

HB 2453

RECEIVED

99 APR -8 PM 4:30

OFFICE OF THE SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2453

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]



Passed March 13, 1999

In Effect Ninety Days from Passage

RECEIVED

99 APR -8 PM 4:30

OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2453

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)
[BY REQUEST OF THE EXECUTIVE]

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to repeal articles eighteen and eighteen-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article one, chapter twenty-four of said code; and to amend said code by adding thereto a new chapter, designated chapter twenty-four-d, all relating to the public service commission; continuing the public service commission; delegating to the public service commission the responsibilities formerly held by the West Virginia cable television advisory board and the regulation of cable television thereby; repealing and substantially enacting the provisions of the cable television systems act and tenant's right to cable service act; requiring cable franchises; establishing duties of the public service commission; describing the application process; establishing standards for cable service; establishing penalties; restricting franchise transfer; requiring rate filings; establishing certain requirements for operation; establishing a complaint process; giving the public service commission the authority to establish

rules and regulations; preserving the current method of taxation; establishing tenants rights to cable service; establishing a right of entry by a cable operator; requiring a notice of installation of cable service by a cable operator; and establishing procedures for determining just compensation for a landlord.

Be it enacted by the Legislature of West Virginia:

That articles eighteen and eighteen-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed; that section three, article one, chapter twenty-four of said code be amended and reenacted; and that said code is amended by adding thereto a new chapter, designated chapter twenty-four-d, all to read as follows:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

1 (a) The public service commission of West Virginia,
2 heretofore established, is continued and directed as provided by
3 this chapter, chapter twenty-four-a, chapter twenty-four-b and
4 chapter twenty-four-d of this code. After having conducted a
5 performance audit through its joint committee on government
6 operations, pursuant to section nine, article ten, chapter four of
7 this code, the Legislature hereby finds and declares that the
8 public service commission should be continued and reestab-
9 lished. Accordingly, notwithstanding the provisions of section
10 five, article ten, chapter four of this code, the public service
11 commission shall continue to exist until the first day of July,
12 two thousand one. The public service commission may sue and
13 be sued by that name. The public service commission shall
14 consist of three members who shall be appointed by the
15 governor with the advice and consent of the Senate. The
16 commissioners shall be citizens and residents of this state and
17 at least one of them shall be duly licensed to practice law in
18 West Virginia, with not less than ten years' actual work
19 experience in the legal profession as a member of a state bar.
20 No more than two of the commissioners shall be members of

21 the same political party. Each commissioner shall, before
22 entering upon the duties of his or her office, take and subscribe
23 to the oath provided by section five, article IV of the constitu-
24 tion of this state. The oath shall be filed in the office of the
25 secretary of state. The governor shall designate one of the
26 commissioners to serve as chairman at the governor's will and
27 pleasure. The chairman shall be the chief administrative officer
28 of the commission. The governor may remove any commis-
29 sioner only for incompetency, neglect of duty, gross immoral-
30 ity, malfeasance in office or violation of subsection (c) of this
31 section.

32 (b) The unexpired terms of members of the public service
33 commission at the time this subsection becomes effective are
34 continued. Upon expiration of the terms, appointments are for
35 terms of six years, except that an appointment to fill a vacancy
36 is for the unexpired term only. The commissioners whose terms
37 are terminated by the provisions of this subsection are eligible
38 for reappointment.

39 (c) No person while in the employ of, or holding any
40 official relation to, any public utility subject to the provisions
41 of this chapter, or holding any stocks or bonds of a public utility
42 subject to the provisions of this chapter, or who is pecuniarily
43 interested in a public utility subject to the provisions of this
44 chapter, may serve as a member of the commission or as an
45 employee of the commission. Nor may any commissioner be a
46 candidate for or hold public office, or be a member of any
47 political committee, while acting as a commissioner; nor may
48 any commissioner or employee of the commission receive any
49 pass, free transportation or other thing of value, either directly
50 or indirectly, from any public utility or motor carrier subject to
51 the provisions of this chapter. In case any of the commissioners
52 becomes a candidate for any public office or a member of any
53 political committee, the governor shall remove him or her from
54 office and shall appoint a new commissioner to fill the vacancy
55 created.

56 (d) The salaries of members of the public service commis-
57 sion and the manner in which they are paid established by the

58 prior enactment of this section are continued. Effective the first
59 day of July, one thousand nine hundred ninety-six, and in light
60 of the assignment of new, substantial additional duties embrac-
61 ing new areas and fields of activity under certain legislative
62 enactments, each commissioner shall receive an annual salary
63 of sixty-five thousand dollars to be paid in monthly installments
64 from the special funds in the amounts that follow:

65 (1) From the public service commission fund collected
66 under the provisions of section six, article three of this chapter,
67 fifty-two thousand dollars;

68 (2) From the public service commission motor carrier fund
69 collected under the provisions of section six, article six, chapter
70 twenty-four-a of this code, ten thousand eight hundred fifty
71 dollars; and

72 (3) From the public service commission gas pipeline safety
73 fund collected under the provisions of section three, article five,
74 chapter twenty-four-b of this code, two thousand one hundred
75 fifty dollars.

76 In addition to this salary provided for all commissioners,
77 the chairman of the commission shall receive five thousand
78 dollars per annum to be paid in monthly installments from the
79 public service commission fund collected under the provisions
80 of section six, article three of this chapter on and after the first
81 day of July, one thousand nine hundred ninety-six.

CHAPTER 24D. CABLE TELEVISION.

ARTICLE 1. CABLE TELEVISION SYSTEMS ACT.

§24D-1-1. Legislative findings.

1 The Legislature finds that television is an important source
2 of information and entertainment affecting the welfare and
3 economy of the state, and that cable television services have
4 become widespread, often providing the only access to quality
5 television signals in many areas of the state. The Legislature
6 finds that it is in the public interest to establish uniform
7 standards within the state of West Virginia for the issuance,
8 renewal and transfer of cable television franchises; to establish

9 uniform standards for the provision of cable service; to estab-
10 lish uniform procedures for the investigation and resolution of
11 complaints concerning cable service; and to establish just,
12 reasonable and nondiscriminatory rates and charges for the
13 provision of cable service to the extent that the service is not
14 subject to effective competition. The purpose of the article is to
15 promote such goals by all available means not in conflict with
16 federal law, rules or regulations.

§24D-1-2. Definitions.

1 As used in this chapter:

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

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

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

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

13 (5) "Cable operator" means any person or group of persons
14 (A) who provides cable service over a cable system and directly
15 or through one or more affiliates owns a significant interest in
16 the cable system or (B) who otherwise controls or is responsible
17 for, through any arrangement, the management and operation of
18 a cable system.

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

24 (7) "Cable system" means any facility within this state
25 consisting of a set of closed transmission paths and associated

26 signal generation, reception and control equipment that is
27 designed to provide cable service which includes video pro-
28 gramming and which is provided to multiple subscribers within
29 a community, but does not include (A) a facility that serves
30 only to retransmit the television signals of one or more televi-
31 sion broadcast stations; (B) a facility that serves only subscrib-
32 ers in one or more multiple unit dwellings under common
33 ownership, control or management, unless that facility or
34 facilities uses any public right-of-way; or (C) a facility of a
35 public utility subject, in whole or in part, to the provisions of
36 chapter twenty-four of this code, except to the extent that those
37 facilities provide video programming directly to subscribers.

38 (8) "Commission" or "Public Service Commission" means
39 the public service commission of West Virginia.

40 (9) "County commission" means the commissioners
41 composing the county commission in pursuance of section nine,
42 article IX of the constitution of this state within whose jurisdic-
43 tion there exists a cable system or where such cable system is
44 hereafter constructed, operated, acquired or extended.

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

49 (11) "Franchising authority" means a municipality, a
50 county commission or the public service commission empow-
51 ered by federal, state or local law to grant a cable franchise.

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

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

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

61 (15) "Person" means an individual, partnership, associa-
62 tion, joint stock company, trust, corporation or governmental
63 agency.

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

66 (17) "Public, educational or governmental access facilities"
67 means (A) channel capacity designated for public, educational
68 or governmental uses and (B) facilities and equipment for the
69 use of that channel capacity.

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

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

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

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

§24D-1-3. 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 desig-
3 nated service area, without first obtaining a cable franchise
4 from a franchising authority as provided in this chapter.

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

13 the cable system or systems; and (5) if applicable, the date on
14 which and the franchising authority with which, a formal
15 application for a franchise was filed.

16 (c) The commission shall, upon receipt of such information,
17 determine the appropriate franchising authority or authorities
18 for the purposes of the consideration of the issuance of a
19 franchise to such cable operator or operators and shall notify the
20 appropriate franchising authority or authorities and any such
21 cable system operator of the franchise application procedures
22 to be followed by the respective parties. Any such cable
23 operator, that has not previously applied for a franchise with the
24 appropriate franchising authority, shall, within sixty days of
25 receipt of such notice from the commission, make formal
26 application to the appropriate franchising authority or authori-
27 ties for a franchise in accordance with the provisions of this
28 article.

29 (d) The franchising authority shall be the municipality in
30 which a cable system is to be constructed, operated, acquired or
31 extended, or if there be no such municipality or if the municipi-
32 pality so elects not to act as a franchising authority, then the
33 franchising authority shall be the county commission of the
34 county in which such cable system is to be constructed,
35 operated, acquired or extended: *Provided*, That nothing herein
36 shall prohibit any county commission of a county in which a
37 municipality acting as a franchising authority is located from
38 also acting as a franchising authority for any cable system to be
39 constructed, operated, acquired or extended within the jurisdic-
40 tion of such county commission, nor prohibit any county
41 commission of a county acquiring the franchise authority from
42 a municipality from electing to transfer such authority to the
43 commission.

44 (e) If a county commission elects not to act as the franchise
45 authority, the commission shall become the franchising
46 authority. A county commission acting as a franchising
47 authority for unincorporated areas of the county may elect
48 separately to transfer to the commission any franchise authority
49 acquired from a municipality. If any municipality or county

50 commission so elects not to be the franchising authority, the
51 mayor or president of the county commission shall certify such
52 delegation in writing to the commission. Such election shall be
53 promptly made upon written request of the commission or the
54 cable operator.

§24D-1-4. Existing cable franchises.

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

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

§24D-1-5. Duties of the public service commission.

1 In addition to its other duties, the public service commis-
2 sion shall:

3 (a) To the extent permitted by, and not contrary to applica-
4 ble federal law, rules and regulations:

5 (1) Prescribe standards for procedures and practices which
6 franchising authorities shall follow in considering the issuance
7 of cable franchises, which standards shall provide for the forms
8 of applications and proposals, the filing of all franchise
9 applications, proposals and related documents as public records,
10 with reasonable notice to the public that such records are open
11 to inspection and examination during reasonable business
12 hours; the holding of a public hearing, upon reasonable notice
13 to the public, at which the applications or proposals shall be
14 examined and members of the public and interested parties are
15 afforded a reasonable opportunity to express their views
16 thereon; the rendition of a written report by the franchising
17 authority made to the public, setting forth the reasons for its
18 decision in awarding or not awarding the franchise; and such
19 other procedural standards governing the issuance of cable

20 franchises mandated by the provisions of this article or as the
21 commission may otherwise deem necessary or appropriate to
22 assure maximum public participation and competition and to
23 protect the public interest;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§24D-1-7. 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 a time frame
5 established by rule promulgated by the commission, the
6 franchising authority shall notify an applicant in writing of the

7 acceptance or nonacceptance for filing of an application or
8 proposal for issuance of a cable franchise required by this
9 chapter.

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

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

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

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

1 (a) A franchising authority is exclusively empowered to
2 issue a cable franchise to construct or operate facilities for a
3 cable 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 it is
8 in the public interest to do so. In determining whether a cable
9 franchise shall be issued, the franchising authority shall take
10 into consideration, among other things, any objections arising
11 from the public hearing, the content of the application or
12 proposal, the public need for the proposed service, the ability of
13 the applicant to offer safe, adequate and reliable service at a
14 reasonable cost to the subscribers, the suitability of the appli-
15 cant, the financial responsibility of the applicant, the technical
16 and operational ability of the applicant to perform efficiently
17 the service for which authority is requested, and any other
18 matters as the franchising authority considers appropriate in the
19 circumstances.

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

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

§24D-1-9. 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 (i) over public
3 rights-of-way, and (ii) through easements, which are within the
4 area to be served by the cable system and which have been
5 dedicated for compatible uses.

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

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

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

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

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

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

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

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

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

54 (3) For state or federal-aid highways, all public welfare
55 rules adopted by the secretary of the department of transporta-
56 tion.

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

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

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

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

70 (4) An “easement dedicated for compatible uses” is a public
71 or private easement for electric, gas, telephone or other utility
72 transmission.

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

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

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

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

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

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

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

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

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

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

24 (b) In lieu of, or in addition to, the relief provided by
25 subsection (a) hereof, the franchising authority may fine a cable
26 operator, for each violation under the provisions of this section,
27 in an amount not less than fifty dollars nor more than five
28 thousand dollars for each violation. Each day’s continuance of

29 a violation may be treated as a separate violation pursuant to
30 rules and regulations adopted by the commission. Any penalty
31 assessed under this section shall be in addition to any other
32 costs, expenses or payments for which the cable operator is
33 responsible under other provisions of this chapter.

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

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

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

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

1 (a) No cable system and no cable franchise, including any
2 system without a franchise and any franchise in existence on the
3 effective date of this chapter, may be assigned, sold, or trans-
4 ferred, including a transfer of control of any cable system,
5 whether by change in ownership or otherwise, except upon
6 written application to and approval of the appropriate franchis-

7 ing authority or authorities. For purposes of this section
8 “transfer of control” means a transfer of the majority interest,
9 either directly or indirectly, in the entity holding the cable
10 franchise. The form of the application for transfer shall be
11 prescribed by the commission.

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

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

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

**§24D-1-13. Rates; filing with public service commission; ap-
proval.**

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

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

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

**§24D-1-14. Requirement for adequate service; terms and condi-
tions 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) The commission shall require each cable operator to
6 submit a schedule of all terms and conditions of service in the
7 form and with the notice that the commission may prescribe.
8 The schedule shall be submitted with the annual report refer-
9 enced in section twenty-four of this article.

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

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

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

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

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

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

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

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

1 Each cable operator shall operate a business office in or
2 near its area of operation as approved by the franchise authority
3 or the commission that shall be open during normal business
4 hours, and each cable operator shall operate sufficient telephone
5 lines, including a toll-free number or any other free calling
6 option, as approved by the commission, staffed by a company
7 customer service representative during normal business hours.

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

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

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

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

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

11 (b) The notice shall be in nontechnical language, under-
12 standable by the general public, and in a convenient format. On
13 or before the thirtieth day of January each year, the operator
14 shall certify to the franchising authority and the commission

15 that it has distributed the notice as provided in this section
16 during the previous calendar year as required by this section.

§24D-1-19. 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, pro-
3 gramming, equipment malfunctions, billing procedure, em-
4 ployee relations with customers and similar matters as may be
5 prescribed by the commission. The records shall be maintained
6 for a period of two years.

7 (b) The record or log shall contain the following informa-
8 tion 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 47 U.S.C. §551 as the same is in effect on the
15 effective date of this chapter, every cable operator shall make
16 the logs or records, or both, of such complaints available to any
17 authorized agent of the commission and the franchising
18 authority, upon request during normal business hours for on-site
19 review.

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

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

7 (b) Within sixty days of the granting of an initial franchise,
8 a renewal franchise or a transferred franchise, the franchisee
9 shall file a copy of the franchise and any federal communica-
10 tions commission rulings or other rulings affecting such

11 franchise with the commission and the franchising authority.
12 The commission and franchising authority shall maintain a file
13 of all franchise documents so recorded and make copies
14 available upon request for the cost of reproduction and mailing,
15 plus a reasonable administrative fee. The filing fee for initial,
16 renewal or transfer franchise documents is fifty dollars per
17 franchise, renewal or transfer of such franchise. In years in
18 which the filing of initial, renewal or transfer franchise docu-
19 ments is not required, the franchisee shall pay a fee of twenty-
20 five dollars for each franchise it holds.

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

§24D-1-21. Rights of individuals.

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

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

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

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

16 (c) In the event that the commission cannot resolve the
17 complaint to the satisfaction of all parties, the complainant may

18 file a formal request to the commission and the complainant
19 and cable operator shall be afforded all rights including the
20 right of appeal as set forth in chapter twenty-four of this code.

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 commission or court that the cable
24 operator 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 commission.

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

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

40 (g) No cable operator may raise rates or retier and charge
41 subscribers without providing to his or her subscribers suffi-
42 cient advance written notice and opportunity to discontinue
43 service.

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

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

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

8 and regulations promulgated by the cable advisory board
9 pursuant to repealed article eighteen, chapter five, and in force
10 and in effect on the thirty-first day of December, one thousand
11 nine hundred ninety-seven, shall remain in effect and hereby
12 become the rules and regulations of the commission.

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

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

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

§24D-1-24. Annual reports.

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

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

1 (a) Each cable operator shall pay to the commission an
2 annual fee in an amount of twelve cents per subscriber. Such
3 funds and all other funds to be paid to the commission under the
4 provisions of this chapter shall be deposited into a special fund

5 designated the "cable fund." Such fund shall be used for
6 purposes of administering the provisions of this article. To the
7 extent permitted by federal law, the commission may prohibit
8 cable operators from assessing subscribers for any contribution
9 toward the annual fee to be paid hereunder.

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

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

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

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

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

1 Enactment of the amendments to section one, article three,
2 chapter twenty-four of this code and this article in the year one
3 thousand nine hundred ninety-nine shall in no way change how
4 cable television providers, cable television property and cable
5 television services are taxed by this state or its political
6 subdivisions after the effective date of this enactment. For tax
7 purposes, providers of cable television services who do not
8 provide telephone services over the same system are not
9 engaged in providing a public service and are neither a public
10 service business nor a public utility as those terms were used in
11 the tax laws of this state and its political subdivisions on the
12 thirty-first day of December, one thousand nine hundred ninety-
13 eight, and the cable television service furnished by them is not
14 a service subject to regulation by the public service commission
15 for purposes of exemption from tax under section eight, article
16 fifteen, chapter eleven of this code. This method of taxing

17 providers of cable television services, their property and
18 services shall remain in effect until affirmatively changed by
19 the Legislature.

ARTICLE 2. TENANTS' RIGHTS TO CABLE SERVICES.

§24D-2-1. Legislative findings.

1 The Legislature finds and declares as follows:

2 (a) Cable television has become an important medium of
3 public communication and entertainment.

4 (b) It is in the public interest to assure apartment residents
5 and other tenants of leased residential dwellings access to cable
6 television service of a quality and cost comparable to service
7 available to residents living in personally owned dwellings.

8 (c) It is in the public interest to afford apartment residents
9 and other tenants of leased residential dwellings the opportunity
10 to obtain cable television service of their choice and to prevent
11 landlords from treating such residents and tenants as a captive
12 market for the sale of television reception services selected or
13 provided by the landlord.

§24D-2-2. Definitions.

1 As used in this article:

2 (a) "Cable operator" means any person or group of persons:
3 (1) Who provides cable service over a cable system and directly
4 or through one or more affiliates owns a significant interest in
5 the cable system; or (2) who otherwise controls or is responsi-
6 ble for, through any arrangement, the management and opera-
7 tion of a cable system.

8 (b) "Cable service" or "cable television service" means: (1)
9 The one-way transmission to subscribers of video programming
10 or other programming service; and (2) subscriber interaction, if
11 any, which is required for the selection of video programming
12 or other programming service.

13 (c) "Cable system" means any facility within this state
14 consisting of a set of closed transmission paths and associated
15 signal generation, reception and control equipment that is

16 designed to provide cable service which includes video pro-
17 gramming and which is provided to multiple subscribers within
18 a community, but does not include: (1) a facility that serves
19 only to retransmit the television signals of one or more televi-
20 sion broadcast stations; (2) a facility that serves only subscrib-
21 ers in one or more multiple unit dwellings under common
22 ownership, control or management, unless that facility or
23 facilities uses any public right-of-way; or (3) a facility of a
24 public utility subject, in whole or in part, to the provisions of
25 chapter twenty-four of this code, except to the extent that those
26 facilities provide video programming directly to subscribers.

27 (d) "Cable television facilities" includes all antennas, poles,
28 supporting structures, wires, cables, conduits, amplifiers,
29 instruments, appliances, fixtures and other personal property
30 used by a cable operator in providing service to its subscribers.

31 (e) "Commission" or "Public Service Commission" shall
32 mean the public service commission of West Virginia.

33 (f) "Landlord" means a person owning, controlling, leasing,
34 operating or managing the multiple dwelling premises.

35 (g) "Multiple dwelling premises" means any area occupied
36 by dwelling units, appurtenances thereto, grounds and facilities,
37 which dwelling units are intended or designed to be occupied or
38 leased for occupation, or actually occupied, as individual homes
39 or residences for three or more households. The term includes
40 mobile home parks.

41 (h) "Person" means an individual, partnership, associate,
42 joint stock company, trust, corporation or governmental agency.

43 (i) "Tenant" means a person occupying single or multiple
44 dwelling premises owned or controlled by a landlord but does
45 not include an inmate or any person incarcerated or housed
46 within any state institution.

§24D-2-3. Landlord-tenant relationship.

1 (a) A landlord may not:

2 (1) Interfere with the installation, maintenance, operation
3 or removal of cable television facilities upon his property or
4 multiple dwelling premises, except that a landlord may require:

5 (A) That the installation of cable television facilities
6 conform to such reasonable conditions as are necessary to
7 protect the safety, functioning and appearance of the multiple
8 dwelling premises and the convenience and well-being of other
9 tenants;

10 (B) That the cable operator or the tenant or a combination
11 thereof bear the entire cost of the installation or removal of such
12 facilities; and

13 (C) That the cable operator agrees to indemnify the landlord
14 for any damage caused by the installation, operation or removal
15 of such facilities;

16 (2) Demand or accept any payment from any tenant, in any
17 form, in exchange for permitting cable television service on or
18 within his property or multiple dwelling premises, or from any
19 cable operator in exchange therefor except as may be deter-
20 mined to be just compensation in accordance with this article;

21 (3) Discriminate in rental charges, or otherwise, between
22 tenants who receive cable television service and those who do
23 not.

24 (b) Provisions relating to cable television service or satellite
25 master antenna systems contained in rental agreements and
26 leases executed prior to the effective date of this article may be
27 enforced notwithstanding this section.

28 (c) A cable operator may not enter into any agreement with
29 the owners, lessees or persons controlling or managing the
30 multiple dwelling premises served by a cable television, or do
31 or permit any act, that would have the effect, directly or
32 indirectly, of diminishing or interfering with existing rights of
33 any tenant or other occupant of such building to use or avail
34 himself of master or individual antenna equipment.

35 (d) The cable operator shall retain ownership of all wiring
36 and equipment used in any installation or upgrade of a cable
37 system within any multiple dwelling premises.

§24D-2-4. Prohibition.

1 Except as provided in this article, no landlord may demand
2 or accept any payment from any cable operator in exchange for
3 permitting cable television service or facilities on or within the
4 landlord's property or multiple dwelling premises.

§24D-2-5. Just compensation.

1 Every landlord is entitled to a single payment of just
2 compensation for property taken by a cable operator for the
3 installation of cable television service or facilities. The amount
4 of just compensation, if not agreed between the landlord and
5 cable operator, shall be determined by the commission in
6 accordance with this article upon application by the landlord
7 pursuant to section eight of this article. A landlord is not
8 entitled to just compensation in the event of a rebuild, upgrade
9 or rewiring of cable television service or facilities by a cable
10 operator.

§24D-2-6. Right of entry.

1 A cable operator, upon receiving a request for service by a
2 tenant or landlord, has the right to enter property of the landlord
3 for the purpose of making surveys or other investigations
4 preparatory to the installation. Before such entry, the cable
5 operator shall serve notice upon the landlord and tenant, which
6 notice shall contain the date of the entry, the name and address
7 of the cable operator, the name and address of the landlord,
8 from whom the request for service was received, and a citation
9 to this act. The cable operator is liable to the landlord for any
10 damages caused by such entry but such damages shall not
11 duplicate damages paid by the cable operator pursuant to
12 section eight of this article.

§24D-2-7. Notice of installation.

1 (a) Every cable operator proposing to install cable televi-
2 sion service or facilities upon the property of a landlord shall
3 serve upon said landlord and tenant, or an authorized agent,
4 written notice of intent thereof at least fifteen days prior to the
5 commencement of such installation. Verbal notice to the tenant

6 shall be legally sufficient if the date and time of entry is
7 communicated to the tenant by either the landlord or cable
8 operator at least twenty-four hours prior to entry.

9 (b) The commission shall prescribe the procedure for
10 service of such notice, and the form and content of such notice,
11 which shall include, but need not be limited to:

12 (1) The name and address of the cable operator;

13 (2) The name and address of the landlord;

14 (3) The approximate date of the installation; and

15 (4) A citation to this act.

16 (c) Where the installation of cable service or facilities is not
17 effected pursuant to a notice served in accordance with this
18 section, for whatever reason including denial of entry by the
19 landlord, the cable operator may file with the board a petition,
20 verified by an authorized person from the cable operator, setting
21 forth:

22 (1) Proof of service of a notice of intent to install cable
23 television service upon the landlord;

24 (2) The specific location of the real property;

25 (3) The resident address of the landlord, if known;

26 (4) A description of the facilities and equipment to be
27 installed upon the property, including the type and method of
28 installation and the anticipated costs thereof;

29 (5) The name of the individual or officer responsible for the
30 actual installation;

31 (6) A statement that the cable operator shall indemnify the
32 landlord for any damage caused in connection with the installa-
33 tion, including proof of insurance or other evidence of ability to
34 indemnify the landlord;

35 (7) A statement that the installation shall be conducted
36 without prejudice to the rights of the landlord to just compensa-
37 tion in accordance with section eight of this article;

38 (8) A summary of efforts by the cable operator to effect
39 entry of the property for the installation; and

40 (9) A statement that the landlord is afforded the opportunity
41 to answer the petition within ten days from the receipt thereof,
42 which answer must be responsive to the petition and may set
43 forth any additional matter not contained in the petition.

44 If no answer is filed within the time permitted, the commis-
45 sion shall grant the petitioning cable operator an order of entry
46 and installation, which order constitutes a ruling that the
47 petitioning cable operator has complied with the requirements
48 of this article. If the landlord files a written answer to the
49 petition, the cable operator shall have ten days within which to
50 reply to the answer. The commission may grant or deny the
51 petition, schedule an administrative hearing on any factual
52 issues presented thereby or direct such other procedures as may
53 be consistent with the installation of cable television service or
54 facilities in accordance with this article. The only basis upon
55 which the commission may deny a petition by the cable
56 operator is that the cable operator has not complied with the
57 requirements of this article.

58 Within thirty days of the date of grant or denial of the
59 petition, or issuance of any other order by the commission
60 following a hearing or other procedure, the cable operator or
61 landlord may appeal such grant or denial or order of the
62 commission to the circuit court of Kanawha county. Any order
63 issued by the commission pursuant to this section may be
64 enforced by an action seeking injunctive or mandamus relief in
65 circuit court where the property is located.

§24D-2-8. Application for just compensation.

1 (a) If the landlord and cable operator have not reached
2 agreement on the amount of just compensation, a landlord may
3 file with the commission an application for just compensation
4 within four months following the service by the cable operator
5 of the notice described in section eight of this article, or within
6 four months following the completion of the installation of the
7 cable television facilities, whichever is later.

8 (b) An application for just compensation shall set forth
9 specific facts relevant to the determination of just compensa-
10 tion. Such facts should include, but need not be limited to, a
11 showing of:

12 (1) The location and amount of space occupied by the
13 installation;

14 (2) The previous use of such space;

15 (3) The value of the applicant's property before the
16 installation of cable television facilities and the value of the
17 applicant's property subsequent to the installation of cable
18 television facilities; and

19 (4) The method or methods used to determine such values.
20 The commission may, upon good cause shown, permit the filing
21 of supplemental information at any time prior to final determi-
22 nation by the commission.

23 (c) A copy of the application filed by the landlord for just
24 compensation shall be served upon the cable operator making
25 the installation and upon either the mayor or county commis-
26 sion of the municipality or county, respectively, in which the
27 real property is located when the municipality or county is the
28 franchise authority.

29 (d) Responses to the application, if any, shall be served on
30 all parties and on the commission within twenty days from the
31 service of the application.

32 (e)(1) The commission shall within sixty days of the receipt
33 of the application, make a preliminary finding of the amount of
34 just compensation for the installation of cable television
35 facilities.

36 (2) Either party may, within twenty days from the release
37 date of the preliminary finding by the commission setting the
38 amount of just compensation, file a written request for a
39 hearing. Upon timely receipt of such request, the commission
40 shall conduct a hearing on the issue of compensation.

41 (3) In determining just compensation, the commission may
42 consider evidence introduced including, but not limited to, the
43 following:

44 (A) Evidence that a landlord has a specific alternative use
45 for the space occupied or to be occupied by cable television
46 facilities, the loss of which will result in a monetary loss to the
47 owner;

48 (B) Evidence that installation of cable facilities upon such
49 multiple dwelling premises will otherwise substantially
50 interfere with the use and occupancy of such premises to the
51 extent which causes a decrease in the resale or rental value; or

52 (C) Evidence of increase in the value of the property
53 occurring by reason of the installation of the cable television
54 facilities.

55 (4) For purposes of this article, the commission shall
56 presume that a landlord has received just compensation from a
57 cable operator for the installation within a multiple dwelling
58 premises if the landlord receives compensation in the amount
59 of one dollar for each dwelling unit within the multiple dwell-
60 ing premises or one hundred dollars for the entire multiple
61 dwelling premises, whichever amount is more.

62 (5) If, after the filing of an application, the cable operator
63 and the applicant agree upon the amount of just compensation,
64 a hearing shall not be held on the issue.

65 (6) Within thirty days of the date of the notice of the
66 decision of the commission, either party may appeal the
67 decision of the commission in the circuit court of Kanawha
68 county regarding the amount awarded as compensation.

§24D-2-9. Existing cable services protected.

1 Cable services being provided to tenants on the effective
2 date of this article may not be prohibited or otherwise prevented
3 so long as the tenant continues to request such services.

§24D-2-10. Exception.

1 Notwithstanding any provision in this article to the con-
2 trary, a landlord and cable operator may by mutual agreement
3 establish the terms and conditions upon which cable television
4 facilities are to be installed within a multiple dwelling premises
5 without having to comply with the provisions of this article.

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

Fred L. Brown
Chairman Senate Committee

Joe F. Smith
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harold Atkins
Clerk of the Senate

Bryon M. Gray
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

John H. Harman
Speaker of the House of Delegates

The within *approved* this the *8th*
day of *April*, 1999.

Earl K. Rayburn
Governor

PRESENTED TO THE

GOVERNOR

Date 4/6/99

Time 2:31 pm