

# Public Service Commission

Richard E. Hitt, General Counsel



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April 20, 1999

Judy Cooper, Director  
Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
1900 Kanawha Blvd. E.  
Charleston, WV 25305-0771

Re: Cable Television Rules

Dear Judy:

We weren't able to spend a great deal of time making changes to the existing cable television rules. Generally, all references to the Board in the existing rules should be changed to the Public Service Commission. All references to Chapter 5, Article 18, Section 1 et seq. of the West Virginia Code should be changed to West Virginia Code Section 24D-1-1 et seq. I have tried to make all these changes throughout the rules but I may have missed a couple of spots.

After these rules have been revised, I would appreciate a diskette that contains the rules. During the process of reviewing these rules, it is apparent to the Commission that we will need to engage in a fairly comprehensive rulemaking in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick", written over a large, stylized flourish.

Richard E. Hitt  
General Counsel

REH/cbd  
Enclosure  
rickmisc/cooper17.wpd

- references to chapter 5, articles 18 and 18A should be changed to chapter 24D-1-1 et seq.

150CSR26

TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION

SERIES 26  
FRANCHISING PROCEDURES

Ed Note: HB 2453 passed March 13, 1999 and effective June 11, 1999 authorizes the PSC to adopt rules concerning cable television. In §24D-1-23(b) the bill states: "The rules and regulations promulgated by the cable advisory board pursuant to repealed §5-18-1 and in effect on December 31, 1997, shall remain in effect and hereby become the rules and regulations of the commission." This was 187CSR1.

Effective from 4/15/99

§150-26-1. General.

1.1. Scope. -- This emergency rule establishes the franchising procedures set forth for compliance with the West Virginia Cable Television Systems Act, W. Va. Code §§5-18-1 et seq.

§240-1-1 et seq

1.2. Authority. -- W. Va. Code §5-16-6(g).

1.3. Filing Date. -- June 11, 1999.

1.4. Effective Date. -- June 11, 1999.

§150-26-2. Applicability.

2.1. No cable television franchise shall be granted in this state unless it is awarded in compliance with the procedures set forth in this rule and in compliance with the West Virginia Cable Television Systems Act, W. Va. Code §§5-18-1 to 5-18-30. Except as hereinafter provided, sections 3, 4, 5, 6, 7, and 8 of this rule govern the procedure for franchising areas where no cable operator has conducted business in the past. Section 9 of this rule governs the procedure for renewing franchises which expire. Section 10 governs the procedure for franchising cable operators who have provided cable service to an area in the past without a franchise. Section 11 governs the procedure for approving transfers of existing franchises.

§240-1-1 et seq

§150-26-3. Request for proposals.

3.1. Prior to inviting applications for any cable television franchise, a franchising authority shall adopt a request for proposals that shall contain, but need not be limited to, the following:

3.1.1. A description of the cable television system desired by the franchising authority, including any system specifications established by the West Virginia Cable Television Advisory Board.

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3.1.2. A statement specifying that applicants must use the application form established by the West Virginia Cable Television Advisory Board.

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3.1.3. A statement indicating the fee to be submitted with the application, and the manner in which such fee is to be submitted.

3.1.4. A statement that all applications must contain the information required by section 5 of this rule.

3.1.5. The closing date for the submission of applications (which shall be the same as that contained in the public notice).

3.1.6. The name, address, and telephone number of the officials who may be contacted for further information.

§150-26-4. Invitation of applications; public notice of request for proposals.

- references to the West Virginia Cable Television Advisory Board should be changed to WVPSC.

4.1. A franchising authority shall invite applications for a cable television franchise by means of a public notice advertising the availability of its requests for proposals. The public notice shall contain, but need not be limited to:

4.1.1. A description of the political or geographic boundaries of the area for which a franchise is sought.

4.1.2. A statement that a formal request for proposals is available to prospective applicants from a municipal, county or ~~West Virginia Cable Television Advisory Board~~ officer whose name, address, and telephone number are specified.

*Commissioner*

4.1.3. A statement that applications for the franchise must be submitted in writing following the application form and manner specified by the ~~West Virginia Cable Television Advisory Board~~ *Commissioner* no later than a date certain (which date shall be not less than 60 days from the date of final publication of the public notice).

4.1.4. A statement that all applications will be made available for public inspection during normal business hours at a specified location within the county ~~of~~ *of* the cable service area.

4.2. The public notice of request for proposals shall for cable franchises having a service area with more than one thousand (1000) homes passed be published in the following manner:

4.2.1. At least once in each two (2) different calendar weeks in a newspaper of general circulation in the county or counties in which the proposed service area is located.

4.2.2. At least once in any two (2) publications that may reasonably be expected to attract the attention of prospective franchise applicants nationally.

4.2.3. The last published notice shall appear at least fifteen (15) days prior to the date of the hearing.

4.2.4. Public notice advertising proposals for more than one franchise may be published together within the same ad.

4.3. The public notice of request for proposals shall for cable franchises having a service area with one thousand (1000) homes passed or less be published in the following manner:

4.3.1. At least once in each two (2) different calendar weeks in a newspaper of general circulation in the county or counties in which the proposed service area is located.

4.3.2. At least once in each two (2) different calendar weeks in a newspaper having significant general statewide circulation in West Virginia, or significant general circulation in Charleston, West Virginia.

4.3.3. The last published notice shall appear at least fifteen (15) days prior to the date of the hearing.

4.3.4. Public notice advertising proposals for more than one franchise may be published together within the same ad.

4.4. Promptly upon the filing of its public notice of request for proposals to any magazine or newspaper for publication, the franchising authority shall furnish the ~~West Virginia Cable Television Advisory Board~~ *Commissioner* true and complete copies of:

4.4.1. The proposed public notice.

4.4.2. The formally adopted request for proposals.

4.5. Upon receipt of proof of publication from the publishers, the franchising authority shall forward a copy of such proof to the ~~Board~~ *Commissioner*.

*Commissioner*

4.6. If the franchising authority is the ~~West Virginia Cable Television Advisory Board~~, notice shall be given to the city council and mayor of any municipalities affected, the county commission of any counties affected and to any telephone or

other utility and cable company in the county or counties affected by the proposed service area.

**§150-26-5. Required contents of application.**

5.1. Every applicant submitting a franchising authority for a cable television franchise shall use the application form established by the ~~West Virginia Cable Television Advisory Board~~ *Commission* to provide the information necessary to determine whether a cable franchise should be issued.

5.2. The franchising authority shall not accept applications for a cable franchise that do not use the form provided by the ~~West Virginia Cable Television Advisory Board~~ *Commission*. The franchising authority shall not accept applications which have not followed the instruction and format required by the ~~West Virginia Cable Television Advisory Board~~ *Commission*.

5.3. The application must provide all information required by the ~~West Virginia Cable Television Advisory Board~~ *Commission* before it may be accepted for filing and considered by the franchising authority.

5.4. The franchising authority shall notify an applicant in writing that its application for a cable franchise has been either accepted for filing or rejected within thirty (30) days of receipt of the application.

5.5. If an application for a franchise is rejected as incomplete or for failing to use the proper form and format of the application form provided by the ~~West Virginia Cable Television Advisory Board~~ *Commission*, the franchising authority shall notify the applicant in writing the reasons for rejection and provide an applicant thirty (30) days to file a correct and completed application.

**§150-26-6. Investigation and due diligence required.**

6.1. The franchising authority shall use due diligence to investigate and assess the technical ability, financial condition, and character of every

applicant in order to determine whether it would be in the public interest to grant a cable franchise.

6.1.1. specific factors the franchising authority must consider when determining whether granting a specific cable application would be in the public interest are:

6.1.1.a. Any objections arising from the public hearing:

6.1.1.b. The content of the application or proposal:

6.1.1.c. The public need for the proposed service:

6.1.1.d. The ability of the applicant to offer safe, adequate and reliable service at a reasonable cost to the subscribers:

6.1.1.e. The suitability as to the good character of the applicant:

6.1.1.f. The financial responsibility of the applicant:

6.1.1.g. The technical and operational ability of the applicant to perform efficiently the service for which authority is requested:

6.1.1.h. The geography or topography of the proposed service area:

6.1.1.i. The present, planned, and potential expansion in facilities or cable services of the applicant's proposed cable system and any of the applicant's existing cable systems: and

6.1.1.j. Any other matters the franchising authority considers appropriate in the circumstances.

**§150-26-7. Requirement for public hearing on reasonable notice.**

7.1. The franchising authority shall conduct a public hearing prior to awarding any cable

television franchise. The hearing shall be preceded by reasonable notice to each of the franchise applicants and to the public and shall be conducted by the franchising authority in accordance with the following procedures:

7.1.1. There shall be an agenda for the hearing which shall specify the proposals to be considered at the hearing.

7.1.2. Every person who has applied for a cable television franchise shall appear at the hearing either in person or by authorized representative. The application of the applicant who does not appear will not be further considered except for good cause shown for the applicant's absence.

7.1.3. All persons shall be given full opportunity to participate in the hearing and to ask questions of any applicant or participant in the hearing, but nothing contained herein shall limit the power of the presiding officer to establish reasonable time limits and otherwise limit repetitive statements or questions.

7.1.4. The notice of hearing shall:

7.1.4.a. Conform to all relevant state and local laws and ordinances;

7.1.4.b Describe the agenda to be considered at the public hearing; and

7.1.4.c Indicate that copies of all franchise applications are available for public inspection during normal business hours at a place to be specified in the notice.

7.1.5. Where the franchising authority has received more than one application for a cable television franchise, the hearing required by this section shall be convened not sooner than thirty (30) days following the closing date specified for the filing of such applications.

7.1.6. Notwithstanding the number of applications for a cable television franchise which have been received, the hearing required by this

section shall be convened within one hundred twenty (120) days of the later of the following dates:

7.1.6.a. The closing date specified for the filing of such applications; or

7.1.6.b. The earliest date upon which the franchising authority may convene such a hearing pursuant to local law or charter.

7.1.7. The franchising authority shall provide the ~~West Virginia Cable Television Advisory Board~~ <sup>Commission</sup> with a copy of the Notice of Public Hearing at the time it is published.

**§150-26-8. Timing and manner of award of franchise.**

8.1. If more than one application for a cable television franchise has been received by a franchising authority, a franchise may be awarded by that franchising authority no sooner than thirty (30) days following the public hearing held pursuant to section 7 of this rule.

8.2. Notwithstanding the number of applications for a cable television franchise which have been received, the franchising authority shall either award a cable television franchise or deny all applications before it for the franchise within a period of four months from the public hearing held pursuant to section 7 of this rule. The failure of the franchising authority to act within this period shall be considered a denial of all cable television franchise applications pending before the franchising authority at such time. Such denial due to failure to act shall be promptly communicated to the applicants in writing.

8.3. A franchising authority may award a cable television franchise only if due diligence is used to prepare a franchise agreement that will protect the interests of the residents of the service area affected by the proposed franchise.

8.4. Upon the award of a cable television franchise, the franchising authority shall include in

its decision awarding the franchise the reasons for the award and for the selection of the franchisee.

8.5. The franchise agreement entered into between the franchising authority and the cable operator must contain certain provisions and follow the standards as set forth by law or by guidelines as adopted by the ~~Board~~ *Commission*. All franchising agreements must be filed with the ~~Board~~ *Commission* and are subject to its review to ensure compliance.

8.6. Provisions contained in franchising agreements entered into after the effective date of the West Virginia Cable Television Systems Act which conflict with or are contrary to law or the guidelines adopted by the Board are null and void, and the ~~Board~~ *Commission* may institute action under W. Va. Code ~~§§ 18-26(e)~~ to correct any omission in the contract, as well as prohibit enforcement of any unlawful or invalid contract provisions.

8.7. After considering all matters of record regarding a cable franchise application, a franchising authority may, in its discretion, issue only a partial exercise of the franchise sought or may attach to the franchise granted any franchise terms or limitations which the franchising authority considers necessary for the public interest.

8.8. If a franchising authority, after investigation and consideration of an application for a franchise, decides to reject or grant only part of the franchise, it shall set forth in writing its decision and the reasons for it.

**§150-26-9. Procedure for Renewal of Existing Franchises.**

9.1. At any time within the final three years of a franchise, the franchising authority may, and shall if requested by the cable operator, conduct a public hearing which gives the public in the franchise area an opportunity to identify the franchise area's future cable-related needs and interests and to review the past performance of the cable operator during the current franchise.

9.1.1. Notice of the public hearing shall be published at least once in each of two (2) different calendar weeks in a newspaper of general circulation in the county or counties in which the franchise area is served. The last published notice shall appear at least fifteen (15) days prior to the date of the hearing.

9.2. Upon completion of a public hearing pursuant to subsection 9.1. of this rule, a cable operator may submit a proposal for renewal of a franchise to the appropriate franchising authority by a date established by the franchising authority.

9.3. Every proposal for a renewal of a franchise shall be on the form established by the ~~West Virginia Cable Television Advisory Board~~ *Commission* to provide the information necessary to determine whether a renewal should be granted.

9.4. The franchising authority shall not accept proposals for renewal of franchises that do not use the form provided by the ~~West Virginia Cable Television Advisory Board~~ *Commission*. The franchising authority shall not accept proposals for renewal that have not followed the instructions and format required by the ~~West Virginia Cable Television Advisory Board~~ *Commission*.

9.4.1. A franchising authority may invite applications for a cable television franchise for the service area up for renewal at any time before or during the renewal process. If a franchising authority decides to invite such applications, it shall follow the procedures set forth in sections 4 through 8 of this rule to obtain and evaluate such applications.

9.5. The proposal for renewal must provide all information required by the ~~West Virginia Cable Television Advisory Board~~ *Commission* before it may be accepted for filing and considered by the franchising authority.

9.5.1. The franchising authority shall promptly provide the ~~West Virginia Cable Television Advisory Board~~ *Commission* with a copy of the proposal for a renewal.

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§240-1-1  
*et seq*

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9.5.2. If a franchised cable operator submits a proposal for renewal, the franchising authority shall notify the franchised cable operator in writing that its proposal for renewal has been either accepted for filing or rejected within thirty (30) days of receipt of the renewal proposal.

9.5.3 If a proposal for a renewal is rejected as incomplete or for failing to use the proper form and format of the proposal for renewal form provided by the ~~West Virginia Cable Television Advisory Board~~, <sup>Commissioner</sup> the franchising authority shall notify the franchised cable operator in writing the reasons for rejection and provide the franchised cable operator thirty (30) days to file a correct and completed proposal for renewal.

9.6. Upon the filing of a proposal for renewal of a franchise, either pursuant to subsection 9.2. of this rule or at anytime within the final three (3) years of the franchiser the franchising authority shall provide prompt public notice of such filing and, within four (4) months of the completion of any proceeding under subsection 9.1. of this rule, or if no such proceedings were held, then within four months of the filing of the proposal, shall either renew the franchise or issue a preliminary determination that the franchise should not be renewed.

9.6.1. Following the filing of a proposal for renewal, the franchise authority shall commence an administrative proceeding and provide public notice of such proceeding to consider whether the renewal should be granted based on whether:

9.6.1.a. The cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

9.6.1.b. The quality of the cable operators service, including signal quality, response to consumer complaints, and billing practices has been reasonable in light of community needs;

9.6.1.c. The cable operator has the financial, legal and technical ability to provide the services, facilities, and equipment as set forth in the cable operator's proposal for renewal; and

9.6.1.d. The cable operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the costs of meeting such needs and interests.

9.6.2. In any administrative proceeding conducted under subsection 9.6.1. of this rule the cable operator shall be given thirty (30) days notice of the date of the proceeding and the issues to be addressed unless both the cable operator and the franchising authority stipulate to a different notice period. ~~The West Virginia Cable Television Advisory Board~~ shall also be given notice of this proceeding. <sup>Commissioner</sup>

9.6.3. Both the cable operator and the franchising authority, or its designee, shall be given fair opportunity to participate fully in the proceeding. Such participation shall include the right to introduce evidence, question and cross-examine witnesses, and to require the production of evidence.

9.6.4. A transcript shall be made of the administrative proceeding.

9.6.5. Within sixty (60) days of the completion of an administrative proceeding conducted pursuant to subsection 9.6.1. of this rule the franchising authority shall issue a written decision and the reasons for granting or denying the proposal for renewal of a franchise. The franchising authority shall promptly transmit a copy of its decision to both the cable operator and the ~~West Virginia Cable Television Advisory Board~~. <sup>Commissioner</sup> Any renewal of a franchise granted by a franchising authority may be for a period of not less than five (5) nor more than twenty (20) years.

9.6.6. A franchising authority's decision to deny a renewal must be based upon one or more adverse findings made with respect to the factors

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outlined in subsections 9.6.1.a. through 9.6.1.d. of this rule. A franchising authority, however, may not base a denial of renewal on either subsection 9.5.1.a or 9.6.1.b. of this rule;

9.6.6.a. For events which occurred after October 30, 1984, unless the franchising authority provided the operator with notice of the events and the opportunity to correct any problems; or

9.6.6.b. In any case where it is documented that the franchising authority waived its right to object or effectively acquiesced into the practices of the cable operator.

9.7. Any cable operator aggrieved by a final decision of a franchising authority issued pursuant to administrative proceedings pursuant to subsection 9.6.1. of this rule may seek judicial review of that decision within one hundred twenty (120) days of their receipt of the decision from the franchising authority.

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9.7.1. Any cable operator having its proposal for renewal denied pursuant to subsection 9.6.6 & f this rule may at the appropriate time submit an application for a franchise following the procedures set forth in sections 1 to 8 of this rule. Such an application for a franchise shall be considered according to the criteria set forth in sections 1 to 8 of this rule.

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9.8. The franchise renewal agreement entered into between the franchising authority and the cable-operator must contain certain provisions and follow the standards as set forth by law or by guidelines as adopted by the Board. All franchise renewal agreements must be filed with the Board and are subject to its review to ensure compliance.

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9.9. Provisions contained in franchise renewal agreements entered into after the effective date of the West Virginia Cable Television Systems Act which conflict with or are contrary to law or the guidelines adopted by the Board are null and void, and the Board may institute action under W. Va. Code §5-18-26(e) to correct any

omission in the contract, as well as prohibit enforcement of any unlawful or invalid contract provisions.

§150-26-10. Procedure for franchising non-franchised cable operators already providing cable service.

10.1. A franchising authority may, on its own initiative, conduct a public hearing which gives the public in a potential cable franchise area an opportunity to identify that area's future cable related needs and interests and to review the past performance of any non-franchised cable operator who may currently provide cable service or who may have provided cable service in the past two years to that area.

10.1.1. Notice of the public hearing shall be published at least once in each of two (2) different calendar weeks in a newspaper of general circulation in the county or counties in which the franchise area is served. The last published notice shall appear at least fifteen (15) days prior to the date of the hearing.

10.2. A non-franchised cable operator shall, within sixty (60) days of receipt of notice from the West Virginia Cable Television Advisory Board of the identity of its franchising authority or authorities, file an application for a franchise. This notice shall be provided by the West Virginia Cable Television Advisory Board pursuant to W. Va. Code §5-18-4. § 240-1-1 et seq.

10.3. A franchising authority may also invite applications for a cable television franchise for areas not served by a franchised operator and for areas served by a non-franchised operator. If a franchising authority desires to invite such applications, it shall follow the procedures set forth in sections 4 through 8 of this rule to obtain and evaluate such applications.

10.3.1. If a cable operator submits an application for a franchise for an area already serviced by a non-franchised operator, the non-franchised operator servicing the area shall be

afforded notice of the hearing held pursuant to section 7 of this rule. Such non-franchised operator shall be given an opportunity at that hearing to present evidence, examine and cross-examine witnesses, and to require the production of evidence regarding: (1) the new applicant's financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the new applicant's proposal and (2) whether or not the new applicant's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

10.4. Every application for a franchise from a non-franchised cable operator shall be on the form established by the ~~West Virginia Cable Television Advisory Board~~ <sup>Commission</sup> to provide the information necessary to determine whether a franchise should be issued.

10.5 The franchising authority shall not accept applications for a cable franchise from non-franchised operators that do not use the form provided by the ~~West Virginia Cable Television Advisory Board~~. The franchising authority shall not accept applications which have not followed the instructions and format required by the West Virginia Cable Television Advisory Board.

10.6. The application for a franchise must provide all information required by the ~~West Virginia Cable Television Advisory Board~~ before it may be accepted for filing and considered by the franchising authority.

10.6.1. The franchising authority shall promptly provide the ~~West Virginia Cable Television Advisory Board~~ with a copy of any application for franchise the franchising authority receives from non-franchised cable operators.

10.7. If a non-franchised cable operator submits an application for a franchise, the franchising authority shall notify the non-franchised cable operator in writing that its application for a franchise has been either accepted for filing or

rejected within thirty (30) days of receipt of the application.

10.7.1. if an application for a franchise is rejected as incomplete or for failing to use the proper form and format of the application form provided by the ~~West Virginia Cable Television Advisory Board~~ <sup>Commission</sup>, the franchising authority shall notify the applicant in writing the reasons for rejection and provide an applicant thirty (30) days to file a correct and completed application.

10.8. The franchising authority shall use due diligence to investigate and assess the technical ability, financial condition, and character of every applicant in order to determine whether it would be in the public interest to grant a cable franchise.

10.8.1. Specific factors the franchising authority must consider when determining whether granting a specific cable application would be in the public interest are:

10.8.1.a. Any objections arising from the public hearing;

10.8.1.b. The content of the application or proposal;

10.8.1.c. The public need for the proposed service;

10.8.1.d. The ability of the applicant to offer safe, adequate, and reliable service at a reasonable cost to the subscribers;

10.8.1.e. The suitability as to the good character of the applicant;

10.8.1.f. The financial responsibility of the applicant;

10.8.1.g. The technical and operational ability of the applicant to perform efficiently the service for which authority is requested;

10.8.1.h. The geography or topography of the proposed service area:

10.8.1.i. The present, planned, and potential expansion in facilities or cable services of the applicant's proposed cable system and any of the applicant's existing cable systems; and

10.8.1.j. Any other matters the franchising authority considers appropriate in the circumstances.

10.8.2. Because the non-franchised cable operator has established a record of service in a specific area, the franchising authority should also especially consider whether the past quality of the operator's service, including signal quality, response to consumer complaints, and billing practices have been reasonable in light of past community needs.

10.9. The franchising authority shall conduct a public hearing prior to awarding any cable television franchise a non-franchised operator who has provided cable service. The hearing shall be preceded by reasonable notice to the non-franchised operator and to the public and shall be conducted by the franchising authority in accordance with the following procedures:

10.9.1. There shall be an agenda for the hearing which shall specify the proposal to be considered at the hearing.

10.9.2. The non-franchised operator who has applied for a cable television franchise shall appear at the hearing either in person or by authorized representative. The application of the non-franchised operator who does not appear will not be further considered except for good cause shown for the absence.

10.9.3. All persons shall be given full opportunity to participate in the hearing and to ask questions of the non-franchised operator or participant in the hearing, but nothing contained herein shall limit the power of the presiding officer to establish reasonable time limits and otherwise

limit repetitive statements or questions. A transcript of the hearing shall be made.

10.9.4. The notice of hearing shall:

10.9.4.a. Conform to all relevant state and local laws and ordinances.

10.9.4.b. Describe the agenda to be considered at the public hearing.

10.9.4.c. Indicate that a copy of the franchise application is available for public inspection during normal business hours at a place to be specified in the notice.

10.9.5. The hearing required by this subsection shall be convened not sooner than thirty (30) days nor later than one hundred twenty (120) days following the filing of the application.

10.9.6. The franchising authority shall provide the ~~West Virginia Cable Television Advisory Board~~ <sup>Commission</sup> with a copy of the Notice Public Hearing at the time it is published.

10.10. The franchising authority shall issue a decision on the application for a franchise from a non-franchised cable operator as soon as practicable after the public hearing but not later than sixty (60) days after the hearing is concluded. The franchising authority shall promptly notify the non-franchised operator and the ~~West Virginia Cable Television Advisory Board~~ <sup>Commission</sup> in writing of its decision.

10.10.1. A franchising authority may award a franchise to a non-franchised cable operator who has provided cable service in the past to the proposed franchise area only if due diligence is used to prepare a franchise agreement that will protect the interests of the residents of the service area affected by the proposed franchise.

10.10.2. The franchising agreement entered into between the franchising authority and the previously non-franchised cable operator must contain certain provisions and follow the stan-

dards as set forth by law or by guidelines as adopted by the Board. All franchising agreements must be filed with the Board and are subject to its review to ensure compliance.

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10.10.3. Provisions contained in franchising agreements entered into after the effective date of the West Virginia Cable Television Systems Act which conflict with or are contrary to law or the guidelines adopted by the Board are null and void, and the Board may institute action under W. Va. Code § 5-18-26(e) to correct any omission in the contract, as well as prohibit enforcement of any unlawful or invalid contract provisions.

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§ 240-1-1 *et seq.*

10.10.4. After considering all matters of record regarding a cable franchise application from a previously non-franchised cable operator, a franchising authority may, in its discretion, issue only a partial exercise of the franchise sought or may attach to the franchise granted any franchise terms or limitations which the franchising authority considers necessary for the public interest.

10.10.5. If a franchising authority, after investigation and consideration of an application for a franchise, decides to reject or grant only part of the franchise, it shall set forth in writing its decision and the reasons for it.

**§150-26-11. Procedure for granting transfer of a cable franchise or cable system.**

11.1. Every application submitted to a franchising authority for the transfer of a cable franchise or non-franchised cable system (hereinafter "cable system") shall use the application form established by the West Virginia Cable Television Advisory Board to provide the information necessary to determine whether a transfer should be granted.

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11.2 The franchising authority shall not accept applications for transfer of a cable franchise or cable system that do not use the form provided by the West Virginia Cable Television Advisory Board. The franchising authority shall not accept applications which have not followed

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the instruction and format required by the ~~West Virginia Cable Television Advisory Board.~~

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11.3. The application must provide all information required by the ~~West Virginia Cable Television Advisory Board~~ before it may be accepted for filing and considered by the franchising authority.

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11.4. The franchising authority shall notify an applicant in writing that its application for the transfer of a cable franchise or cable system has been either accepted for filing or rejected within thirty (30) days of receipt of the application.

11.5. If an application for a transfer of a cable franchise or cable system is rejected as incomplete or for failing to use the proper form and format of the application form provided by the ~~West Virginia Cable Television Advisory Board~~, the franchising authority shall notify the applicant in writing the reasons for rejection and provide an applicant thirty (30) days to file a correct and completed application.

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11.6. The franchising authority shall use due diligence to investigate and assess the technical ability, financial condition, and character of every transfer applicant in order to determine whether it would be in the public interest to grant a transfer.

11.6.1. specific factors the franchising authority must consider when determining whether granting a specific cable transfer application would be in the public interest are:

11.6.1.a. Any objections arising from the public hearing;

11.6.1.b. The content of the application or proposal;

11.6.1.c. The public benefit from the transfer;

11.6.1.d. The ability of the applicant to offer safer adequate and reliable service at a reasonable cost to the subscribers;

11.6.1.e. The suitability as to the good character of the applicant:

11.6.1.f. The financial responsibility of the applicant:

11.6.1.g. The technical and operational ability of the applicant to perform efficiently the service for which authority is requested;

11.6.1.h. The ability of the transfer applicant to provide the present, planned, and potential expansion in facilities or cable services agreed to by the current franchise holder; or where no such agreement exists the ability of the transfer applicant to provide the expansion in facilities and cable services consistent with the reasonable future cable-related community needs and interests.

11.6.1.i. Any other matters the franchising authority considers appropriate in the circumstances.

11.7. The franchising authority shall conduct a public hearing prior to granting any transfer of a cable franchise or cable system. The hearing shall be preceded by reasonable notice to the transfer applicant, the transferring cable operator, and the public and shall be conducted by the franchising authority in accordance with the following procedures:

11.7.1. There shall be an agenda for the hearing which shall specify the transfer(s) to be considered at the hearing.

11.7.2. Every person who has applied for a transfer of a cable franchise or cable system shall appear at the hearing either in person or by authorized representative. The application of the applicant who does not appear will not be further considered except for good cause shown for the absence.

11.7.3. All persons shall be given full opportunity to participate in the hearing and to ask

questions of any applicant or participant in the hearing, but nothing contained herein shall limit the power of the presiding officer to establish reasonable time limits and otherwise limit repetitive statements or questions.

11.7.4. The notice of hearing shall:

11.7.4.a. Conform to all relevant state and local laws and ordinances.

11.7.4.b. Describe the agenda to be considered at the public hearing.

11.7.4.c. Indicate that copies of all transfer applications are available for public inspection during normal business hours at a place to be specified in the notice.

11.7.5. The hearing may not be held unless the public has been given notice pursuant to subsection 11.7.4. of this rule, at least thirty (30) days prior to the date of the hearing.

11.7.6. The franchising authority shall provide the ~~West Virginia Cable Television Advisory Board~~ <sup>Commission</sup> with a copy of the Notice of Public Hearing for Transfer at the time it is published.

11.8. The franchising authority shall either grant or deny a transfer of a cable franchise or cable system within a period of sixty (60) days from the public hearing held pursuant to subsection 11.7. of this rule. The failure of the franchising authority to act within this period shall be considered a denial of all cable transfer applications pending before the franchising authority at such time. Such denial due to failure to act shall be promptly communicated to the applicants in writing.

11.9. A franchising authority may grant a transfer of a cable franchise or cable system only if due diligence is used in reviewing the transfer application to protect the interests of the residents of the service area affected by the proposed transfer.

**§150-26-12. Request for Information.**

12.1. The ~~Board~~<sup>Commission</sup> may in the conduct of its duties require cable operators in West Virginia and those cable operators applying for franchise agreements within West Virginia, to provide information and documents as may be necessary to meet the responsibilities of the ~~Board~~<sup>Commission</sup> and objectives of the West Virginia Cable Television Systems Act.

**§150-26-13. Violation of Rules; Penalties**

13.1. For each violation of these rules the Board may fine a cable operator in an amount not less than fifty dollars (~~\$50.00~~) nor more than five hundred dollars (~~\$500.00~~) for each violation. Each day of non-compliance with a court order or injunction issued in connection with the enforcement of these rules or the West Virginia Cable Television Systems Act is a separate violation.

**§150-26-14. Severability**

14.1. If any provision of any subparagraph, subsection or section of these rules is held unconstitutional or void, the remaining provisions of such subparagraph, subdivision, subsection or section remain valid to the extent permitted under law.

*\$100 minimum*  
*HB 2453 changes maximum fine to \$1,000 - but we may have to wait for rulemaking to change rule substantively.*