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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

ENROLLED

Committee Substitute for
SENATE BILL NO. 67

(By Senator

Chapin, et al)

PASSED

March 10,

1990

In Effect

90 days from

Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 67

(BY SENATORS CHAFIN, BLATNIK, WAGNER, J. MANCHIN
AND WARNER, *original sponsors*)

[Passed March 10, 1990; in effect ninety days from passage.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen, relating to the regulation of cable television systems; providing for a short title; establishing legislative findings; defining certain terms; requiring all cable operators to obtain franchises for cable systems; designating franchising authorities; existing franchises to remain in effect; creating the West Virginia cable television advisory board; establishing the composition of, terms of office and certain duties and authority of the board; compensation for board members; setting forth specific duties of the board; establishing the application or proposal process for cable franchises and establishing fees and requirements therefor; requiring the holding of a public hearing for the issuance of a franchise with notice thereof to be given appropriate governing bodies and the general

public; when cable franchise to be issued; establishing criteria to be considered by franchising authorities; providing for the terms and conditions of cable system installation, construction, operation and removal; when cable franchise may be revoked, altered or suspended; when civil fine may be imposed; establishing procedure for renewal of a cable franchise; prohibiting the transfer of any cable system or cable franchise without approval of appropriate franchising authorities; cable operators to file schedule of rates with board; authorizing board to regulate rates and other charges to the extent permitted by federal law; mandating cable operators to provide safe, adequate and reliable service; establishing procedures for the restoring of interrupted service and substandard service; when subscriber to receive credit or refund for interrupted service; setting forth office operating requirements for cable operators; requiring cable operators to mail notice to subscribers and prescribing contents thereof; requiring cable operators to maintain a record of all complaints regarding quality of service, rates, programming, equipment malfunctions, billing procedures, employee relations with customers and similar matters; mandating the filing of all franchise and related documents with the board; clarifying that application fees are franchise fees within the intent and meaning of federal law; prohibiting cable operators from discriminating against subscribers or channel users; establishing procedure for the consideration of consumer complaints by the board; when cable operator may be fined; prescribing further duties of the board; authorizing board to bring legal action for enforcement purposes; reports to be filed by cable operators; assessing annual fee against cable operators; clarifying effect of annual fee on other franchise fees; prohibiting the regulation of the cable television industry as a utility; and providing for the severability of the provisions of this article.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eighteen, to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND ATTOR-
NEY GENERAL; BOARD OF PUBLIC WORKS; MISCEL-
LANEOUS AGENCIES, COMMISSIONS, OFFICES,
PROGRAMS, ETC.**

ARTICLE 18. WEST VIRGINIA CABLE TELEVISION SYSTEMS ACT.

§5-18-1. Short title.

1 This article may be cited as the “West Virginia Cable
2 Television Systems Act”.

§5-18-2. Legislative findings.

1 The Legislature finds that television is an important
2 source of information and entertainment affecting the
3 welfare and economy of the state, and that cable
4 television services have become widespread, often
5 providing the only access to quality television signals
6 in many areas of the state. The Legislature finds that
7 it is in the public interest to establish uniform stand-
8 ards within the state of West Virginia for the issuance,
9 renewal and transfer of cable television franchises; to
10 establish uniform standards for the provision of cable
11 service; to establish uniform procedures for the
12 investigation and resolution of complaints concerning
13 cable service; and to establish just, reasonable and
14 nondiscriminatory rates and charges for the provision
15 of cable service to the extent that the service is not
16 subject to effective competition. The purpose of this
17 article is to promote such goals by all available means
18 not in conflict with federal law, rules or regulations.

§5-18-3. Definitions.

1 As used in this article:

2 (1) “Applicant” means a person who initiates an
3 application or proposal.

4 (2) “Application” means an unsolicited filing for a
5 cable franchise.

6 (3) “Basic cable service” means any service tier
7 which includes the retransmission of local television
8 broadcast signals.

9 (4) "Board" means the West Virginia cable television
10 advisory board created under the provisions of this
11 article.

12 (5) "Cable franchise" means a nonexclusive initial
13 authorization or renewal thereof issued pursuant to
14 this article, whether the authorization is designated as
15 a franchise, permit, order, contract, agreement or
16 otherwise, which authorizes the construction or oper-
17 ation of a cable system.

18 (6) "Cable operator" means any person or group of
19 persons (A) who provides cable service over a cable
20 system and directly or through one or more affiliates
21 owns a significant interest in the cable system or (B)
22 who otherwise controls or is responsible for, through
23 any arrangement, the management and operation of a
24 cable system.

25 (7) "Cable service" means (A) the one-way transmis-
26 sion to subscribers of video programming or other
27 programming service and (B) subscriber interaction, if
28 any, which is required for the selection of video
29 programming or other programming service.

30 (8) "Cable system" means any facility within this
31 state consisting of a set of closed transmission paths
32 and associated signal generation, reception and control
33 equipment that is designed to provide cable service
34 which includes video programming and which is
35 provided to multiple subscribers within a community,
36 but does not include (A) a facility that serves only to
37 retransmit the television signals of one or more
38 television broadcast stations; (B) a facility that serves
39 only subscribers in one or more multiple unit dwell-
40 ings under common ownership, control or manage-
41 ment, unless that facility or facilities uses any public
42 right-of-way; or (C) a facility of a public utility subject,
43 in whole or in part, to the provisions of chapter
44 twenty-four of this code, except to the extent that
45 those facilities provide video programming directly to
46 subscribers.

47 (9) "County commission" means the commissioners
48 composing the county commission in pursuance of

49 section nine, article IX of the constitution of this state
50 within whose jurisdiction there exists a cable system
51 or where such cable system is hereafter constructed,
52 operated, acquired or extended.

53 (10) "Facility" includes all real property, antennas,
54 poles, supporting structures, wires, cables, conduits,
55 amplifiers, instruments, appliances, fixtures and other
56 personal property used by a cable operator in provid-
57 ing service to its subscribers.

58 (11) "Franchising authority" means a municipality, a
59 county commission or the West Virginia cable televi-
60 sion advisory board.

61 (12) "Institution of higher education" means an
62 academic college or university accredited by the North
63 Central Association of Colleges and Schools.

64 (13) "Municipality" means any municipal corpora-
65 tion duly chartered in the state of West Virginia
66 within whose jurisdiction there exists a cable system
67 or where such cable system is hereafter constructed,
68 operated, acquired or extended.

69 (14) "Other programming service" means informa-
70 tion that a cable operator makes available to all
71 subscribers generally.

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

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

77 (17) "Public, educational or governmental access
78 facilities" means (A) channel capacity designated for
79 public, educational or governmental uses and (B)
80 facilities and equipment for the use of that channel
81 capacity.

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

85 (19) "School" means an academic and noncollege

86 type regular or special education institution of learn-
87 ing established and maintained by the department of
88 education or licensed and supervised by that
89 department.

90 (20) "Service area" means the geographic area for
91 which a cable operator has been issued a cable
92 franchise.

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

§5-18-4. Cable franchise required; franchising authority.

1 (a) No person may construct, operate or acquire a
2 cable system, or extend an existing cable system
3 outside its designated service area, without first
4 obtaining a cable franchise from a franchising author-
5 ity as provided in this article.

6 (b) Any person operating a cable system on the
7 effective date of this article without a franchise shall,
8 within sixty days of the effective date of this article,
9 notify the board in writing setting forth: (1) The name,
10 business address and telephone number of the cable
11 operator; (2) the principals and ultimate beneficial
12 owners of the cable system or systems; (3) the geo-
13 graphic location and service area of any cable system
14 operated by such person; and (4) the number of
15 subscribers within the cable system or systems. If the
16 board shall not have been appointed and organized
17 within sixty days of the effective date of this article,
18 then such filing shall be made with the public service
19 commission where such documents shall be retained
20 for delivery to the board following the appointment
21 and organization of its members.

22 (c) The board shall, upon receipt of such informa-
23 tion, determine the appropriate franchising authority
24 or authorities for the purposes of the consideration of
25 the issuance of a franchise to such cable operator or
26 operators and shall notify the appropriate franchising
27 authority or authorities and any such cable system

28 operator of the franchise application procedures to be
 29 followed by the respective parties. Any such cable
 30 operator shall, within sixty days of receipt of such
 31 notice from the board, make formal application to the
 32 appropriate franchise authority or authorities for a
 33 franchise in accordance with the provisions of this
 34 article.

35 (d) The franchising authority shall be the municipal-
 36 ity in which a cable system is to be constructed,
 37 operated, acquired or extended, or if there be no such
 38 municipality, then the franchising authority shall be
 39 the county commission of the county in which such
 40 cable system is to be constructed, operated, acquired
 41 or extended: *Provided*, That nothing herein shall
 42 prohibit any county commission of a county in which
 43 a municipality acting as a franchising authority is
 44 located from also acting as a franchising authority for
 45 any cable system to be constructed, operated, acquired
 46 or extended within the jurisdiction of such county
 47 commission.

48 (e) Any municipality or county commission may
 49 elect not to act as a franchising authority, in which
 50 event, the franchising authority for any cable system
 51 to be constructed, operated, acquired or extended
 52 within the jurisdiction of such municipality or within
 53 the jurisdiction of such county commission shall be the
 54 board. If any municipality or county commission so
 55 elects, the mayor or president of the county commis-
 56 sion shall certify such delegation in writing to the
 57 presiding officer of the board.

§5-18-5. Existing cable franchises.

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

7 (b) For purposes of subsection (a) of this section and
 8 other provisions of this article, a cable franchise shall
 9 be considered in effect on the effective date of this

10 article if such franchise was granted on or before such
11 effective date.

**§5-18-6. West Virginia cable television advisory board
created; appointments and terms of
members; meetings; vacancies; quorum.**

1 (a) There is hereby created a cable review board to
2 be known as the "West Virginia Cable Television
3 Advisory Board" which board shall, in consultation
4 with the attorney general's office, implement the
5 provisions of this article and consider subscriber
6 complaints in accordance with the provisions of section
7 twenty-five of this article.

8 (b) The board shall consist of seven members, who
9 shall be residents of this state, and who shall be
10 appointed as follows:

11 (1) The governor shall appoint one member to
12 represent the viewpoint of the public service commis-
13 sion. When the member is to be appointed, the gover-
14 nor shall request from the public service commission
15 a list of three nominees for such position. A summary
16 of the qualifications of each nominee shall be submit-
17 ted with each list. When the completed list of nomi-
18 nees is submitted in accordance with the provisions
19 hereof, the governor shall make his or her appoint-
20 ment from the persons so nominated.

21 (2) The governor shall appoint one member to
22 represent the viewpoint of those cable operators whose
23 cable system or systems in the aggregate have five
24 thousand subscribers or more, and one member to
25 represent the viewpoint of cable operators whose cable
26 system or systems in the aggregate have less than five
27 thousand subscribers. The governor shall request from
28 the trade association representing cable operators in
29 this state a list of three nominees for each such
30 position of the board. All nominees shall be persons
31 with special experience and competence in cable
32 television operations. A summary of the qualifications
33 of each nominee shall be submitted with each list.
34 When the completed list of nominees for each position
35 is submitted in accordance with the provisions hereof,

36 the governor shall make his or her appointments from
37 the persons so nominated.

38 (3) The governor shall appoint one member to
39 represent the viewpoint of municipalities within the
40 state and one member to represent the counties within
41 the state. The governor shall request from the associ-
42 ations representing the municipalities and counties,
43 respectively, a list of three nominees for such position.
44 A summary of the qualifications of each nominee shall
45 be submitted with each list. When the completed list
46 of nominees is submitted in accordance with the
47 provisions hereof, the governor shall make his or her
48 appointments from the persons so nominated.

49 (4) The governor shall appoint two members from
50 the general public who shall be from different political
51 parties and who shall not represent the viewpoint of
52 the members appointed in accordance with the provi-
53 sions of subdivision (2) or (3) of this subsection.

54 (5) All appointments made by the governor under
55 the provisions of this section shall be with the advice
56 and consent of the senate.

57 (c) Upon the initial appointment of members, the
58 governor shall specify the length of the beginning
59 term which each member shall serve, pursuant to the
60 following formula:

61 (1) With regard to the two members appointed in
62 accordance with the provisions of subdivisions (2) and
63 (3), subsection (b) of this section, one member shall
64 serve a beginning term of two years, and one member
65 shall serve a beginning term of three years;

66 (2) The two members appointed in accordance with
67 the provisions of subdivision (3), subsection (b) of this
68 section shall serve a term of two years;

69 (3) The member appointed in accordance with the
70 provisions of subdivision (1), subsection (b) of this
71 section shall be appointed to serve a beginning term of
72 one year; and

73 (4) Following the beginning terms provided for in

74 this subsection, members shall be nominated and
75 appointed in the manner provided for in this section
76 and shall serve for a term of three years. Members are
77 eligible for reappointment.

78 (d) The board shall meet at least once during each
79 calendar quarter, or more often as may be necessary,
80 and at other times upon the call of the chairman or
81 upon the request of any three members of the board.
82 The chairman shall set the agenda for all meetings. No
83 meeting of the board may be conducted unless said
84 notice and agenda are given to the board members at
85 least five days in advance, as provided herein, except
86 in cases of emergency, as declared by the chairman, in
87 which event, members shall be notified of the board
88 meeting and the agenda in a manner to be determined
89 by the chairman. Four members of the board shall
90 constitute a quorum and no action may be taken by
91 the board unless agreed to by a majority of the
92 members present.

93 (e) Each member of the board shall take and sub-
94 scribe to the oath or affirmation required pursuant to
95 section 5, article IV of the constitution of West Vir-
96 ginia. A member may be removed by the governor for
97 substantial neglect of duty or gross misconduct in
98 office, after written notice and an opportunity to reply.

99 (f) The board shall meet within thirty days of the
100 initial appointments to the board, at a time and place
101 to be determined by the governor, who shall designate
102 a member to preside at that meeting until a chairman
103 is elected. At its first meeting, the board shall elect a
104 chairman and such other officers as are necessary.

105 (g) The board shall, within six months after the
106 appointment of the initial board, promulgate rules for
107 its procedure and to otherwise carry out its duties
108 under the provisions of this article. Such rules shall be
109 promulgated as legislative rules subject to legislative
110 rule-making review and subject to the administrative
111 procedures act.

112 (h) The board may subpoena witnesses, compel their
113 attendance and testimony, administer oaths and

114 affirmations, take evidence and require by subpoena
 115 the production of books, logs, papers, records or other
 116 evidence needed for the performance of the board's
 117 duties or exercises of its power under the provisions of
 118 section twenty-five of this article.

119 (i) The board may request the attorney general to
 120 provide legal advice to the board and the attorney
 121 general shall comply with the request. The board shall
 122 employ an executive secretary to be compensated
 123 from the cable advisory board fund created under the
 124 provisions of this article in an amount to be fixed by
 125 the board. Such executive secretary shall be in charge
 126 of its offices which shall be within the public service
 127 commission, shall be responsible to the board for the
 128 maintenance of such offices and shall be the custodian
 129 of all documents filed by cable operators and of any
 130 complaints or other documents which may be filed
 131 with the board in accordance with the provisions of
 132 this article. The board is also authorized to employ and
 133 assign the necessary professional and clerical staff and
 134 such hearing examiners as may be necessary to
 135 conduct hearings in such various locations in the state,
 136 under the provisions of section twenty-five of this
 137 article, in order to provide a convenient forum for
 138 persons making subscriber complaints to be heard.
 139 The salaries and expenses of any such staff and
 140 hearing examiners shall be paid from the fees assessed
 141 and collected under provisions of this article.

§5-18-7. Compensation and expenses of board members.

1 Each member of the board not otherwise employed
 2 by the state shall receive a per diem in the amount of
 3 fifty dollars while actually engaged in the performance
 4 of the duties of the board, which shall be paid out of
 5 the cable advisory board fund created under the
 6 provisions of this article. Each member shall be
 7 reimbursed for all reasonable and necessary expenses
 8 actually incurred during the performance of his or her
 9 duties. Each member shall receive meals, lodging and
 10 mileage expense reimbursements at the rates estab-
 11 lished by rule of the commissioner of the department
 12 of finance and administration for in-state travel of

13 public employees. The reimbursement shall be paid
14 out of the state treasury upon a requisition upon the
15 state auditor, properly certified by the chairman of the
16 board.

§5-18-8. Duties of West Virginia cable television advisory board.

1 The West Virginia cable television advisory board
2 shall:

3 (1) Develop and maintain a statewide plan for the
4 provision of cable services, setting forth the objectives
5 which the board deem to be in the best interest of the
6 citizens of this state;

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

9 (A) Prescribe standards for procedures and practices
10 which franchising authorities shall follow in consider-
11 ing the issuance of cable franchises, which standards
12 shall provide for the forms of applications and propos-
13 als, the filing of all franchise applications, proposals
14 and related documents as public records, with reason-
15 able notice to the public that such records are open to
16 inspection and examination during reasonable busi-
17 ness hours; the holding of a public hearing, upon
18 reasonable notice to the public, at which the applica-
19 tions or proposals shall be examined and members of
20 the public and interested parties are afforded a
21 reasonable opportunity to express their views thereon;
22 the rendition of a written report by the franchising
23 authority made to the public, setting forth the reasons
24 for its decision in awarding or not awarding the
25 franchise; and such other procedural standards
26 governing the issuance of cable franchises mandated
27 by the provisions of this article or as the board may
28 otherwise deem necessary or appropriate to assure
29 maximum public participation and competition and to
30 protect the public interest;

31 (B) Prescribe minimum standards for inclusion in
32 franchises, including maximum initial and renewal
33 terms; minimum channel capacity; provisions regard-

34 ing public, educational or governmental access facili-
35 ties; a requirement that no such franchise may be
36 exclusive; standards necessary or appropriate to
37 protect the interests of viewers of free broadcast
38 television and the public generally, which prohibit or
39 limit cable operators from prohibiting or entering into
40 agreements prohibiting the sale or other transfer of
41 rights for the simultaneous or subsequent transmission
42 over free broadcast television; and such other stand-
43 ards for inclusion in franchises as the board shall
44 deem necessary or appropriate to protect the public
45 interest, including any provision regulating the rates
46 for cable services to the extent that the same is not in
47 conflict with federal law, rules or regulations;

48 (C) Prescribe standards by which a franchising
49 authority shall determine whether an applicant pos-
50 sesses (i) the technical ability, (ii) the financial ability,
51 (iii) the good character and (iv) other qualifications
52 necessary to operate a cable system in the public
53 interest;

54 (D) Prescribe standards for the construction and
55 operation of cable systems, which standards shall be
56 designed to promote (i) safe, adequate and reliable
57 service to subscribers, (ii) the construction and opera-
58 tion of systems consistent with the most advanced
59 state of the art, (iii) a construction schedule providing
60 for maximum penetration as rapidly as possible within
61 the limitations of economic feasibility, (iv) the con-
62 struction of systems with the maximum practicable
63 channel capacity, facilities for local program origina-
64 tion, facilities to provide service in areas conforming to
65 various community interests, facilities with the techni-
66 cal capacity for interconnection with other systems
67 within regions as established in the board's statewide
68 plan and facilities capable of transmitting signals from
69 subscribers to the cable system or to other points, and
70 (v) the prompt handling of inquiries, complaints and
71 requests for repairs;

72 (E) Prescribe such standards for the prohibition or
73 limitation of concentration of control over mass media
74 and communication companies and facilities and

75 methods of enforcing such standards, as the board may
76 determine to be necessary or appropriate to protect
77 the public interest: *Provided*, That nothing contained
78 herein shall be construed to authorize the impairment
79 of any existing rights of any mass media and commu-
80 nication company or any subsidiary thereof;

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

84 (4) Establish minimum specifications for equipment,
85 service and safety of cable;

86 (5) Represent the interests of citizens of this state
87 before the federal communication commission and
88 make available information to the public on commun-
89 ications developments at the federal level;

90 (6) Stimulate and encourage cooperative arrange-
91 ments among organizations, institutions, counties and
92 municipalities in the development of public, educa-
93 tional or governmental access facilities;

94 (7) Maintain liaison with the communications indus-
95 try and other parties, both public and private, having
96 an interest therein, other states and political subdivi-
97 sions of this state to promote the rapid and harmoni-
98 ous development of cable services as set forth in the
99 legislative findings and intent of this article;

100 (8) Undertake such studies as may be necessary to
101 meet the responsibilities and objectives of this article;
102 and

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

**§5-18-9. Application or proposal for cable franchise; fee;
certain requirements.**

1 (a) No cable franchise shall be issued except upon
2 written application or proposal therefor to the fran-
3 chising authority, accompanied by a fee of two hun-
4 dred fifty dollars.

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

10 (1) The citizenship and character of the applicant;

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

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

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

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

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

**§5-18-10. Cable franchise application or proposal procedure;
public hearing; notice.**

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

3 (1) After the application or proposal and required fee
4 are received by the franchising authority within a
5 time frame established by rule promulgated by the
6 board, the franchising authority shall notify an appli-
7 cant in writing of the acceptance or nonacceptance for
8 filing of an application or proposal for issuance of a
9 cable franchise required by this article.

10 (2) After the issuance of a notice of acceptance for
11 filing and within a time frame established by rule
12 promulgated by the board, the franchising authority
13 shall hold a public hearing on the application or
14 proposal to afford interested persons the opportunity

15 to submit data, views or arguments, orally or in
16 writing. If the franchising authority is the board,
17 notice thereof shall be given to the city council and
18 mayor of any municipalities affected, the county
19 commission of any counties affected and to any
20 telephone or other utility and cable company in the
21 county or counties in which the proposed service area
22 is located, and a representative of the governing body
23 of a municipality or county commission may appear at
24 the public hearing to represent the interests of the
25 public which will be served by the issuance of a cable
26 franchise. The franchising authority shall also cause
27 notice of the application and hearing to be published
28 at least once in each of two successive weeks in a
29 newspaper of general circulation in the county or
30 counties in which the proposed service area is located.
31 The last published notice shall appear at least fifteen
32 days prior to the date of the hearing.

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

**§5-18-11. Issuance of cable franchise authority; criteria;
content.**

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

5 (b) The franchising authority, after a public hearing
6 as provided in this article, shall issue a cable franchise
7 to the applicant when the franchising authority is
8 convinced that it is in the public interest to do so. In
9 determining whether a cable franchise shall be issued,

10 the franchising authority shall take into consideration,
 11 among other things, any objections arising from the
 12 public hearing, the content of the application or
 13 proposal, the public need for the proposed service, the
 14 ability of the applicant to offer safe, adequate and
 15 reliable service at a reasonable cost to the subscribers,
 16 the suitability of the applicant, the financial responsi-
 17 bility of the applicant, the technical and operational
 18 ability of the applicant to perform efficiently the
 19 service for which authority is requested, and any
 20 other matters as the franchising authority considers
 21 appropriate in the circumstances.

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

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

**§5-18-12. Cable system installation, construction, operation,
 removal; general provisions.**

1 (a) A cable franchise shall be construed to authorize
 2 the construction or operation of a cable system within
 3 the service area above, below, on, in or along any
 4 highway or other public place and through easements
 5 which have been dedicated for compatible purposes.

6 (b) The technical specifications, general routes of the

7 distribution system and the schedule for construction
8 of the cable system are subject to the approval of the
9 franchising authority.

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

15 (d) The cable operator shall indemnify and hold the
16 state, county and municipality harmless at all times
17 from any and all claims for injury and damage to
18 persons or property, both real and personal, caused by
19 the installation, operation or maintenance of its cable
20 system, notwithstanding any negligence on the part of
21 the state, county and/or municipality, their employees
22 or agents. Upon receipt of notice in writing from the
23 state, county and/or municipality, the cable operator
24 shall, at its own expense, defend any action or pro-
25 ceeding against the state, county and/or municipality
26 in which it is claimed that personal injury or property
27 damage was caused by activities of the cable operator
28 in the installation, operation or maintenance of its
29 cable system.

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

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

40 (g) Upon termination of the period of the cable
41 permit or of any renewal thereof, by passage of time
42 or otherwise, the cable operator shall remove its
43 facilities from the highways and other public places in,
44 on, over, under or along which they are installed if so
45 ordered by the franchising authority and shall restore
46 the areas to their original or other acceptable condi-

47 tion or otherwise dispose of its facilities. If removal is
48 not completed within six months of the termination,
49 any property not removed shall be deemed to have
50 been abandoned and the cable operator shall be liable
51 for the cost of its removal.

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

54 (1) All applicable state statutes, municipal ordinan-
55 ces and all applicable rules and orders of the public
56 service commission governing the construction, main-
57 tenance and removal of overhead and underground
58 facilities of public utilities;

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

62 (3) For state or federal-aid highways, all public
63 welfare rules adopted by the commissioner of the
64 department of highways.

65 (i) In the use of easements dedicated to compatible
66 purposes, the cable operator shall ensure:

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

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

74 (3) That the owner of the property is justly compen-
75 sated by the cable operator for any damages caused by
76 the installation, construction, operation or removal of
77 facilities by the cable operator.

**§5-18-13. Revocation, alteration, or suspension of cable
franchise; penalties.**

1 (a) Any cable franchise issued in accordance with
2 the provisions of this article may be revoked, altered
3 or suspended by the franchising authority upon the
4 recommendation of the cable advisory board to a

5 municipality or county acting as a franchising author-
6 ity or after a hearing before the franchising authority,
7 for the following reasons:

8 (1) For making material false or misleading state-
9 ments in, or for material omissions from, any applica-
10 tion or proposal or other filing made with the franchis-
11 ing authority;

12 (2) For failure to maintain signal quality under the
13 standards prescribed by the board;

14 (3) For any sale, lease, assignment or other transfer
15 of its cable franchise without consent of the franchis-
16 ing authority;

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

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

22 (6) For failure to comply with this article or any
23 rules, regulations or orders prescribed by the board;

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

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

28 (b) In lieu of, or in addition to, the relief provided
29 by subsection (a) hereof, the franchising authority
30 may fine a cable operator, for each violation under the
31 provisions of this section, in an amount not less than
32 fifty dollars nor more than five thousand dollars for
33 each violation. Each day's continuance of a violation
34 may be treated as a separate violation pursuant to
35 rules and regulations adopted by the board. Any
36 penalty assessed under this section shall be in addition
37 to any other costs, expenses or payments for which the
38 cable operator is responsible under other provisions of
39 this article.

§5-18-14. Renewal of cable franchise.

1 Any cable franchise issued pursuant to this article

2 may be renewed by the franchising authority upon
 3 approval of a cable operator's application or proposal
 4 therefor and in accordance with the provisions of 47
 5 U.S.C. §546 as the same is in effect on the effective
 6 date of this article. The form of the application or
 7 proposal shall be prescribed by the board. The appli-
 8 cation or proposal fee shall be the same fee prescribed
 9 for franchise applications. The periods of renewal shall
 10 be not less than five nor more than twenty years each.
 11 The board shall require of the applicant full disclosure,
 12 including the proposed plans and schedule of expendi-
 13 tures for or in support of the use of public, educational
 14 or governmental access facilities.

§5-18-15. Transfer of cable franchise.

1 (a) No cable system and no cable franchise, including
 2 any system without a franchise and any franchise in
 3 existence on the effective date of this article, and
 4 including the rights, privileges and obligations thereof,
 5 may be assigned, sold, leased, encumbered or other-
 6 wise transferred, voluntarily or involuntarily, directly
 7 or indirectly, including a transfer of control of any
 8 cable system, whether by change in ownership or
 9 otherwise, except upon written application to and
 10 approval of the appropriate franchising authority or
 11 authorities. The form of the application for transfer
 12 shall be prescribed by the board.

13 (b) The procedure for consideration of any transfer
 14 under the provisions of this section shall conform, as
 15 nearly as possible, to the procedures prescribed in
 16 sections nine and ten of this article for the consider-
 17 ation of issuing cable franchises, including the applica-
 18 tion fee therefor.

§5-18-16. Rates; filing with board; approval.

1 (a) The board shall require each cable operator to
 2 file a schedule of its rates of service on a form and
 3 with the notice that the board may prescribe.

4 (b) To the extent permitted by federal law, the
 5 board shall regulate rates to ensure that they are just
 6 and reasonable both to the public and to the cable

7 operator and are not unduly discriminatory.

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

§5-18-17. Requirement for adequate service; terms and conditions of service.

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

5 (b) The board shall require each cable operator to
6 submit a schedule of all terms and conditions of
7 service in the form and with the notice that the board
8 may prescribe.

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

§5-18-18. Procedures for restoring interrupted service and improving substandard service.

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

10 (b) Each cable operator shall restore interrupted
11 service not later than twenty-four hours after being
12 notified by a subscriber that service has been inter-
13 rupted, unless (1) service cannot be restored until

14 another company repairs facilities owned by such
15 company and leased to, or required for the operation
16 of, the cable service, (2) the interruption was caused
17 by an act of nature or (3) the cable operator is unable
18 to restore service within twenty-four hours due to
19 extenuating circumstances. In the event of such
20 extenuating circumstances, the company shall restore
21 service as soon as feasible and then submit a written
22 notice to the board indicating that service has been
23 restored and explaining the nature of the extenuating
24 circumstances.

§5-18-19. Credit or refund for interrupted service.

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

8 (b) The board shall promulgate rules establishing a
9 viewing time reliability standard for cable operators
10 and requiring such companies to file with the board
11 information on service interruptions not caused by
12 subscribers.

§5-18-20. Office operating requirements; office hours.

1 Each cable operator shall operate a business office in
2 the service area or in an immediately adjacent fran-
3 chise area as may be approved by the board that shall
4 be open during normal business hours, and each cable
5 operator shall operate sufficient telephone lines,
6 including a toll-free number or any other free calling
7 option, as approved by the board, staffed by a company
8 customer service representative during normal busi-
9 ness hours.

§5-18-21. Notice to subscribers regarding quality of service.

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

3 (1) Informs subscribers how to communicate their

4 views and complaints to the cable operator and to the
5 board;

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

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

13 (b) The notice shall be in nontechnical language,
14 understandable by the general public, and in a conve-
15 nient format. On or before the thirtieth day of Janu-
16 ary of each year, the operator shall certify to the
17 franchising authority and the board that it has distrib-
18 uted the notice as provided in this section during the
19 previous calendar year as required by this section.

§5-18-22. Recording of subscriber complaints.

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

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

10 (1) Date, time, nature of complaint;

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

12 (3) Investigation of complaint; and

13 (4) Manner and time of resolution of complaint.

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

§5-18-23. Franchise document clearing house.

1 (a) Within sixty days of the effective date of this
2 article, all cable operators holding an existing fran-
3 chise shall file a copy of the franchise and any federal
4 communications commission rulings or other rulings
5 affecting such franchises with the board. If the board
6 shall not have been appointed and organized within
7 sixty days of the effective date of this article, then
8 such filing shall be made with the public service
9 commission where such documents shall be retained
10 for delivery to the board following the appointment
11 and organization of its members.

12 (b) Within sixty days of the granting of an initial
13 franchise, a renewal franchise or a transferred fran-
14 chise, the franchisee shall file a copy of the franchise
15 and any federal communications commission rulings
16 or other rulings affecting such franchise with the
17 board and the franchising authority. The board and
18 franchising authority shall maintain a file of all
19 franchise documents so recorded and make copies
20 available upon request for the cost of reproduction and
21 mailing, plus a reasonable administrative fee. The
22 filing fee for initial, renewal or transfer franchise
23 documents is fifty dollars per franchise, renewal or
24 transfer of such franchise. In years in which the filing
25 of initial, renewal or transfer franchise documents is
26 not required, the franchisee shall pay a fee of twenty-
27 five dollars for each franchise it holds.

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

§5-18-24. Rights of individuals.

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

§5-18-25. Complaints; violations; penalties.

1 (a) Subscriber complaints regarding the operation of
2 a cable system must be made in writing and filed with
3 the board. The board shall take up such complaints
4 with the cable operator complained against in an
5 endeavor to bring about satisfaction of the complaint
6 without formal hearing.

7 (b) The board shall resolve all complaints, if possible,
8 informally. No form of informal complaint is pres-
9 cribed, but the writing must contain the essential
10 elements of a complaint, including the name and
11 address of the complainant, the correct name of the
12 cable operator against which the complaint is made, a
13 clear and concise statement of the facts involved, and
14 a request for affirmative relief.

15 (c) In the event that the board cannot resolve the
16 complaint to the satisfaction of all parties, the com-
17 plainant may file a formal request to the board and he
18 or she is entitled to a hearing before the board, which
19 hearing shall be conducted in accordance with chapter
20 twenty-nine-a of the code, and the complainant and
21 cable operator shall be afforded all rights including the
22 right of appeal as set forth in said chapter twenty-
23 nine-a.

24 (d) A cable operator may be subject to a fine in
25 accordance with subsection (e) hereof, upon a determi-
26 nation by the board that the cable operator has
27 violated any of the following:

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

29 (2) Substantial compliance with rules or orders
30 prescribed by the board.

31 (e) The board may fine a cable operator for each
32 violation of subsection (d) of this section in an amount
33 not less than fifty dollars nor more than five hundred
34 dollars for each violation. Any penalty assessed under
35 this section is in addition to any other costs, expenses,
36 or payments for which the cable operator is responsi-
37 ble under other provisions of this section.

38 (f) The board may permit, in lieu of a full hearing
39 before the board, one of its hearing examiners to
40 conduct hearings and report its findings to the board.

41 (g) No cable operator shall charge for more than one
42 outlet per household.

43 (h) No cable operator shall add new channels and
44 charge subscribers without the consent of the
45 subscriber.

§5-18-26. Other duties of board; suit to enforce article.

1 (a) The board has the power and jurisdiction to
2 supervise every cable operator within this state so far
3 as may be necessary to carry out the purposes of this
4 article and to do all things which are necessary or
5 convenient in the exercise of this power and
6 jurisdiction.

7 (b) The board may adopt rules and regulations as are
8 necessary to implement the provisions of this article.

9 (c) The board or the board's designated representa-
10 tives may, from time to time, visit the places of
11 business and other premises and examine the records
12 and facilities of all cable operators to ascertain if all
13 laws, rules, regulations and cable franchise provisions
14 have been complied with, and may examine all
15 officers, agents and employees of cable operators and
16 all other persons, under oath, and compel the produc-
17 tion of papers and the attendance of witnesses to
18 obtain the information necessary for administering
19 this article.

20 (d) The board may appoint or contract for assistants
21 and clerical, stenographic and other staff as may be
22 necessary for the proper administration and enforce-
23 ment of this article.

24 (e) The board or other aggrieved party may insti-
25 tute, or intervene as a party in, any action in any
26 court of law seeking a mandamus, or injunctive or
27 other relief to compel compliance with this article, or
28 any rule, regulation, or order adopted hereunder, or to
29 restrain or otherwise prevent or prohibit any illegal or

30 unauthorized conduct in connection with this article.

§5-18-27. Reports.

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

§5-18-28. Annual fees; effect of application and filing fees on franchise fees.

1 (a) Each cable operator shall pay to the board an
2 annual fee in an amount not less than twenty cents
3 per subscriber or such greater annual fee as may be
4 determined by the board. Such funds and all other
5 funds to be paid to the board under the provisions of
6 this article shall be deposited into a special fund
7 designated the "cable advisory board fund". Such fund
8 shall be used for purposes of administering the provi-
9 sions of this article. To the extent permitted by federal
10 law, the board may prohibit cable operators from
11 assessing subscribers for any contribution toward the
12 annual fee to be paid hereunder.

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

§5-18-29. Cable television industry not regulated as a utility.

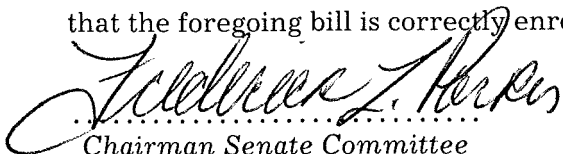
1 No provision of this article may be construed to
2 grant the board the power to regulate the cable
3 television industry as a utility.

§5-18-30. Severability.

1 If any provision of any subparagraph, subsection or
2 section of this article is held to be unconstitutional or
3 void, the remaining provisions of such subparagraph,
4 subdivision, subsection or section shall remain valid,
5 unless the court finds the valid provisions are so

6 essentially and inseparably connected with, and so
7 dependent upon the unconstitutional or void provision
8 that the court cannot presume the Legislature would
9 have enacted the remaining valid provisions without
10 the unconstitutional or void one, or unless the court
11 finds that the remaining valid provisions, standing
12 alone, are incomplete and are incapable of being
13 executed in accordance with the legislative intent.

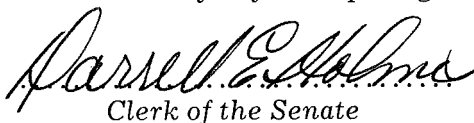
The Joint Committee on Enrolled Bills hereby certifies
that the foregoing bill is correctly enrolled.


Chairman Senate Committee

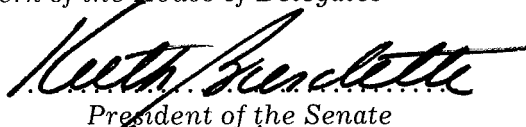

Chairman House Committee

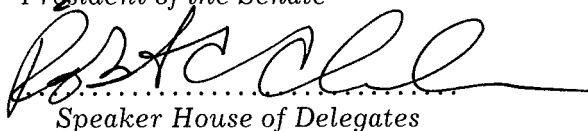
Originated in the Senate.

In effect ninety day from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 31st
day of March, 1990.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/22/40

Time 9:21 am