

SB 214

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998

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SENATE BILL NO. 214

(By Senator WOOTEN, ET AL)

PASSED March 14, 1998

In Effect 90 Days From Passage

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SENATE OF WEST VIRGINIA

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Senate Bill No. 214

(BY SENATORS WOOTON, BALL, BOWMAN, DITTMAR, HUNTER,
KESSLER, ROSS, SCHOONOVER, SNYDER, BUCKALEW AND DEEM)

[Passed March 14, 1998; in effect ninety 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
2 source of information and entertainment affecting the
3 welfare and economy of the state, and that cable television
4 services have become widespread, often providing the only
5 access to quality television signals in many areas of the
6 state. The Legislature finds that cable television services
7 in West Virginia are often not subject to effective competi-
8 tion and that cable television services have become more
9 and more expensive for the citizens of West Virginia, and
10 that to the extent permitted by federal law, the state of
11 West Virginia should provide a mechanism for the regula-
12 tion of the service provided and the prices charged by
13 cable television operators. Further, the Legislature finds
14 that it is in the public interest to establish standards
15 within the state of West Virginia for the issuance, renewal
16 and transfer of cable television franchises; to establish
17 uniform standards for the provision of cable service; to
18 permit local franchising authorities to develop and

19 establish procedures for the investigation and resolution
20 of complaints concerning cable service; and to establish
21 just, reasonable and nondiscriminatory rates and charges
22 for the provision of cable service within their franchise
23 areas. The purpose of this article is to promote such goals
24 by all available means not clearly preempted by federal
25 law.

§5-18-3. Definitions.

1 As used in this article:

2 (1) "Applicant" means a person who initiates an applica-
3 tion or proposal.

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

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

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

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

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

24 (7) "Cable service" means: (A) The one-way transmission
25 to subscribers of video programming or other program-

26 ming service; and (B) subscriber interaction, if any, which
27 is required for the selection of video programming or other
28 programming service.

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

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

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

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

59 (12) "Institution of higher education" means an academic
60 college or university accredited by the north central

61 association of colleges and schools.

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

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

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

73 (16) "Proposal" means a filing solicited by the franchis-
74 ing authority for a cable franchise.

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

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

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

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

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

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

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

6 (b) Any person operating a cable system on the effective
7 date of this article without a franchise shall, within sixty
8 days of the effective date of this article, notify the board
9 in writing setting forth: (1) The name, business address
10 and telephone number of the cable operator; (2) the
11 principals and ultimate beneficial owners of the cable
12 system or systems; (3) the geographic location and service
13 area of any cable system operated by such person; and (4)
14 the number of subscribers within the cable system or
15 systems.

16 (c) The board shall, upon receipt of such information,
17 determine the appropriate franchising authority or
18 authorities for the purposes of the consideration of the
19 issuance of a franchise to such cable operator or operators
20 and shall notify the appropriate franchising authority or
21 authorities and any such cable system operator of the
22 franchise application procedures to be followed by the
23 respective parties. Any such cable operator shall, within
24 sixty days of receipt of such notice from the board, make
25 formal application to the appropriate franchising author-
26 ity or authorities for a franchise in accordance with the
27 provisions of this article.

28 (d) The franchising authority shall be the municipality
29 in which a cable system is to be constructed, operated,
30 acquired or extended, or if there be no such municipality
31 or if the municipality so elects not to act as a franchising
32 authority, then the franchising authority shall be the
33 county commission of the county in which such cable
34 system is to be constructed, operated, acquired or ex-
35 tended: *Provided*, That nothing herein shall prohibit any
36 county commission of a county in which a municipality

37 acting as a franchising authority is located from also
38 acting as a franchising authority for any cable system to
39 be constructed, operated, acquired or extended within the
40 jurisdiction of such county commission, nor prohibit any
41 county commission of a county acquiring the franchise
42 authority from a municipality from electing to transfer
43 such authority to the board.

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

§5-18-5. Existing cable franchises.

1 (a) The provisions of any cable franchise in effect on the
2 effective date of this article shall remain in effect, subject
3 to the express provisions of this article, and for no longer
4 than the then current remaining term of the franchise as
5 such franchise existed on the effective date. All terms and
6 conditions of any written cable franchise agreement
7 entered into between a cable operator and any franchising
8 authority before the effective date of the reenactment of
9 this article in the year one thousand nine hundred ninety-
10 eight, including, but not limited to, any provisions under
11 which a cable operator has voluntarily agreed to limit its
12 cable rates to subscribers, shall be enforceable under the
13 provisions of this act.

14 (b) For purposes of subsection (a) of this section and
15 other provisions of this article, a cable franchise shall be
16 considered in effect on the effective date of this article if

17 such franchise was granted on or before such effective
18 date.

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

1 (a) There is hereby created, effective the first day of
2 July, one thousand nine hundred ninety-eight, a cable
3 review board to be known as the "West Virginia Cable
4 Television Subscribers Protection Board" which board
5 shall, in consultation with the attorney general's office,
6 implement the provisions of this article and consider
7 subscriber complaints in accordance with the provisions
8 of section twenty-five of this article.

9 (b) The terms of office of all of the members of the board
10 serving on the effective date of the reenactment of this
11 section in the year one thousand nine hundred ninety-
12 eight shall expire on the effective date of such
13 reenactment, and the governor shall appoint a new board
14 forthwith as provided herein. The new board shall consist
15 of nine members, who shall be residents of this state, and
16 who shall be appointed from the lists of nominees submit-
17 ted to the governor pursuant to this subsection. Each
18 body submitting a list of nominees pursuant to this
19 subsection shall also submit a summary of the qualifica-
20 tions of each nominee on the list. When a completed list
21 of nominees is submitted in accordance with the provi-
22 sions hereof, the governor shall make his or her appoint-
23 ment from the persons so nominated on the list: *Provided,*
24 That no member of the board serving on the effective date
25 of the reenactment of this section may be considered for
26 reappointment to service for a period of three years
27 following the conclusion of their previous term:

28 (1) The governor shall appoint one member to represent
29 the viewpoint of senior citizens living on fixed incomes.
30 When this member is to be appointed, the governor shall
31 request from the West Virginia chapter of the American

32 association of retired persons a list of three nominees for
33 such position.

34 (2) The governor shall appoint one member to represent
35 the viewpoint of those cable operators whose cable system
36 or systems in the aggregate have five thousand subscribers
37 or more, and one member to represent the viewpoint of
38 cable operators whose cable system or systems in the
39 aggregate have fewer than five thousand subscribers. The
40 governor shall request from the trade association repre-
41 senting cable operators in this state a list of three nomi-
42 nees for each such position of the board. All nominees
43 shall be persons with special experience and competence
44 in cable television operations.

45 (3) The governor shall appoint one member to represent
46 the viewpoint of municipalities within the state and one
47 member to represent the counties within the state. The
48 governor shall request from the associations representing
49 the municipalities and counties, respectively, a list of
50 three nominees for such position.

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

56 (5) The governor shall appoint one member to represent
57 the interests of the consumer protection and antitrust
58 division of the office of the attorney general. The gover-
59 nor shall request from the attorney general a list of three
60 nominees for such position.

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

66 (7) The governor shall appoint one member to represent

67 the interests of the deaf and hard of hearing. The gover-
68 nor shall request from the West Virginia commission for
69 the deaf and hard of hearing a list of three nominees for
70 such position.

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

75 (9) All appointments made by the governor under the
76 provisions of this section shall be with the advice and
77 consent of the Senate.

78 (c) Upon the initial appointment of members, the
79 governor shall specify the length of the beginning term
80 which each member shall serve, pursuant to this subsec-
81 tion. Three of the members shall be appointed for terms
82 of one year, three shall be appointed for two years and
83 three shall be appointed for three years. The governor
84 shall designate which members shall serve initial terms of
85 one, two or three years. After the initial terms have
86 expired, all members of the board shall be appointed for
87 terms of three years. Members are eligible for reappoint-
88 ment.

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

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

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

115 (g) The board shall, within six months after the appoint-
116 ment of the initial board, promulgate rules for its proce-
117 dure and to otherwise carry out its duties under the
118 provisions of this article. Such rules shall be promulgated
119 as legislative rules subject to legislative rule-making
120 review and subject to the administrative procedures act.

121 (h) The board may subpoena witnesses, compel their
122 attendance and testimony, administer oaths and affirma-
123 tions, take evidence and require by subpoena the produc-
124 tion of books, logs, papers, records or other evidence
125 needed for the performance of the board's duties or
126 exercises of its power under the provisions of section
127 twenty-five of this article.

128 (i) The board may request the attorney general to
129 provide legal advice to the board and the attorney general
130 shall comply with the request. The board shall employ an
131 executive secretary to be compensated from the cable
132 advisory board fund created under the provisions of this
133 article in an amount to be fixed by the board. Such
134 executive secretary shall be in charge of its offices which
135 shall be within the public service commission, shall be
136 responsible to the board for the maintenance of such
137 offices and shall be the custodian of all documents filed by
138 cable operators and of any complaints or other documents

139 which may be filed with the board in accordance with the
140 provisions of this article. The board is also authorized to
141 employ and assign the necessary professional and clerical
142 staff and such hearing examiners as may be necessary to
143 conduct hearings in such various locations in the state,
144 under the provisions of section twenty-five of this article,
145 in order to provide a convenient forum for persons making
146 subscriber complaints to be heard. The salaries and
147 expenses of any such staff and hearing examiners shall be
148 paid from the fees assessed and collected under provisions
149 of this article.

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

1 The West Virginia cable television subscribers protec-
2 tion board shall:

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

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

9 (A) Prescribe standards for procedures and practices
10 which franchising authorities shall follow in considering
11 the issuance of cable franchises, which standards shall and
12 provide for the forms of applications and proposals, the
13 filing of all franchise applications, proposals and related
14 documents as public records, with reasonable notice to the
15 public that such records are open to inspection and
16 examination during reasonable business hours; the
17 holding of a public hearing, upon reasonable notice to the
18 public, at which the applications or proposals shall be
19 examined and members of the public and interested
20 parties are afforded a reasonable opportunity to express
21 their views thereon; the rendition of a written report by
22 the franchising authority made to the public, setting forth

23 the reasons for its decision in awarding or not awarding
24 the franchise; and such other procedural standards
25 governing the issuance of cable franchises mandated by
26 the provisions of this article or as the board may otherwise
27 deem necessary or appropriate to assure maximum public
28 participation and competition and to protect the public
29 interest;

30 (B) Prescribe minimum standards for inclusion in
31 franchises, including maximum initial and renewal terms,
32 which shall be not less than five nor more than ten years;
33 minimum channel capacity; provisions regarding public,
34 educational or governmental access facilities; a require-
35 ment that no such franchise may be exclusive; standards
36 necessary or appropriate to protect the interests of viewers
37 of free broadcast television and the public generally,
38 which prohibit or limit cable operators from prohibiting
39 or entering into agreements prohibiting the sale or other
40 transfer of rights for the simultaneous or subsequent
41 transmission over free broadcast television; and such other
42 standards for inclusion in franchises as the board shall
43 deem necessary or appropriate to protect the public
44 interest, including any provision regulating the rates for
45 cable services to the extent that the same is not preempted
46 by federal law;

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

52 (D) Prescribe standards for the construction and opera-
53 tion of cable systems, which standards shall be designed
54 to promote: (i) Safe, adequate and reliable service to
55 subscribers; (ii) the construction and operation of systems
56 consistent with the most advanced state of the art; (iii) a
57 construction schedule providing for maximum penetration
58 as rapidly as possible within the limitations of economic

59 feasibility; (iv) the construction of systems with the
60 maximum practicable channel capacity, facilities for local
61 program origination, facilities to provide service in areas
62 conforming to various community interests, facilities with
63 the technical capacity for interconnection with other
64 systems within regions as established in the board's
65 statewide plan and facilities capable of transmitting
66 signals from subscribers to the cable system or to other
67 points; and (v) the prompt handling of inquiries, com-
68 plaints and requests for repairs;

69 (E) Prescribe such standards for the prohibition or
70 limitation of concentration of control over mass media
71 and communication companies and facilities and methods
72 of enforcing such standards, as the board may determine
73 to be necessary or appropriate to protect the public
74 interest: *Provided*, That nothing contained herein shall be
75 construed to authorize the impairment of any existing
76 rights of any mass media and communication company or
77 any subsidiary thereof;

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

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

83 (5) Represent the interests of citizens of this state before
84 the federal communication commission and make avail-
85 able information to the public on communications devel-
86 opments at the federal level;

87 (6) Stimulate and encourage cooperative arrangements
88 among organizations, institutions, counties and munici-
89 palities in the development of public, educational or
90 governmental access facilities;

91 (7) Maintain liaison with the communications industry
92 and other parties, both public and private, having an
93 interest therein, other states and political subdivisions of

94 this state to promote the rapid and harmonious develop-
95 ment of cable services as set forth in the legislative
96 findings and intent of this article;

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

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

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

1 (a) No cable franchise shall be issued except upon
2 written application or proposal therefor to the franchising
3 authority, accompanied by a nonrefundable fee of one
4 thousand dollars.

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

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

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

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

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

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

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

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

3 (1) After the application or proposal and required fee are
4 received by the franchising authority within sixty days,
5 the franchising authority shall notify an applicant in
6 writing of the acceptance or nonacceptance for filing of an
7 application or proposal for issuance of a cable franchise
8 required by this article.

9 (2) Within ninety days after the issuance of a notice of
10 acceptance for filing, the franchising authority shall hold
11 a public hearing on the application or proposal to afford
12 interested persons the opportunity to submit data, views
13 or arguments, orally or in writing. If the franchising
14 authority is the board, notice thereof shall be given to the
15 city council and mayor of any municipalities affected, the
16 county commission of any counties affected and to any
17 telephone or other utility and cable company in the county
18 or counties in which the proposed service area is located,
19 and a representative of the governing body of a municipal-
20 ity or county commission may appear at the public
21 hearing to represent the interests of the public which will
22 be served by the issuance of a cable franchise. The
23 franchising authority shall also cause notice of the appli-
24 cation and hearing to be published at least once in each of
25 two successive weeks in a newspaper of general circula-
26 tion in the county or counties in which the proposed
27 service area is located. The last published notice shall
28 appear at least fifteen days prior to the date of the hear-
29 ing.

30 (3) After holding a public hearing, the franchising
31 authority shall approve the application or proposal, in
32 whole or in part, with or without conditions or modifica-
33 tions, or shall deny the application or proposal, with
34 reasons for denial sent in writing to the applicant. Upon
35 denial of the application or proposal, the applicant may
36 appeal such denial to the circuit court of the county in

37 which the franchise is to be located, which appeal shall be
38 filed and considered in accordance with the provisions of
39 section four, article five, chapter twenty-nine-a of this
40 code. In such a proceeding, the applicant shall have the
41 burden of proving that the franchising authority acted
42 unreasonably or arbitrarily in denying the application.

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

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

5 (b) The franchising authority, after a public hearing as
6 provided in this article, shall issue a cable franchise to the
7 applicant when the franchising authority is convinced that
8 it is in the public interest to do so. In determining
9 whether a cable franchise shall be issued, the franchising
10 authority shall take into consideration, among other
11 things, any objections or comments arising from the public
12 hearing, along with any objections or comments which
13 have been submitted in writing, the content of the appli-
14 cation or proposal, the public need for the proposed
15 service, the ability of the applicant to offer safe, adequate
16 and reliable service at a reasonable cost to the subscribers,
17 the suitability of the applicant, the financial responsibility
18 of the applicant, the technical and operational ability of
19 the applicant to perform efficiently the service for which
20 authority is requested, and any other matters as the
21 franchising authority considers appropriate in the circum-
22 stances.

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

29 cable systems.

30 (d) In issuing a cable franchise under this article, the
31 franchising authority is not restricted to approving or
32 disapproving the application or proposal, but may issue it
33 for only partial exercise of the privilege sought or may
34 attach to the exercise of the right granted by the cable
35 franchise terms, limitations which the franchising author-
36 ity considers the public interest may require. The cable
37 franchise shall be nonexclusive, shall include a description
38 of the service area in which the cable system is to be
39 constructed, extended or operated and the approximate
40 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
2 shall be reduced to writing and shall be signed, in the form
3 of an agreement, by authorized persons on behalf of the
4 franchising authority and the franchisee.

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

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

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

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

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

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

19 (6) State specifically the time periods within which the

20 expansions set forth in subdivision (5) of this subsection
21 are required to be done;

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

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

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

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

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

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

52 (13) State specifically that subscribers shall be entitled
53 to credit upon their cable television bills for one thirtieth

54 of the subscriber's monthly bill for each day in which the
55 subscriber has a loss of service for six hours or more;

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

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

65 (A) The franchising authority;

66 (B) Any subscriber of the franchisee's cable television
67 system; and

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

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

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

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

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

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

6 (b) The technical specifications, general routes of the
7 distribution system and the schedule for construction of
8 the cable system are subject to the approval of the fran-
9 chising authority.

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

14 (d) The cable operator shall indemnify and hold the
15 state, county and municipality harmless at all times from
16 any and all claims for injury and damage to persons or
17 property, both real and personal, caused by the installa-
18 tion, operation or maintenance of its cable system, not-
19 withstanding any negligence on the part of the state,
20 county and/or municipality, their employees or agents.
21 Upon receipt of notice in writing from the state, county
22 and/or municipality, the cable operator shall, at its own
23 expense, defend any action or proceeding against the
24 state, county and/or municipality in which it is claimed
25 that personal injury or property damage was caused by
26 activities of the cable operator in the installation, opera-
27 tion or maintenance of its cable system.

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

34 (f) The cable operator shall be required to designate at
35 least ten percent but not more than three of all of its

36 channels for public, educational or governmental use.

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

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

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

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

59 (3) For state or federal-aid highways, all public welfare
60 rules adopted by the secretary of the department of
61 transportation.

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

64 (1) That the safety, functioning and appearance of the
65 property and the convenience and safety of other persons
66 is not adversely affected by the installation or construc-
67 tion of facilities necessary for a cable system;

68 (2) That the cost of the installation, construction,
69 operation or removal of facilities is borne by the cable

70 operator; and

71 (3) That the owner of the property is justly compensated
72 by the cable operator for any damages caused by the
73 installation, construction, operation or removal of facili-
74 ties by the cable operator.

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

1 (a) Any cable franchise issued in accordance with the
2 provisions of this article may be revoked, altered or
3 suspended by the franchising authority after a hearing
4 before the franchising authority, for the following reasons:

5 (1) For making material false or misleading statements
6 in, or for material omissions from, any application or
7 proposal or other filing made with the franchising author-
8 ity;

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

11 (3) For any sale, lease, assignment or other transfer of its
12 cable franchise without consent of the franchising author-
13 ity;

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

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

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

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

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

25 (b) In lieu of, or in addition to, the relief provided by

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

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

§5-18-14. Renewal of cable franchise.

1 Any cable franchise issued pursuant to this article may
2 be renewed by the franchising authority upon approval of
3 a cable operator's application or proposal therefor and in
4 accordance with the provisions of federal law as the same
5 is in effect on the effective date of this article. The form
6 of the application or proposal shall be prescribed by the
7 board. The application or proposal fee shall be the same
8 fee prescribed for franchise applications. The periods of
9 renewal shall be not less than five nor more than ten years
10 each. The board shall require of the applicant full disclo-
11 sure, including the proposed plans and schedule of expen-
12 ditures for or in support of the use of public, educational
13 or governmental access facilities.

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

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

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

14 (c) The procedure for consideration of any transfer
15 under the provisions of this section shall conform, as
16 nearly as possible, to the procedures prescribed in this
17 article for the consideration of issuing cable franchises,
18 including the application fee therefor.

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

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

4 (b) To the extent permitted by federal law, the board
5 shall regulate rates to ensure that they are just and
6 reasonable to the public and are not unduly discrimina-
7 tory. The board's primary mission in this regard is to keep
8 the rates as low as possible for the cable subscribers of
9 this state.

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

14 (d) For purposes of this article, "rate regulation" does
15 not include any voluntary agreement on the part of a cable

16 operator to limit cable rates to amounts specified in a
 17 franchise agreement. If a franchise agreement provides for
 18 cable rates in excess of those permitted by the board in the
 19 exercise of its authority to regulate rates, then the rates
 20 set by the board shall govern.

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

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

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

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

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

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

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

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

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

5 (2) States the responsibility of the board to receive and

6 act on consumer complaints concerning all matters
7 regulated under this article; and

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

11 (b) The notice shall be in nontechnical language, under-
12 standable by the general public, and in a convenient
13 format. On or before the thirtieth day of January of each
14 year, the operator shall certify to the franchising authority
15 that it has distributed the notice as provided in this
16 section during the previous calendar year as required by
17 this section.

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

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

7 (b) The record or log shall contain the following infor-
8 mation for each complaint received:

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

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

11 (3) Investigation of complaint; and

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

13 (c) Consistent with the subscriber privacy provisions
14 contained in federal law as the same is in effect on the
15 effective date of the reenactment of this article in the year
16 one thousand nine hundred ninety-eight, every cable
17 operator shall make the logs or records, or both, of such
18 complaints available to any authorized agent of the board
19 and the franchising authority, upon request during normal
20 business hours for on-site review.

§5-18-23. Public service commission to be franchise document clearinghouse.

1 (a) Within sixty days of the effective date of this article,
2 all cable operators holding an existing franchise shall file
3 a copy of the franchise and any federal communications
4 commission rulings or other rulings affecting such fran-
5 chises with the public service commission where such
6 documents shall be retained for examination by other
7 franchising authorities and citizens.

8 (b) Within sixty days of the granting of an initial
9 franchise, a renewal franchise or a transferred franchise,
10 the franchisee shall file a copy of the franchise and any
11 federal communications commission rulings or other
12 rulings affecting such franchise with the public service
13 commission and the franchising authority. The public
14 service commission and franchising authority shall
15 maintain a file of all franchise documents so recorded and
16 make copies available upon request for the cost of repro-
17 duction and mailing, plus a reasonable administrative fee.
18 The filing fee for initial, renewal or transfer franchise
19 documents is two hundred fifty dollars per franchise,
20 renewal or transfer of such franchise. In years in which
21 the filing of initial, renewal or transfer franchise docu-
22 ments is not required, the franchisee shall pay a fee of one
23 hundred dollars for each franchise it holds.

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

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

1 (a) Subscriber complaints regarding the operation of a
2 cable system may be made in writing and filed with the
3 board on a form prescribed by the board. The complaint
4 form shall be in nontechnical language which is clearly

5 understandable to the general public. The board shall
6 take up such complaints with the cable operator com-
7 plained against in an endeavor to bring about satisfaction
8 of the complaint without formal hearing.

9 (b) The board shall resolve all complaints, if possible,
10 informally. An informal complaint must contain the name
11 and address of the complainant, the name of the cable
12 operator against which the complaint is made, a clear and
13 concise statement of the facts involved and a request for
14 affirmative relief.

15 (c) In the event that the board cannot resolve the com-
16 plaint to the satisfaction of all parties, the complainant
17 may file a formal request to the board and he or she is
18 entitled to a hearing before the board. The complainant
19 and cable operator shall be afforded all rights including
20 the right of appeal as set forth herein.

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

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

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

28 (e) The board may fine or obtain civil penalties against
29 a cable operator for each violation of subsection (d) of this
30 section in an amount not less than fifty dollars nor more
31 than five hundred dollars for each violation. Any penalty
32 assessed under this section is in addition to any other
33 costs, expenses or payments for which the cable operator
34 is responsible under other provisions of this section.

35 (f) The board may permit, in lieu of a full hearing before
36 the board, one of its hearing examiners to conduct hear-
37 ings and report its findings to the board.

38 (g) No cable operator shall charge for more than one

39 outlet per household.

40 (h) No cable operator may raise rates or retier and
41 charge subscribers without providing complete compli-
42 ance with the terms of this article and the applicable
43 franchise agreement.

44 (i) As an alternative to filing an informal or formal
45 complaint with the board, any subscriber or person to
46 whom cable service is required by the franchise agreement
47 to be extended may file an action in the circuit court of
48 the county wherein the franchise exists. In any such
49 action, the circuit court shall have authority to fashion
50 any legal or equitable relief as may be just and appropri-
51 ate under the circumstances.

§5-18-27. Reports.

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

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

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

13 (b) Any filing fee required under the provisions of this

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

§5-18-29. Attorney's fees.

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

§5-18-30. Construction of article.

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

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

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

1 Pursuant to the provisions of article ten, chapter four of
2 this code, the West Virginia cable television subscribers
3 protection board shall continue to exist until the first day
4 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.**

1 (a) A person who sells, gives or otherwise transfers to

2 another or offers, advertises or exposes for sale to another
3 any device, mechanism, tool or printed circuit, or any kit,
4 plan or instructional procedure for the making of such
5 device, mechanism, tool or printed circuit, with the
6 knowledge that another will acquire cable television
7 services in violation of this article; or who attaches,
8 maintains the attachment of or uses any of the foregoing
9 devices for the purpose of remuneration or for commercial
10 advantage, with the knowledge that cable television
11 services will be or are being acquired in violation of this
12 article, shall be guilty of a misdemeanor and shall be
13 punishable in accordance with subsection (b) of this
14 section, or shall be civilly liable in accordance with
15 subsection (c) of this section, or both: *Provided*, That the
16 provisions of this section do not apply to solely private use
17 of the foregoing devices.

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

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

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

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

33 (c) Any cable operator, cable system or other aggrieved
34 party may bring an action in any court of competent
35 jurisdiction to enjoin and restrain any violation of the
36 provisions of this section, or may bring a civil action for
37 damages, or both.

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

Randy Schoonover
.....
Chairman Senate Committee

Nick Fautano
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Karrell Hill
.....
Clerk of the Senate

Bryan M. Gray
.....
Clerk of the House of Delegates

Carl Ray Franklin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

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

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 10:40 am