same fee prescribed for franchise applications. The periods of renewal shall be not less than five nor more than twenty years each. The commission shall require of the applicant full disclosure, including the proposed plans and schedule of expenditures for or in support of the use of public, educational or governmental access facilities. Except as otherwise provided in this section, the franchising authority shall have exclusive authority regarding the renewal of a cable franchise.

(b) For cable franchises for which a proposal or application for renewal has been submitted by the cable operator to the franchising authority prior to expiration of the cable franchise and which application or proposal the franchising authority has neither approved nor denied, the cable franchise, at the cable operator's election, shall continue upon the same terms and conditions until such time as the franchising authority either approves or denies the application or proposal for renewal.

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§24D-1-12. Transfer of cable franchise.

(a) No cable system and no cable franchise, including any system without a franchise and any franchise in existence on the effective date of this chapter, may be assigned, sold, or transferred, including a transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval of the appropriate franchising authority or authorities. For purposes of this section "transfer of control" means a transfer of the majority interest, either directly or indirectly, in the entity holding the cable franchise. The form of the application for transfer shall be prescribed by the commission.

(b) Notice provisions may be prescribed by the commission for encumbrances creating potential transfers.

(c) The procedure for consideration of any transfer under the provisions of this section shall conform, as nearly as possible, to the procedures prescribed in sections six and seven of this article for the consideration of issuing cable franchises, including the application fee therefor.

(d) Except as otherwise provided in this section, the franchising authority shall have exclusive authority regarding the approval of transfers of cable franchises.

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§24D-1-13. Rates; filing with Public Service Commission; approval.

(a) The commission shall require each cable operator to file a schedule of its rates of service on a form and with the notice that the commission may prescribe. The schedule shall be filed with the annual report referenced in section twenty-four of this article.

(b) To the extent permitted by federal law, the commission shall regulate rates to ensure that they are just and reasonable both to the public and to the cable operator and are not unduly discriminatory.

(c) To the extent permitted by federal law, the commission shall regulate charges other than those related to rates for the provision of basic cable service to ensure that they are just and reasonable and not unduly discriminatory.

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§24D-1-14. Requirement for adequate service; terms and conditions of service.

(a) Every cable operator shall provide safe, adequate, and reliable service in accordance with applicable laws, rules, franchise requirements and its filed schedule of terms and conditions of service.

(b) The commission shall require each cable operator to submit a schedule of all terms and conditions of service in the form and with the notice that the commission may prescribe. The schedule shall be submitted with the annual report referenced in section twenty-four of this article.

(c) The commission shall ensure that the terms and conditions upon which cable service is provided are fair both to the public and to the cable operator, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable service to subscribers in the service area.

(d) To the extent a subscriber elects to receive a paper bill, a cable operator shall provide a paper copy of the subscriber's monthly bill at no charge. A cable operator shall prorate any charge for service(s) that is cancelled by a subscriber rather than charging for the full term.

(e) A cable operator shall comply with all customer service and technical standards established by the Federal Communications Commission. These standards, as amended, are adopted for use and application in regulating cable operators.

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§24D-1-15. Procedures for restoring interrupted service and improving substandard service.

(a) Each cable operator, for the purpose of restoring interrupted service and improving substandard service, shall be able to receive calls twenty-four hours a day, seven days a week, and shall have one or more qualified persons as may be necessary to repair the cable system, facilities and equipment owned by the cable operator and located on a subscriber's premises, including, but not limited to, cable receiving equipment and directly associated equipment.

(b) Each cable operator shall restore interrupted service not later than twenty-four hours after being notified by a subscriber that service has been interrupted, unless: (1) Service cannot be restored until another company repairs facilities owned by such company and leased to, or required for the operation of, the cable service; (2) the interruption was caused by an act of nature; or (3) the cable operator is unable to restore service within twenty-four hours due to extenuating circumstances. In the event of such extenuating circumstances, the company shall restore service as soon as feasible and then submit a written notice to the commission indicating that service has been restored and explaining the nature of the extenuating circumstances.

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§24D-1-16. Credit or refund for interrupted service.

(a) If cable service to a subscriber is interrupted for more than twenty-four continuous hours, such subscriber shall, upon request, receive a credit or refund from the cable operator in an amount that represents the proportionate share of such service not received in a billing period, provided such interruption is not caused by the subscriber.

(b) The commission may promulgate rules establishing a viewing time reliability standard for cable operators and requiring such companies to file with the commission information on service interruptions not caused by subscribers.

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§24D-1-17. Office operating requirements; office hours.

(a) Each cable operator shall operate a business office in or near its area of operation as approved by the franchise authority or the commission that shall be open during normal business hours.

(b) Each cable operator shall operate sufficient telephone lines, including a toll-free number or any other free calling option, as approved by the commission, staffed by a company customer service representative during normal business hours.

(c) In addition to the requirements of subsection (a) and (b) of this section, each cable operator that has been subject to a compliance order issued by the Public Service Commission in a show cause or general investigation proceeding in which the commission concluded that the provider's customer service communications were not safe, adequate, or reliable shall maintain a call center within the boundaries of the state to serve its subscribers. The foregoing requirement shall be in effect for a minimum period of five years commencing 90 days from the commission compliance order or on the effective date of this subsection, whichever occurs later. After five years of operations under this subsection, a cable operator may petition the commission for, and the commission has authority to grant or deny, a release of the cable operator from the requirements of this subsection. The commission will grant a release only upon proper showing that the cable operator is in compliance with this chapter, commission rules, and the commission compliance order.

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§24D-1-18. Notice to subscribers regarding quality of service.

(a) Annually, every cable operator shall mail to each of its subscribers a notice which:

(1) Informs subscribers how to communicate their views and complaints to the cable operator and to the commission;

(2) States the responsibility of the commission to receive and act on consumer complaints concerning matters other than channel selection, programming and rates; and

(3) States the policy regarding the method by which subscribers may request rebates or pro rata credit as described in section sixteen of this article.

(b) The notice shall be in nontechnical language, understandable by the general public, and in a convenient format. On or before January 30, each year, the operator shall certify to the franchising authority and the commission that it has distributed the notice as provided in this section during the previous calendar year as required by this section.

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§24D-1-19. Recording of subscriber complaints.

(a) Every cable operator shall keep a record or log of all complaints received regarding quality of service, rates, programming, equipment malfunctions, billing procedure, employee relations with customers and similar matters as may be prescribed by the commission. The records shall be maintained for a period of two years.

(b) The record or log shall contain the following information for each complaint received:

(1) Date, time, nature of complaint;

(2) Name, address, telephone number of complainant;

(3) Investigation of complaint; and

(4) Manner and time of resolution of complaint.

(c) Consistent with the subscriber privacy provisions contained in 47 U.S.C. §551 as the same is in effect on the effective date of this chapter, every cable operator shall make the logs or records, or both, of such complaints available to any authorized agent of the commission and the franchising authority, upon request during normal business hours for on-site review.

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§24D-1-20. Franchise document clearinghouse.

(a) All cable operators holding an existing franchise on the effective date of this article shall file a copy of the franchise and any federal communications commission rulings or other rulings affecting such franchises with the commission with the annual report filed in one thousand nine hundred ninety-nine as referenced in section twenty-four of this article.

(b) Within sixty days of the granting of an initial franchise, a renewal franchise or a transferred franchise, the franchisee shall file a copy of the franchise and any federal communications commission rulings or other rulings affecting such franchise with the commission and the franchising authority. The commission and franchising authority shall maintain a file of all franchise documents so recorded and make copies available upon request for the cost of reproduction and mailing, plus a reasonable administrative fee. The filing fee for initial, renewal or transfer franchise documents is $50 per franchise, renewal or transfer of such franchise. In years in which the filing of initial, renewal or transfer franchise documents is not required, the franchisee shall pay a fee of $25 for each franchise it holds.

(c) All such fees paid by any cable operator are franchise fees with the intent and meaning of 47 U.S.C. §542 as the same is in effect on the effective date of this chapter.

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§24D-1-21. Rights of individuals.

A cable television system operator may not deny service, deny access, or otherwise discriminate against subscribers, channel users, or any other citizens on the basis of age, race, religion, sex, physical handicap or country of natural origin.

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§24D-1-22. Complaints; violations; penalties.

(a) Complaints of affected parties regarding the operation of a cable system must be made in writing and filed with the commission. The commission shall take up such complaints with the cable operator complained against in an endeavor to bring about satisfaction of the complaint without formal hearing. The commission shall not consider any complaint involving programming or any other issue that is preempted by federal law.

(b) The commission shall resolve all complaints, if possible informally. No form of informal complaint is prescribed, but the writing must contain the essential elements of a complaint, including the name and address of the complainant, the correct name of the cable operator against which the complaint is made, a clear and concise statement of the facts involved and a request for affirmative relief.

(c) In the event that the commission cannot resolve the complaint to the satisfaction of all parties, the complainant may file a formal request to the commission and the complainant and cable operator shall be afforded all rights including the right of appeal as set forth in chapter twenty-four of this code.

(d) A cable operator may be subject to a fine or civil penalty in accordance with subsection (e) hereof, upon a determination by the commission or court that the cable operator has violated any of the following:

(1) The material terms of its cable franchise; or

(2) Substantial compliance with this article or rules or orders prescribed by the commission.

(e) The commission may fine or obtain civil penalties against a cable operator for each violation of subsection (d) of this section in an amount not less than $100 nor more than $1,000 for each violation. Any penalty assessed under this section is in addition to any other costs, expenses or payments for which the cable operator is responsible under other provisions of this section.

(f) In addition to fines and civil penalties, the commission may determine and declare and by order require for violation of subsection (d) of this section the cable operator to comply with the terms of its franchise or the requirements of this article or orders prescribed by the commission.

(g)No cable operator may raise rates or retier and charge subscribers without providing to his or her subscribers sufficient advance written notice and opportunity to discontinue service.

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§24D-1-23. Other duties of commission; suit to enforce chapter.

(a) The commission has the power and jurisdiction to supervise every cable operator within this state so far as may be necessary to carry out the purposes of this chapter and to do all things which are necessary or convenient in the exercise of this power and jurisdiction.

(b) The commission may adopt rules and regulations as are necessary to implement the provisions of this article. The rules and regulations promulgated by the cable advisory board pursuant to repealed article eighteen, chapter five, and in force and in effect on December 31, 1997, shall remain in effect and hereby become the rules and regulations of the commission.

(c) The commission or the commission's designated representatives may, from time to time, visit the places of business and other premises and examine the records and facilities of all cable operators to ascertain if all laws, rules, regulations and cable franchise provisions have been complied with, and may examine all officers, agents and employees of cable operators and all other persons, under oath, and compel the production of papers and the attendance of witnesses to obtain the information necessary for administering this article.

(d) The commission may appoint or contract for assistants and clerical, stenographic and other staff as may be necessary for the proper administration and enforcement of this article.

(e) The commission or other aggrieved party may institute, or intervene as a party in, any action in any court of law seeking a mandamus, or injunctive or other relief to compel compliance with this chapter, or any rule, regulation, or order adopted hereunder, or to restrain or otherwise prevent or prohibit any illegal or unauthorized conduct in connection with this article.

WV Legislature

§24D-1-24. Annual reports.

Each cable operator shall file annually with the commission reports of its financial, technical and operational condition and its ownership. The reports shall be made in a form and on the time schedule prescribed by the commission and shall be kept on file open to the public.

WV Legislature

§24D-1-25. Annual fees; effect of application and filing fees on franchise fees.

(a) Each cable operator shall pay to the commission an annual fee in an amount of 12¢ per subscriber. Such funds and all other funds to be paid to the commission under the provisions of this chapter shall be deposited into a special fund designated the "cable fund." Such fund shall be used for purposes of administering the provisions of this article. To the extent permitted by federal law, the commission may prohibit cable operators from assessing subscribers for any contribution toward the annual fee to be paid hereunder.

(b) Any filing fee required under the provisions of this chapter and the annual fee to be paid to the commission under the provisions of this section, together with any franchise fee paid to any franchising authority, may not exceed the maximum amount for any franchise fee as set forth in 47 U.S.C. §542 as the same is in effect on the effective date of this article.

(c) The commission shall not impose on or collect from any cable operator franchise fees when acting in the capacity as a franchising authority, other than fees set out in subsection (a) of this section and any filing fee required by this article.

WV Legislature

§24D-1-26. Cable television industry not regulated as a utility.

No provision of this article may be construed to grant the commission the power to regulate the cable television industry as a utility.

WV Legislature

§24D-1-27. Current method of taxation preserved.

Enactment of the amendments to section three, article one, chapter twenty-four of this code and this article in the year 1999 shall in no way change how cable television providers, cable television property and cable television services are taxed by this state or its political subdivisions after the effective date of this enactment. For tax purposes, providers of cable television services who do not provide telephone services over the same system are not engaged in providing a public service and are neither a public service business nor a public utility as those terms were used in the tax laws of this state and its political subdivisions on December 31, 1998, and the cable television service furnished by them is not a service subject to regulation by the Public Service Commission for purposes of exemption from tax under section eight, article fifteen, chapter eleven of this code. This method of taxing providers of cable television services, their property and services shall remain in effect until affirmatively changed by the Legislature.

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

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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.

WV Legislature

§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

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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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature