WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED

SENATE BILL NO. 214

(By Senator WOOTON, ET AL.)

PASSED March 14, 1998
In Effect 90 Days From Passage
AN ACT to repeal section seven, article eighteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty-one, twenty-two, twenty-three, twenty-five, twenty-seven, twenty-eight, twenty-nine and thirty of said article; to further amend said article by adding thereto three new sections, designated sections eleven-a, eleven-b and thirty-one; and to amend and reenact section three, article three-d, chapter sixty-one of said code, all relating generally to the regulation of cable television service; establishing a short title; modifying prior legislative findings and definitions; providing for franchising authorities and requiring franchises for the construction, operation or acquisition of cable
television systems; providing for the continuation of existing franchises and the enforcement of the terms and conditions of existing franchise agreements; provides for the creation, composition and delineation of the duties and powers of the cable television subscribers protection board; providing procedures for applications and proposals for cable television franchises and establishing application fees therefor; providing for public hearing upon an application for a cable television franchise, and for criteria to be considered on the question of the issuance of franchises; providing for a written franchise agreement and mandatory and permissive provisions and terms therefor; permitting certain agreements involving cable rates; providing general requirements relating to the installation, construction and operation, and removal of cable television systems; providing for revocation, alteration and suspension of cable franchises; providing for civil penalties; providing for the renewal of franchises; restricting transfers of cable television franchises; permitting the board to regulate rates in certain instances; requiring adequate service; providing refunds and credits for service interruptions; requiring notices to subscribers regarding quality of service; requiring recordation of subscriber complaints; requiring that the public service commission serve as a document clearinghouse; providing a mechanism for the handling of subscriber complaints; providing for other powers to be vested in franchising authorities; requiring certain reports to be filed by cable operators; providing for annual fees and other franchise fees; providing for the recovery of attorney's fees in actions against cable operators; providing for liberal construction of certain provisions of the article; termination of board; establishing criminal offenses relating to the theft of cable television services; and creating and defining a misdemeanor offense, penalties, a civil action and remedies for the attachment, maintenance or use of devices to acquire unauthorized cable for commercial gain or remuneration.

Be it enacted by the Legislature of West Virginia:
That section seven, article eighteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two, three, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty-one, twenty-two, twenty-three, twenty-five, twenty-seven, twenty-eight, twenty-nine and thirty of said article be amended and reenacted, that said article be further amended by adding thereto three new sections, designated sections eleven-a, eleven-b and thirty-one; and that section three, article three-d, chapter sixty-one of said code be amended and reenacted, all 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.

§5-18-2. 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 cable television services in West Virginia are often not subject to effective competition and that cable television services have become more and more expensive for the citizens of West Virginia, and that to the extent permitted by federal law, the state of West Virginia should provide a mechanism for the regulation of the service provided and the prices charged by cable television operators. Further, the Legislature finds that it is in the public interest to establish 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 permit local franchising authorities to develop and
establish 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 within their franchise areas. The purpose of this article is to promote such goals by all available means not clearly preempted by federal law.


1. As used in this article:

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

   (2) “Application” means a filing for a cable franchise.

   (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 subscribers protection 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 program-
(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 providing service to its subscribers.

(11) "Franchising authority" means a municipality, a county commission or the West Virginia cable television subscribers protection board.

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

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

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

(15) "Person" means an individual, partnership, associa-
tion, joint stock company, trust, corporation or govern-
mental agency.

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

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

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

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

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

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

§5-18-4. 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.

(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 franchising authority or authorities for a franchise in accordance with the provisions of this article.

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

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

§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. All terms and
conditions of any written cable franchise agreement
entered into between a cable operator and any franchising
authority before the effective date of the reenactment of
this article in the year one thousand nine hundred ninety-
eight, including, but not limited to, any provisions under
which a cable operator has voluntarily agreed to limit its
cable rates to subscribers, shall be enforceable under the
provisions of this act.

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

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

(a) There is hereby created, effective the first day of July, one thousand nine hundred ninety-eight, a cable review board to be known as the “West Virginia Cable Television Subscribers Protection 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 terms of office of all of the members of the board serving on the effective date of the reenactment of this section in the year one thousand nine hundred ninety-eight shall expire on the effective date of such reenactment, and the governor shall appoint a new board forthwith as provided herein. The new board shall consist of nine members, who shall be residents of this state, and who shall be appointed from the lists of nominees submitted to the governor pursuant to this subsection. Each body submitting a list of nominees pursuant to this subsection shall also submit a summary of the qualifications of each nominee on the list. When a 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 on the list: Provided, That no member of the board serving on the effective date of the reenactment of this section may be considered for reappointment to service for a period of three years following the conclusion of their previous term:

(1) The governor shall appoint one member to represent the viewpoint of senior citizens living on fixed incomes. When this member is to be appointed, the governor shall request from the West Virginia chapter of the American
association of retired persons a list of three nominees for such position.

(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 fewer 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.

(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 associations representing the municipalities and counties, respectively, a list of three nominees for such position.

(4) The governor shall appoint one member to represent the consumer advocate division of the public service commission. The governor shall request from the director of the consumer advocate division a list of three nominees for such position.

(5) The governor shall appoint one member to represent the interests of the consumer protection and antitrust division of the office of the attorney general. The governor shall request from the attorney general a list of three nominees for such position.

(6) The governor shall appoint one member to represent the interests of children and children's cable television programming. The governor shall request from the governor's cabinet on children and families a list of three nominees for such position.

(7) The governor shall appoint one member to represent
the interests of the deaf and hard of hearing. The governor shall request from the West Virginia commission for the deaf and hard of hearing a list of three nominees for such position.

(8) No person who is employed by, who has any financial dealings with, other than as a subscriber, or interest in any cable operator or cable company shall be eligible to a seat on the board.

(9) 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 this subsection. Three of the members shall be appointed for terms of one year, three shall be appointed for two years and three shall be appointed for three years. The governor shall designate which members shall serve initial terms of one, two or three years. After the initial terms have expired, all members of the board shall be appointed for terms 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. Five 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 five, 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 affirmations, take evidence and require by subpoena the production of books, logs, papers, records or other 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.

(i) The board may request the attorney general to provide legal advice to the board and the attorney general shall comply with the request. The board shall 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.

§5-18-8. Duties and powers of West Virginia cable television subscribers protection board.

The West Virginia cable television subscribers protection board shall:

(1) Develop and maintain a statewide plan for the provision of cable services, setting forth the objectives which the board deems 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 considering the issuance of cable franchises, which standards shall and provide for the forms of applications and proposals, the filing of all franchise applications, proposals and related documents as public records, with reasonable notice to the public that such records are open to inspection and examination during reasonable business hours; the holding of a public hearing, upon reasonable notice to the public, at which the applications or proposals shall be examined and members of the public and interested parties are afforded a reasonable opportunity to express their views thereon; the rendition of a written report by the franchising authority made to the public, setting forth
the reasons for its decision in awarding or not awarding
the franchise; and such other procedural standards
governing the issuance of cable franchises mandated by
the provisions of this article or as the 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,
which shall be not less than five nor more than ten years;
minimum channel capacity; provisions regarding public,
educational or governmental access facilities; a require-
ment 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 preempted
by federal law;

(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 opera-
tion 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 communication 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 communications developments at the federal level;

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

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

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

(9) Stimulate and encourage the creation of competition between cable operators in every franchise area of this state.

§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 franchising authority, accompanied by a nonrefundable fee of one thousand 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.

§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 sixty days, 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. Within ninety days after the issuance of a notice of acceptance for filing, 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. In such a proceeding, the applicant shall have the burden of proving that the franchising authority acted unreasonably or arbitrarily in denying the application.

§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 or comments arising from the public hearing, along with any objections or comments which have been submitted in writing, 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
29 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.

§5-18-11a. Franchise agreement in writing; mandatory and permissive terms and conditions.

1 (a) The complete terms and conditions of any franchise shall be reduced to writing and shall be signed, in the form of an agreement, by authorized persons on behalf of the franchising authority and the franchisee.

(b) To the extent that these conditions are not preempted by federal law, the written franchise agreement shall:

1 (1) State that the franchise is not exclusive;

(2) State that the franchising authority will not grant to any other applicant a franchise for the same service area containing more favorable terms and conditions than those contained in the instant franchise agreement;

(3) State the term of the franchise, which shall not be less than five years, nor more than ten years;

(4) Describe specifically the service area of the franchise;

(5) Describe specifically the unserved and uncabled areas within the jurisdiction of the franchising authority to which the franchisee is required to expand its cable service;

(6) State specifically the time periods within which the
expansions set forth in subdivision (5) of this subsection are required to be done;

(7) State specifically the minimum channels to be provided to the subscribers of the system;

(8) State specifically the procedures by which the franchisee may be required to provide additional channels to the subscribers of the system;

(9) Recite specifically any maximum charges or rates to which the franchisee has voluntarily agreed that it would limit itself in imposing charges and rates on the subscribers of the system for cable service subscriptions, including detailed charges for each type or package of subscription;

(10) Recite specifically whether or not the franchisee has voluntarily entered into any agreement by which the franchisee has agreed to limit itself in the increases it will impose ever during the life of the franchise on the rates charged to subscribers, and if so, the franchise agreement shall recite the specific circumstances which the franchisee has voluntarily agreed upon permitting increases in rates and the maximum amounts by which cable rates may be increased in such circumstances;

(11) State specifically the maximum amount(s) that the franchisee may charge for any other service that it may perform, including charges for hook-ups, disconnections, reconnections, service calls and any other charges that the franchisee will ever impose upon a subscriber;

(12) State specifically whether or not the franchisee is permitted ever during the life of the franchise to increase charges set forth in subdivision (11) of this subsection, and if so, the circumstances permitting increases and the maximum amounts by which those charges may be increased in such circumstances;

(13) State specifically that subscribers shall be entitled to credit upon their cable television bills for one thirtieth
of the subscriber’s monthly bill for each day in which the
subscriber has a loss of service for six hours or more;

(14) State specifically that the franchisee consents to the
jurisdiction of the circuit court of the county in which the
franchise is located for all suits and actions arising under
the provisions of this article or arising out of any franchise
agreement; and

(15) State specifically that an action to enforce the
provisions of this article, or for damages or other relief
contemplated under this article, may be brought by any of
the following persons:

(A) The franchising authority;

(B) Any subscriber of the franchisee’s cable television
system; and

(C) Any person in any area to which the franchisee is
required to extend cable service.

The written franchise agreement may contain such other
terms and conditions as the parties may agree upon and
reduce to writing.

§5-18-11b. Voluntary agreements regarding cable rates distin-
guished from rate regulation.

A cable operator or franchisee may enter into a volun-
tary agreement with a franchising authority under which
the cable operator agrees to charge its subscribers less
than the maximum amount that it could charge under the
lawful rate regulations of the board. Such an agreement
shall be enforceable against the cable operator, the board
and any subscriber in the franchise area. If a cable
operator enters into such an agreement, the limitations on
cable rates therein shall not be construed as the regulation
of cable rates by the franchising authority.

§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 condition or otherwise dispose of its facilities. If removal is not completed within six months of the termination, any property not removed shall be deemed to have been abandoned and forfeited to the franchising authority, and, if the property is removed, 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 secretary of the department of transportation.

(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; 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 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.

(c) Any cable operator the franchise of which has been
revoked, modified or suspended pursuant to the provisions
of this section shall have the right to appeal such revoca-
tion, modification or suspension to the circuit court of the
county in which the franchise is located. In such an
appeal, the appellant shall have the burden of proving
that the franchising authority acted in an arbitrary and
capricious manner. If a petition for appeal is not filed
with the circuit court by a cable operator within thirty
days of the action complained of, then the right of such an
appeal shall be forever waived.


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 federal law 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 application or proposal fee shall be the same
fee prescribed for franchise applications. The periods of
renewal shall be not less than five nor more than ten years
each. The board shall require of the applicant full disclo-
sure, including the proposed plans and schedule of expen-
ditures 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 or otherwise 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) Notice provisions may be prescribed by the board for encumbrances creating potential transfers.

(c) The procedure for consideration of any transfer under the provisions of this section shall conform, as nearly as possible, to the procedures prescribed in this article for the consideration of issuing cable franchises, including the application 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 to the public and are not unduly discriminatory. The board’s primary mission in this regard is to keep the rates as low as possible for the cable subscribers of this state.

(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.

(d) For purposes of this article, “rate regulation” does not include any voluntary agreement on the part of a cable
operator to limit cable rates to amounts specified in a franchise agreement. If a franchise agreement provides for cable rates in excess of those permitted by the board in the exercise of its authority to regulate rates, then the rates set by the board shall govern.

§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) Every cable operator shall 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.

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

If cable service to a subscriber is interrupted for more than twelve 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.


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

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

(2) States the responsibility of the board to receive and
act on consumer complaints concerning all matters regulated under this article; and

(3) States the policy regarding the method by which subscribers may request rebates or pro rata credit as described in 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 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 federal law as the same is in effect on the effective date of the reenactment of this article in the year one thousand nine hundred ninety-eight, 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.
§5-18-23. Public service commission to be franchise document clearinghouse.

(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 public service commission where such documents shall be retained for examination by other franchising authorities and citizens.

(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 public service commission and the franchising authority. The public service commission and franchising authority shall maintain a file of all franchise documents so recorded and make copies available upon request for the cost of reproduction and mailing, plus a reasonable administrative fee. The filing fee for initial, renewal or transfer franchise documents is two hundred 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 one hundred dollars for each franchise it holds.

(c) All such fees paid by any cable operator are franchise fees with the intent and meaning of federal law as the same is in effect on the effective date of the reenactment of this article in the year one thousand nine hundred ninety-eight.

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

(a) Subscriber complaints regarding the operation of a cable system may be made in writing and filed with the board on a form prescribed by the board. The complaint form shall be in nontechnical language which is clearly
understandable to the general public. 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. An informal complaint must contain the name and address of the complainant, the 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. The complainant and cable operator shall be afforded all rights including the right of appeal as set forth herein.

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

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

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

(e) The board may fine or obtain civil penalties against a cable operator for each violation of subsection (d) of this section in an amount not less than 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
Each cable operator shall file with the board reports of its financial, technical and operational condition and its ownership. The reports shall be made quarterly 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 thirty 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 subscribers protection 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.


In any action authorized under this article, whether before the board, the franchising authority or any other court or tribunal, including proceedings in a circuit court, if the decision or judgment be against a cable operator, then the cable operator shall be liable to the opposing parties for all of their costs, including their reasonable attorney's fees, expended in the matter.


(a) With respect to the powers conferred by this article upon franchising authorities, this article shall be liberally construed in favor of franchising authorities.

(b) With respect to the rights of enforcement conferred by this article upon franchising authorities, subscribers and other citizens, this article shall be liberally construed in favor of those rights.

§5-18-31. Termination of the West Virginia cable television subscribers protection board.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia cable television subscribers protection board shall continue to exist until the first day of July, two thousand.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3D. THEFT OF CABLE TELEVISION SERVICES.

§61-3D-3. Device or plan intended for acquisition or diversion; penalties; civil action; remedies.

(a) A person who sells, gives or otherwise transfers to
another or offers, advertises or exposes for sale to another
any device, mechanism, tool or printed circuit, or any kit,
plan or instructional procedure for the making of such
device, mechanism, tool or printed circuit, with the
knowledge that another will acquire cable television
services in violation of this article; or who attaches,
maintains the attachment of or uses any of the foregoing
devices for the purpose of remuneration or for commercial
advantage, with the knowledge that cable television
services will be or are being acquired in violation of this
article, shall be guilty of a misdemeanor and shall be
punishable in accordance with subsection (b) of this
section, or shall be civilly liable in accordance with
subsection (c) of this section, or both: Provided, That the
provisions of this section do not apply to solely private use
of the foregoing devices.

(b) A person convicted of a misdemeanor under this
section shall be punished as follows:

(1) Upon a first conviction under this section, the
defendant shall be fined not less than two hundred fifty
dollars, nor more than five hundred dollars.

(2) Upon a second conviction under this section, the
defendant shall be fined not less than five hundred dollars,
nor more than one thousand dollars, or imprisoned in the
county jail not more than thirty days, or both fined and
imprisoned.

(3) Upon a third conviction under this section, the
defendant shall be fined not less than five hundred dollars,
nor more than one thousand dollars, or imprisoned in the
county jail not less than sixty days, nor more than one
year.

(c) Any cable operator, cable system or other aggrieved
party may bring an action in any court of competent
jurisdiction to enjoin and restrain any violation of the
provisions of this section, or may bring a civil action for
damages, or both.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schoonover
Chairman Senate Committee

Mike Franta
Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

Barrett Helberg
Clerk of the Senate

Earl Ray Tomblin
President of the Senate

Speaker House of Delegates

The within..........................this the 8th day of April, 1998.

Joe P. Manchin
Governor
PRESENTED TO THE
GOVERNOR
Date 3/31/98
Time 10:40 AM