WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

ENROLLED
Committee Substitute for
SENATE BILL NO. 67

(By Senator Chafin, et al.)

PASSED March 19, 1990
In Effect 90 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 trans­
fer of any cable system or cable franchise without
approval of appropriate franchising authorities; cable
operators to file schedule of rates with board; authoriz­
ing 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 regard­
ing 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; prohib­
itng cable operators from discriminating against sub­
scribers 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 ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS 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 Television Systems Act".

§5-18-2. Legislative findings.

1 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 this article is to promote such goals by all available means not in conflict with federal law, rules or regulations.


1 As used in this article:

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

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

4 (3) "Basic cable service" means any service tier which includes the retransmission of local television broadcast signals.
(4) "Board" means the West Virginia cable television advisory board created under the provisions of this article.

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

(6) "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.

(7) "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.

(8) "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.

(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 used by a cable operator in provid-
ing service to its subscribers.

(11) “Franchising authority” means a municipality, a
county commission or the West Virginia cable tele-
vision advisory board.

(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 corpora-
tion 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 informa-
tion 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
Section 18-4. 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 article.

(b) Any person operating a cable system on the effective date of this article without a franchise shall, within sixty days of the effective date of this article, notify the board 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; and (4) the number of subscribers within the cable system or systems. If the board shall not have been appointed and organized within sixty days of the effective date of this article, then such filing shall be made with the public service commission where such documents shall be retained for delivery to the board following the appointment and organization of its members.

(c) The board 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 shall, within sixty days of receipt of such notice from the board, make formal application to the appropriate franchise 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, 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.

(e) Any municipality or county commission may elect not to act as a franchising authority, in which event, the franchising authority for any cable system to be constructed, operated, acquired or extended within the jurisdiction of such municipality or within the jurisdiction of such county commission shall be the board. If any municipality or county commission so elects, the mayor or president of the county commission shall certify such delegation in writing to the presiding officer of the board.

§5-18-5. Existing cable franchises.

(a) The provisions of any cable franchise in effect on the effective date of this article 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
§5-18-6. West Virginia cable television advisory board created; appointments and terms of members; meetings; vacancies; quorum.

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

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

(1) The governor shall appoint one member to represent the viewpoint of the public service commission. When the member is to be appointed, the governor shall request from the public service commission a list of three nominees for such position. A summary of the qualifications of each nominee shall be submitted with each list. When the completed list of nominees is submitted in accordance with the provisions hereof, the governor shall make his or her appointment from the persons so nominated.

(2) The governor shall appoint one member to represent the viewpoint of those cable operators whose cable system or systems in the aggregate have five thousand subscribers or more, and one member to represent the viewpoint of cable operators whose cable system or systems in the aggregate have less than five thousand subscribers. The governor shall request from the trade association representing cable operators in this state a list of three nominees for each such position of the board. All nominees shall be persons with special experience and competence in cable television operations. A summary of the qualifications of each nominee shall be submitted with each list. When the completed list of nominees for each position is submitted in accordance with the provisions hereof,
the governor shall make his or her appointments from
the persons so nominated.

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

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

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

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

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

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

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

(4) Following the beginning terms provided for in
this subsection, members shall be nominated and appointed in the manner provided for in this section and shall serve for a term of three years. Members are eligible for reappointment.

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

(e) Each member of the board shall take and subscribe to the oath or affirmation required pursuant to section 5, article IV of the constitution of West Virginia. A member may be removed by the governor for substantial neglect of duty or gross misconduct in office, after written notice and an opportunity to reply.

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

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

(h) The board may subpoena witnesses, compel their 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
duties or exercises of its power under the provisions of
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
general shall comply with the request. The board shall
122 employ an executive secretary to be compensated
from the cable advisory board fund created under the
provisions of this article in an amount to be fixed by
the board. Such executive secretary shall be in charge
of its offices which shall be within the public service
commission, shall be responsible to the board for the
maintenance of such offices and shall be the custodian
of all documents filed by cable operators and of any
complaints or other documents which may be filed
with the board in accordance with the provisions of
this article. The board is also authorized to employ and
assign the necessary professional and clerical staff and
such hearing examiners as may be necessary to
conduct hearings in such various locations in the state,
under the provisions of section twenty-five of this
article, in order to provide a convenient forum for
persons making subscriber complaints to be heard.
The salaries and expenses of any such staff and
hearing examiners shall be paid from the fees assessed
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
duties. Each member shall receive meals, lodging and
9 mileage expense reimbursements at the rates estab-
lished by rule of the commissioner of the department
10 of finance and administration for in-state travel of
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public employees. The reimbursement shall be paid
out of the state treasury upon a requisition upon the
state auditor, properly certified by the chairman of the
board.

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

The West Virginia cable television advisory board
shall:

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

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

(A) Prescribe standards for procedures and practices
which franchising authorities shall follow in consider-
ing the issuance of cable franchises, which standards
shall provide for the forms of applications and propos-
als, the filing of all franchise applications, proposals
and related documents as public records, with reason-
able notice to the public that such records are open to
inspection and examination during reasonable busi-
ness hours; the holding of a public hearing, upon
reasonable notice to the public, at which the applica-
tions 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 board may
otherwise deem necessary or appropriate to assure
maximum public participation and competition and to
protect the public interest;

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

(C) 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;

(D) 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 board’s statewide plan and facilities capable of transmitting signals from subscribers to the cable system or to other points, and (v) the prompt handling of inquiries, complaints and requests for repairs;

(E) 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 board 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 commun-
ication company or any subsidiary thereof;

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

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

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

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

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

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

(9) 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.

§ 5-18-9. 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 fran-
chising authority, accompanied by a fee of two hun-
dred fifty dollars.
(b) An application for issuance of a cable franchise shall be made on a form prescribed by the board. The application shall set forth the facts as required by the board 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 board 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.

§5-18-10. 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 board, 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 article.

(2) After the issuance of a notice of acceptance for filing and within a time frame established by rule promulgated by the board, 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 board, 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.

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

(a) A franchising authority is 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.

§5-18-12. 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 within the service area above, below, on, in or along any highway or other public place and through easements which have been dedicated for compatible purposes.

(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 condi-
tion 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:

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

(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 commissioner of the department of highways.

(i) In the use of easements dedicated to compatible purposes, 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.

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

(a) Any cable franchise issued in accordance with the provisions of this article may be revoked, altered or suspended by the franchising authority upon the recommendation of the cable advisory board 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 failure to maintain signal quality under the standards prescribed by the board;

(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 violation of the terms of its cable franchise;

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

(7) For 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 fifty dollars nor more than five thousand dollars 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 board. 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 article.


Any cable franchise issued pursuant to this article
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 article. The form of the application or
proposal shall be prescribed by the board. The appli-
cation 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 board shall require of the applicant full disclosure,
including the proposed plans and schedule of expendi-
tures for or in support of the use of public, educational
or governmental access facilities.


(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 article, and
including the rights, privileges and obligations thereof,
may be assigned, sold, leased, encumbered or other-
wise transferred, voluntarily or involuntarily, directly
or indirectly, 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. The form of the application for transfer
shall be prescribed by the board.

(b) 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 nine and ten of this article for the consider-
atation of issuing cable franchises, including the applica-
tion fee therefor.

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

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

(b) To the extent permitted by federal law, the
board 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 board 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.

§5-18-17. 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 board 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 board may prescribe.

(c) The board 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.


(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 board indicating that service has been restored and explaining the nature of the extenuating circumstances.

§5-18-19. 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 board shall promulgate rules establishing a viewing time reliability standard for cable operators and requiring such companies to file with the board information on service interruptions not caused by subscribers.

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

Each cable operator shall operate a business office in the service area or in an immediately adjacent franchise area as may be approved by the board that shall be open during normal business hours, and each cable operator shall operate sufficient telephone lines, including a toll-free number or any other free calling option, as approved by the board, staffed by a company customer service representative during normal business hours.


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

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

(2) States the responsibility of the board, 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 nineteen of this article.

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

§5-18-22. 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 board. 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 article, every cable operator shall make the logs or records, or both, of such complaints available to any authorized agent of the board and the franchising authority, upon request during normal business hours for on-site review.

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

(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 board and the franchising authority. The board 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 fifty dollars 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 twenty-five dollars 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 article.


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

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

(b) The board 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 board cannot resolve the complaint to the satisfaction of all parties, the complainant may file a formal request to the board and he or she is entitled to a hearing before the board, which hearing shall be conducted in accordance with chapter twenty-nine-a of the code, and the complainant and cable operator shall be afforded all rights including the right of appeal as set forth in said chapter twenty-nine-a.

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

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

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

(e) The board may fine a cable operator for each violation of subsection (d) of this section in an amount not less than fifty dollars nor more than five hundred dollars 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) The board may permit, in lieu of a full hearing before the board, one of its hearing examiners to conduct hearings and report its findings to the board.

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

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

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

(a) The board 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 article and to do all things which are necessary or convenient in the exercise of this power and jurisdiction.

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

(c) The board or the board'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 board 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 board 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 article, or any rule, regulation, or order adopted hereunder, or to restrain or otherwise prevent or prohibit any illegal or
§5-18-27. Reports.

Each cable operator shall file with the board, 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 board and shall be kept on file open to the public.

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

(a) Each cable operator shall pay to the board an annual fee in an amount not less than twenty cents per subscriber or such greater annual fee as may be determined by the board. Such funds and all other funds to be paid to the board under the provisions of this article shall be deposited into a special fund designated the “cable advisory board fund”. Such fund shall be used for purposes of administering the provisions of this article. To the extent permitted by federal law, the board 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 article and the annual fee to be paid to the board 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.

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

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


If any provision of any subparagraph, subsection or section of this article is held to be unconstitutional or void, the remaining provisions of such subparagraph, subdivision, subsection or section shall remain valid, unless the court finds the valid provisions are so
essentially and inseparably connected with, and so
dependent upon the unconstitutional or void provision
that the court cannot presume the Legislature would
have enacted the remaining valid provisions without
the unconstitutional or void one, or unless the court
finds that the remaining valid provisions, standing
alone, are incomplete and are incapable of being
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