

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED
Aug 12 12 23 PM '99

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: PUBLIC SERVICE COMMISSION TITLE NUMBER: 150
RULE TYPE: EXEMPT LEGISLATIVE; CITE AUTHORITY WV Code §24-1-7 and 24D-1-23
AMENDMENT TO AN EXISTING RULE: YES X NO
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26-31

TITLE OF RULE BEING AMENDED: RULES AND REGULATIONS FOR THE
GOVERNMENT OF CABLE TELEVISION

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON October 12, 1999 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

PUBLIC SERVICE COMMISSION
Sandra Squire, Executive Secretary
P. O. Box 812
201 Brooks Street
Charleston, WV 25323

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

240

SUMMARY OF PROPOSED RULES

The Commission has recently reexamined the Rules and Regulations for the Government of Cable Television and determined that these rules require revision. The Commission believes that further revision will benefit cable companies and the general public. The purposes of these proposed legislative rules are to amend the Commission rules and regulations as follows:

- 1) delete 150 CSR 28, concerning administrative procedures; adopt by reference Title 150 CRS 1, which details the Public Service Commission's current Rules of Practice and Procedure
- 2) combine Series 26-31 of Title 150 into one series, to be renumbered as Series 26
- 3) adopt by reference the Federal Communications Commission's minimum quality of service regulations
- 4) add forms utilized in the regulation of cable companies, and
- 5) amend portions of rules to conform with the recently enacted West Virginia Cable Television Systems Act, West Virginia Code §24D-1-1 et seq.

FISCAL NOTE

This is a fiscal note issued pursuant to §§24-1-7 and 24-2-2 of the West Virginia Code, as these sections are read in pari materia, with §§29A-3-1 through 29A-3-9 of the West Virginia Code, relating to General Order No. In the Matter of Commission Proposed Rules and Regulations for the Government of Cable Television.

I. OBJECTIVES OF THE RULE

The purposes of these proposed legislative rules are to amend legislative rules and regulations, in order to adopt PSC rules of practice and procedure, combine and renumber series 26-31, adopt FCC minimum quality of service regulations, add forms necessary for the regulation of cable companies, and enable the PSC rules to conform with the WVCTSA.

II. COST OF IMPLEMENTING THE PROPOSED RULES:

A. Cost of Implementation for the State:

There will be no implementation cost relating to this rulemaking for the State of West Virginia, other than the costs related to this rulemaking proceeding.

B. Cost of Implementation for Persons affected by the Proposed Rule:

The Commission is of the opinion that no additional costs will be incurred by cable companies as a result of the implementation of these rules, since a majority of the proposed rules merely resolve conflicts which exist between the old cable board rules and the PSC rules and statutes and the cable companies are bound by the current FCC rules.

III. THE EFFECT THIS MEASURE WILL HAVE ON THE COSTS OR REVENUES OF STATE GOVERNMENT (Information required by fiscal notes for either House or the Legislature.)

This rulemaking will have no effect on the costs or revenues of State government.

IV. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS

This rule will have no significant economic impact on the State or its residents.

DATE: 8-11-99 AGENCY: WV Public Service Commission
SIGNATURE OF AUTHORIZED REPRESENTATIVE Charlton L. Rame

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, in the City of Charleston on the 11th day of August, 1999.

GENERAL ORDER NO. 254

IN THE MATTER OF

Commission proposed rules amending
the Rules and Regulations for the
Government of Cable Television.

COMMISSION ORDER PROMULGATING EMERGENCY RULES

The Commission has recently reexamined the Rules and Regulations for the Government of Cable Television and has determined that these rules require revision. The Commission believes that revision will benefit cable companies as well as the general public.

Upon consideration whereof, the Commission has determined that it is necessary to initiate an emergency rulemaking proceeding for the purpose of promulgating proposed amendments to these rules, pursuant to West Virginia Code §§24-1-7 and 24D-1-23, as those sections are read in pari materia with §§29A-3-1 through 29A-3-9.

Specifically the proposed amendments are as follows:

- 1) delete 150 CSR 28, concerning administrative procedures; adopt by reference title 150 CSR 1, which details the Public Service Commission's current rules of practice and procedure;
- 2) combine Series 26-31 of Title 150 into one series, to be renumbered as series 26;
- 3) adopt by reference the Federal Communications Commission's minimum quality of service regulations;
- 4) add forms utilized in the regulation of cable companies; and
- 5) amend portions of rules to conform with the recently enacted West Virginia Cable Television Systems Act, West Virginia Code §24D-1-1 et seq.

IT IS, THEREFORE, ORDERED that the proposed rules be promulgated as Commission-proposed legislative rules amending the Rules and Regulations for the Government of Cable Television.

IT IS FURTHER ORDERED that all cable companies subject to the Commission's jurisdiction and other interested parties be notified of the establishment of this rulemaking proceeding.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission file a copy of the notice of a comment period on a proposed rule; a copy of the text of the proposed rules; the notice of an emergency rule; and a copy of the fiscal note, all attached hereto, with the Office of the Secretary of State.

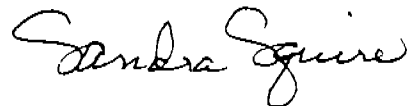
IT IS FURTHER ORDERED that a sixty-day comment period shall be held on this matter and comments shall be filed with the Public Service Commission by October 12, 1999, by 4:00 p.m. All interested parties who so file shall set forth specific comments concerning the proposed amendments to the Rules and Regulations for the Government of Cable Television. Any party seeking a hearing on the proposed amendments shall make a specific written request before the close of the comment period and shall explicitly state the grounds upon which the request is made. All comments should be addressed to: Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, Post Office Box 812, Charleston, WV, 25323.

IT IS FURTHER ORDERED that the Executive Secretary shall cause a copy of this order to be published once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in each of the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Grafton, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Weirton, Welch, Wheeling and Williamson.

IT IS FURTHER ORDERED that the Executive Secretary shall provide copies of these proposed rules to interested parties who address inquiries to: Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, Post Office Box 812, Charleston, WV, 25323.

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A True Copy, Teste:



Sandra Squire
Executive Secretary

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 26
FRANCHISING PROCEDURES
RULES AND REGULATIONS FOR THE GOVERNMENT
OF CABLE TELEVISION

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 April 15, 1991.

§150-26-1. General. - Franchising Procedures

1.1. Scope. -- ~~This~~ These emergency rule rules establishes the franchising procedures set forth for ~~compliance with~~ pertain to the implementation of provisions of the West Virginia Cable Television Systems Act, W. Va. Code §24D-1-1 et seq. relating to the regulation of the provision of cable television service by the Public Service Commission of West Virginia.

1.2. Authority. -- W. Va. Code §24D-1-1 et seq.

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

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

1.5. Definitions.

1.5.1. Commission -- The term "Commission", or "Public Service Commission" means the Public Service Commission of West Virginia unless a different intent clearly appears from the context.

1.5.2. Franchise fee -- The term "franchise fee" means the amount charged the cable operator by the governmental entity granting the cable franchise for the use of public rights-of-way by the cable operator and for other purposes coextensive with that term's definition under federal law.

1.5.3. Interested party -- The term "interested party" means any person who would be directly

affected by a request for an increase in rates or charges submitted to the Commission for approval.

1.5.4. Late fee -- The term "late fee" means any fee, assessment, or charge levied by a cable operator for the purpose of recovery of costs of billing and processing balances unpaid by the scheduled due date of a delinquent subscriber's monthly bill.

1.5.5. Person -- The term "person" means an individual, partnership, associate, joint stock company, trust, corporation, limited liability company, or governmental entity, including any franchising authority.

§150-26-2. Applicability: Issuance of Cable Television Franchises.

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 §24D-1-1 et seq. ~~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.~~

~~§150-26-3. Request for proposals:~~

~~3-1-~~ 2.2. 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-~~ 2.2.1. A description of the cable television system desired by the franchising authority, including any system specifications established by the ~~Public Service~~ Commission.

~~3-1-2-~~ 2.2.2. A statement specifying that applicants must use the application form established by the ~~Public Service~~ Commission.

~~3-1-3-~~ 2.2.3. 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-~~ 2.2.4. A statement that all applications must contain the information required by section ~~5~~ 2.9 this rule.

~~3-1-5-~~ 2.2.5. The closing date for the submission of applications (which shall be the same as that contained in the public notice).

~~3-1-6-~~ 2.2.6. 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:~~

~~4-1-~~ 2.3. 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-~~ 2.3.1. A description of the political or geographic boundaries of the area for which a franchise is sought.

~~4-1-2-~~ 2.3.2. A statement that a formal request for proposals is available to prospective applicants from a municipal, county or ~~Public~~

~~Service~~ Commission officer whose name, address, and telephone number are specified.

~~4-1-3-~~ 2.3.3. A statement that applications for the franchise must be submitted in writing following the application form and manner specified by the ~~Public Service~~ Commission 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-~~ 2.3.4. A statement that all applications will be made available for public inspection during normal business hours at a specified location within the county of the cable service area.

~~4-2-~~ 2.4. 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-~~ 2.4.1. 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-~~ 2.4.2. 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-~~ 2.4.3. The last published notice shall appear at least fifteen (15) days prior to the date of the hearing.

~~4-2-4-~~ 2.4.4. Public notice advertising proposals for more than one franchise may be published together within the same ad.

~~4-3-~~ 2.5. 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-~~ 2.5.1. 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.~~ 2.5.2. 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.~~ 2.5.3. The last published notice shall appear at least fifteen (15) days prior to the date of the hearing.

~~4.3.4.~~ 2.5.4. Public notice advertising proposals for more than one franchise may be published together within the same ad.

~~4.4.~~ 2.6. 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 ~~Public Service~~ Commission true and complete copies of:

~~4.4.1.~~ 2.6.1. The proposed public notice; and

~~4.4.2.~~ 2.6.2. The formally adopted request for proposals.

~~4.5.~~ 2.7. Upon receipt of proof of publication from the publishers, the franchising authority shall forward a copy of such proof to the Commission.

~~4.6.~~ 2.8. If the franchising authority is the ~~Public Service~~ Commission, 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.~~ 2.9. Every applicant submitting a franchising authority for a cable television franchise shall use the application form established by the ~~Public Service~~ Commission to provide the information necessary to determine whether a cable franchise should be issued. (See Form No. 1).

~~5.2.~~ 2.10. The franchising authority shall not accept applications for a cable franchise that do not use the form provided by the ~~Public Service~~

Commission. The franchising authority shall not accept applications which have not followed the instruction and format required by the Public Service Commission.

~~5.3.~~ 2.11. The application must provide all information required by the ~~Public Service~~ Commission before it may be accepted for filing and considered by the franchising authority.

~~5.4.~~ 2.12. 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.~~ 2.13. 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 ~~Public Service~~ 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.~~ 2.14. 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.~~ 2.14.1. 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.~~ 2.14.1.a. Any objections arising from the public hearing:

~~6.1.1.b.~~ 2.14.1.b. The content of the application or proposal:

~~6.1.1.c.~~ 2.14.1.c. The public need for the proposed service:

~~6.1.1.d.~~ 2.14.1.d. The ability of the applicant to offer safe, adequate and reliable service at a reasonable ~~cost~~ cost to the subscribers;

~~6.1.1.e.~~ 2.14.1.e. The suitability as to the good character of the applicant;

~~6.1.1.f.~~ 2.14.1.f. The financial responsibility of the applicant;

~~6.1.1.g.~~ 2.14.1.g. The technical and operational ability of the applicant to perform efficiently the service for which authority is requested;

~~6.1.1.h.~~ 2.14.1.h. The geography or topography of the proposed service area;

~~6.1.1.i.~~ 2.14.1.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.~~ 2.14.1.j. Any other matters the franchising authority considers appropriate in the circumstances.

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

~~7.1.~~ 2.15 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.~~ 2.15.1. There shall be an agenda for the hearing which shall specify the proposals to be considered at the hearing.

~~7.1.2.~~ 2.15.2. 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.~~ 2.15.3. 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.~~ 2.15.4. The notice of hearing shall:

~~7.1.4.a.~~ 2.15.4.a. Conform to all relevant state and local laws and ordinances;

~~7.1.4.b.~~ 2.15.4.b. Describe the agenda to be considered at the public hearing; and

~~7.1.4.c.~~ 2.15.4.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.~~ 2.15.5. 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.~~ 2.15.6. 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~~ after the later of the following dates:

~~7.1.6.a.~~ 2.15.6.a. The closing date specified for the filing of such applications; or

~~7.1.6.b.~~ 2.15.6.b. The earliest date upon which the franchising authority may convene such a hearing pursuant to local law or charter.

~~7.1.7.~~ 2.15.7. The franchising authority shall provide the ~~Public Service~~ Commission 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. 2.16.~~ 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. 2.17.~~ 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. 2.18.~~ 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. 2.19.~~ 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. 2.20.~~ 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 Commission. (See Form No. 2). All franchising agreements must be filed with the Commission and are subject to its review to ensure compliance.

~~8-6. 2.21.~~ 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 Commission are null and void, and the Commission may institute action under W. Va. Code §24D-1-1 et seq. to correct any

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

~~8-7. 2.22.~~ 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. 2.23.~~ 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:~~ **§150-26-3. Procedure for Renewal of Existing Cable Television Franchises.**

~~9-1. 3.1.~~ 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. 3.1.1.~~ 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. 3.2.~~ Upon completion of a public hearing pursuant to subsection ~~9-1. 3.1~~ 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. 3.3.~~ Every proposal for a renewal of a franchise shall be on the form established by the ~~Public—Service~~ Commission to provide the information necessary to determine whether a renewal should be granted. (See Form No. 1).

~~9.4. 3.4.~~ The franchising authority shall not accept proposals for renewal of franchises that do not use the form provided by the ~~Public Service~~ Commission. The franchising authority shall not accept proposals for renewal that have not followed the instructions and format required by the ~~Public Service~~ Commission.

~~9.4.1. 3.4.1.~~ 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. 3.5.~~ The proposal for renewal must provide all information required by the ~~Public Service~~ Commission before it may be accepted for filing and considered by the franchising authority.

~~9.5.1. 3.5.1.~~ The franchising authority shall promptly provide the ~~Public Service~~ Commission with a copy of the proposal for a renewal.

~~9.5.2. 3.5.2.~~ 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. 3.5.3.~~ 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 ~~Public Service~~ Commission, 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. 3.6.~~ Upon the filing of a proposal for renewal of a franchise, either pursuant to subsection ~~9.2.3.2.~~ 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. 3.1.~~ 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. 3.6.1.~~ 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. 3.6.1.a.~~ The cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

~~9.6.1.b. 3.6.1.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. 3.6.1.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. 3.6.1.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. 3.6.2.~~ In any administrative proceeding conducted under subsection ~~9.6.1.3.6.1.~~ 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 ~~Public Service~~ Commission shall also be given notice of this proceeding.

~~9.6.3. 3.6.3.~~ 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.~~ 3.6.4. A transcript shall be made of the administrative proceeding.

~~9.6.5.~~ 3.6.5. Within sixty (60) days ~~of~~ after the completion of an administrative proceeding conducted pursuant to subsection ~~9.6.1.~~ 3.6.1. 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 Public Service Commission. 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.~~ 3.6.6. A franchising authority's decision to deny a renewal must be based upon one or more adverse findings made with respect to the factors outlined in subsections ~~9.6.1.a.~~ 3.6.1.a. through ~~9.6.1.d.~~ 3.6.1.d. of this rule. A franchising authority, however, may not base a denial of renewal on either subsection ~~9.6.1.a.~~ 3.6.1.a. or ~~9.6.1.b.~~ 3.6.1.b. of this rule. or:

~~9.6.6.a.~~ 3.6.6.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.~~ 3.6.6.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.~~ 3.7. Any cable operator aggrieved by a final decision of a franchising authority issued pursuant to administrative proceedings pursuant to subsection ~~9.6.1.~~ 3.6.1. 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.

~~9.7.1.~~ 3.7.1. Any cable operator having its proposal for renewal denied pursuant to subsection ~~9.6.6.~~ 3.6.6. of 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.

~~9.8.~~ 3.8. 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 Commission. All franchise renewal agreements must be filed with the Commission and are subject to its review to ensure compliance.

~~9.9.~~ 3.9. 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 Commission are null and void, and the Commission may institute action ~~under~~ W. Va. Code ~~§5-18-26(c)~~ §24D-1-1 et seq. to correct any omission in the contract, as well as prohibit enforcement of any unlawful or invalid to contract provisions.

~~§150-26-10.~~ §150.26.4. **Procedure for franchising Issuance of Cable Television Franchise to non-franchised cable operators already providing cable service.**

~~10.1.~~ 4.1. 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.~~ 4.1.1. 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.~~ 4.2. A non-franchised cable operator shall, within sixty (60) days ~~of~~ after receipt of notice

from the ~~Public Service~~ Commission of the identity of its franchising authority or authorities, file an application for a franchise. This notice shall be provided by the ~~Public Service~~ Commission pursuant to W. Va. Code §24D-1-1 et seq.

~~†0.3. 4.3.~~ 4.3. 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.

~~†0.3.†. 4.3.1.~~ 4.3.1. 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.

~~†0.4. 4.4.~~ 4.4. Every application for a franchise from a non-franchised cable operator shall be on the form established by the ~~Public Service~~ Commission to provide the information necessary to determine whether a franchise should be issued. (See Form No. 1.)

~~†0.5 4.5.~~ 4.5. The franchising authority shall not accept applications for a cable franchise from non-franchised operators that do not use the form provided by the ~~Public Service~~ Commission. The franchising authority shall not accept applications which have not followed the instructions and format required by the ~~Public Service~~ Commission.

~~†0.6. 4.6.~~ 4.6. The application for a franchise must provide all information required by the ~~Public Service~~ Commission before it may be accepted for filing and considered by the franchising authority.

~~†0.6.†. 4.6.1.~~ 4.6.1. The franchising authority shall promptly provide the ~~Public Service~~ Commission with a copy of any application for franchise the franchising authority receives from non-franchised cable operators.

~~†0.7. 4.7.~~ 4.7. 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.

~~†0.7.†. 4.7.1.~~ 4.7.1. 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 ~~Public Service~~ 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.

~~†0.8. 4.8.~~ 4.8. 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.

~~†0.8.†. 4.8.1.~~ 4.8.1. Specific factors the franchising authority must consider when determining whether granting a specific cable application would be in the public interest are:

~~†0.8.†.a. 4.8.1.a.~~ 4.8.1.a. Any objections arising from the public hearing:

~~†0.8.†.b. 4.8.1.b.~~ 4.8.1.b. The content of the application or proposal:

~~†0.8.†.c. 4.8.1.c.~~ 4.8.1.c. The public need for the proposed service:

~~10.8.1.d.~~ 4.8.1.d. The ability of the applicant to offer safe, adequate, and reliable service at a reasonable cost to the subscribers:

~~10.8.1.e.~~ 4.8.1.e. The suitability as to the good character of the applicant:

~~10.8.1.f.~~ 4.8.1.f. The financial responsibility of the applicant:

~~10.8.1.g.~~ 4.8.1.g. The technical and operational ability of the applicant to perform efficiently the service for which authority is requested:

~~10.8.1.h.~~ 4.8.1.h. The geography or topography of the proposed service area:

~~10.8.1.i.~~ 4.8.1.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.~~ 4.8.1.j. Any other matters the franchising authority considers appropriate in the circumstances.

~~10.8.2.~~ 4.8.2. 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.~~ 4.9. The franchising authority shall conduct a public hearing prior to awarding any cable television franchise to 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.~~ 4.9.1. There shall be an agenda for the hearing which shall specify the proposal to be considered at the hearing.

~~10.9.2.~~ 4.9.2. 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.~~ 4.9.3. 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.~~ 4.9.4. The notice of hearing shall:

~~10.9.4.a.~~ 4.9.4.a. Conform to all relevant state and local laws and ordinances:

~~10.9.4.b.~~ 4.9.4.b. Describe the agenda to be considered at the public hearing: and

~~10.9.4.c.~~ 4.9.4.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.~~ 4.9.5. 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.~~ 4.9.6. The franchising authority shall provide the ~~Public Service~~ Commission with a copy of the Notice of Public Hearing at the time it is published.

~~10.10.~~ 4.10. 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 ~~Public Service~~ Commission in writing of its decision.

~~10.10.1.~~ 4.10.1. 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.~~ 4.10.2. The franchising agreement entered into between the franchising authority and the previously non-franchised cable operator must contain certain provisions and follow the standards as set forth by law or by guidelines as adopted by the Commission. All franchising agreements must be filed with the Commission and are subject to its review to ensure compliance.

~~10.10.3.~~ 4.10.3. 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 Commission are null and void, and the Commission may institute action under W. Va. Code §24D-1-1 et seq. to correct any omission in the contract, as well as to prohibit enforcement of any unlawful or invalid contract provisions.

~~10.10.4.~~ 4.10.4. 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.~~ 4.10.5. 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.~~ **§150-26-5.** Procedure for granting transfer of a cable franchise or cable system.

~~11.1.~~ 5.1. 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 ~~Public Service Commission~~ Federal Communication Commission (hereinafter FCC) Form 394 to provide the information necessary to determine whether a transfer should be granted. (See FCC Form 394.)

~~11.2.~~ 5.2. The franchising authority shall not accept applications for transfer of a cable franchise or cable system that do not use the FCC form 394 provided by the ~~Public Service Commission~~. The franchising authority shall not accept applications which have not followed the instruction and format required by the ~~Public Service Commission~~. FCC.

~~11.3.~~ 5.3. The application must provide all information required by the ~~Public Service Commission~~ FCC before it may be accepted for filing and considered by the franchising authority. A franchising authority shall have 120 days from the date of submission of a completed FCC Form 394, together with all exhibits and any additional information required by the terms of the franchise agreement to act upon an application to sell, assign or otherwise transfer controlling ownership of a cable system franchise.

~~11.4.~~ 5.4. The Any 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~~ that questions the accuracy of the information provided under 5.3 above or completeness of the application, must notify the applicant in writing within thirty (30) days of after receipt of the application or such information will be deemed accepted and the application will be deemed to be complete, unless the cable operator has failed to provide any additional information recently requested by the franchising authority within ten days of such receipt.

~~11.5.~~ 5.5. 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 ~~Public Service Commission~~ FCC, 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 in accordance with the time frames established in 5.4 above .~~

~~11.6.5.6.~~ 5.6. 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.

~~11.6.1.5.6.1.~~ 5.6.1. 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.5.6.1.a.~~ 5.6.1.a. Any objections arising from the public hearing:

~~11.6.1.b.5.6.1.b.~~ 5.6.1.b. The content of the application or proposal:

~~11.6.1.c.5.6.1.c.~~ 5.6.1.c. The public benefit from the transfer:

~~11.6.1.d.5.6.1.d.~~ 5.6.1.d. The ability of the applicant to offer ~~safer~~ safe, adequate and reliable service at a reasonable cost to the subscribers:

~~11.6.1.e.5.6.1.e.~~ 5.6.1.e. The suitability as to the good character of the applicant:

~~11.6.1.f.5.6.1.f.~~ 5.6.1.f. The financial responsibility of the applicant:

~~11.6.1.g.5.6.1.g.~~ 5.6.1.g. The technical and operational ability of the applicant to perform efficiently the service for which authority is requested:

~~11.6.1.h.5.6.1.h.~~ 5.6.1.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; and

~~11.6.1.i.5.6.1.i.~~ 5.6.1.i. Any other matters the franchising authority considers appropriate in the circumstances.

~~11.7.5.7.~~ 5.7. The franchising authority ~~shall~~ may 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:

~~11.7.1.5.7.1.~~ 5.7.1. There shall be an agenda for the hearing which shall specify the transfer(s) to be considered at the hearing.

~~11.7.2.5.7.2.~~ 5.7.2. 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.

~~11.7.3.5.7.3.~~ 5.7.3. 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.

~~11.7.4.5.7.4.~~ 5.7.4. The notice of hearing shall:

~~11.7.4.a.5.7.4.a.~~ 5.7.4.a. Conform to all relevant state and local laws and ordinances:

~~11.7.4.b.5.7.4.b.~~ 5.7.4.b. Describe the agenda to be considered at the public hearing; and.

~~11.7.4.c.5.7.4.c.~~ 5.7.4.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. _____

~~11.7.5.5.7.5.~~ 5.7.5. The hearing may not be held unless the public has been given notice pursuant to

subsection ~~11.7.4.~~ 5.7.4. of this rule, at least thirty (30) days prior to the date of the hearing.

~~11.7.6.~~ 5.7.6. If a public hearing is held, ~~the~~ franchising authority shall provide the Public Service Commission with a copy of the Notice of Public Hearing for Transfer at the time it is published.

~~11.8.~~ 5.8. The franchising authority shall either grant or deny a transfer of a cable franchise or cable system within a period of ~~sixty (60)~~ one hundred twenty (120) days from ~~the public hearing held pursuant to subsection 11.7. of this rule~~ receipt of the application for transfer of the cable franchise or cable system. ~~The failure of the~~ If a franchising authority fails to act within this period, the request 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. deemed granted unless the franchising authority and requesting party otherwise agree to an extension. The endorsement of the transfer of a franchise shall be made on Form No. 3.

~~11.9.~~ 5.9. 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.~~ §150-26-6. **Requests for Information.**

~~12.1.~~ 6.1 The Commission 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 Commission and objectives of the West Virginia Cable Television Systems Act.

~~§150-26-13.~~ §150-26-7. **Violation of Rules; Penalties.**

~~13.1.~~ 7.1. For each violation of these rules the Commission may fine a cable operator in an amount

not less than ~~fifty~~ one hundred dollars (~~\$50.00~~) (\$100.00) nor more than ~~five hundred one thousand~~ dollars (~~\$500.00~~) (\$1000.00) 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.~~ §150-26-8. **Severability**

~~14.1.~~ 8.1. 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.

**TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION**

**SERIES 27
IMPLEMENTING REGULATIONS**

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 187CSR2 effective from June 11, 1997.

§150-27-1. ~~General.~~

1.1. ~~Scope.~~ -- This legislative rule pertains to the implementation of provisions of the West Virginia Cable Television Systems Act, W. Va. Code §24D-1-1 et seq., relating to public access channels, notification of service and rate changes, and payment of annual fees and document fees.

1.2. ~~Authority.~~ -- W. Va. Code §24D-1-1 et seq.

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

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

§150-27-2. ~~Definitions.~~

2.1. ~~"Franchise fee" means the amount charged the cable operator by the governmental entity granting the cable franchise for the use of public right-of-ways by the cable operator and for other purposes coextensive with that term's definition under federal law.~~

§150-27-3. ~~Public, Educational & Governmental Channel Requirements.~~

3.1. ~~The requirement of W. Va. Code §24D-1-1 et seq. shall be imposed only upon initial franchise authorizations and franchise renewal authorizations. Existing cable franchises are exempt from those requirements. (See Ed. Note above.)~~

§150-27-4. ~~150-26-9.~~ Notification of Service and Rate Changes.

4.1. ~~9.1~~ Cable operators are required by W. Va. Code §24D-1-1 et seq. to provide all subscribers with sufficient advance written notice of any retiering of channels or increase of rates for service so that subscribers have the opportunity to discontinue service prior to the imposition of the notified rate increase or retiering. A Cable operator shall provide the subscriber advance written notice at least thirty (30) days before any rate increase or retiering takes effect, and shall provide a copy of the notice contemporaneously to the Commission.

4.2. ~~9.2~~ Cable operators shall notify the ~~Public Service~~ Commission of any change in cable service rates and submit the new schedule of rates on the form prescribed by the Commission for that purpose at least sixty (60) days prior to the effective date of the rates.

§150-27-5. ~~150-26-10~~ Payment of Annual Fees.

5.1. ~~10.1~~ Pursuant to W. Va. Code §5-18-28 ~~§24D-1-25~~ each and every cable operator is required to pay the Commission by September 1 of each year an annual fee of ~~thirty (30)~~ twelve (12) cents per subscriber. To the extent that the payment of this annual fee is, when computed together with any franchise fee paid or owing, greater than five (5) percent of the cable franchise's gross annual revenues, then the payment of this annual fee shall be deducted from and credited as an offset to any

franchise fee amount to be paid to the franchising authority. In all other cases the annual fee shall be in addition to the franchise fee owed to the franchising authority.

~~§150-27-6.~~ 150-26-11 Payment of Filing and Document Fees.

~~6.1.~~ 11.1. Pursuant to W. Va. Code ~~§24D-1-1 et seq.~~ §24D-1-20, each and every cable franchisee which is filing an initial, renewal or transfer of franchise document is required to pay the Commission at the time of filing the franchise document a filing fee of fifty dollars (\$50).

~~6.2.~~ 11.2. Pursuant to W. Va. Code ~~§24D-1-1 et seq.~~ §24D-1-20 in each year a filing fee is not required to be paid then each and every cable franchise shall pay to the Commission beginning in ~~1990~~ 1999 by September 1 of each year a document fee of twenty-five dollars (\$25) for each franchise it holds. To the extent that the payment of this document fee is, when computed together with any franchise fee paid or owing, greater than five (5) percent of the cable franchise's gross annual revenues, then the payment of this document fee shall be deducted from and credited as an offset to any franchise fee amount to be paid to the franchising authority. In all other cases this document fee is in addition to the franchise fee owed to the franchising authority.

~~§150-27-7.~~ 150-26-12. Charges for Disconnection and Downgrades.

~~7.1.~~ 12.1. Notwithstanding any franchise agreement provision to the contrary, after the effective date of this rule no cable system shall charge a subscriber any fee for the disconnection of cable service.

~~7.2.~~ 12.2. Unless contrary to federal law or otherwise specifically provided for in an existing franchise agreement, after the effective date of this rule no cable system shall charge a subscriber any fee for changing to a less expensive cable service tier except where:

~~7.2.1.~~ 12.2.1. The downgrade charge is applied only to subscribers who have not been subject to a rate increase within the proceeding thirty (30) days; and

~~7.2.2.~~ 12.2.2. The downgrade ~~charges~~ charge does not exceed the lesser of the actual out of pocket cost to perform the downgrade or the usual connection fee for new subscribers charged by the cable system. In no event shall the downgrade charge exceed fifty dollars (\$50).

~~7.3.~~ 12.3. Where a subscriber seeks to switch and substitute one or more premium channels with a less expensive premium channel or group of premium channels, this change ~~is in~~ in service shall not be considered a downgrade subject to this rule, and, the cable operator may charge a reasonable fee for this change in service.

~~§150-27-8.~~ 150-26-13. Notice of Potential Transfers due to Encumbrances.

13.1. In any encumbrance of a cable system's assets whereby all or substantially all of the cable system's assets are pledged as security for a note or subject to a lien to obtain financing, the loan agreement as well as all other security agreements pertinent to the loan agreement shall contain the following disclosures:

13.1.1. "Notwithstanding anything to the contrary in the loan agreement or any other security agreements pertinent to the loan agreement a default or assignment under the agreements does not constitute automatic transfer of the cable system's franchise rights. The appropriate franchise authority's approval must be sought before the transfer of franchise rights in accordance with W. Va. Code §24D-1-1 et seq. and ~~Legislative Rules, these rules.~~ Public Service Commission, Franchising Procedures 150-CSR-26-1."

13.1.2. "In the event of an act of default prompting the secured party or lienholder to seek foreclosure, the parties or petitioners agree to notify the proper franchise authority and the ~~Public Service Commission~~ Public Service Commission within seven (7) days ~~of~~ after the default. This notification is to give the franchise

authority and the Commission the opportunity to determine if the default would cause inadequate, unsafe, or unreliable service in violation of W. Va. Code §24D-1-1 et seq.

~~§150-27-9. Violation of Rules; Penalties.~~

~~9.1. For each violation of this rule the Commission may fine a cable operator in an amount not less than fifty dollars nor more than five hundred dollars for each violation. Each day of non-compliance with a court order or injunction issued in connection with the enforcement of these rules or W. Va. Code §24D-1-1 et seq. is a separate violation.~~

§150-26-14.

14.1 Except where these rules specify otherwise, administrative procedures for consumer complaint resolution and franchising issues before the Commission under the West Virginia Cable Television Systems Act, West Virginia Code §24D-1-1 et seq., shall be governed by the Commission's Rules of Practice and Procedure, 150 CSR 1.

TITLE 150
PROCEDURAL RULE
PUBLIC SERVICE COMMISSION

SERIES 28
ADMINISTRATIVE PROCEDURES FOR CONSUMER COMPLAINT RESOLUTION UNDER
THE WEST VIRGINIA CABLE TELEVISION SYSTEMS ACT

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 187CSR3 effective from October 7, 1991.

§150-28-1. General Provisions:

—1.1. Scope. -- This rule shall apply to practice before the Public Service Commission in contested cases brought through the Administrative Procedures Act under the West Virginia Cable Television Systems Act.

—1.2. Authority. -- W. Va. Code §24D-1-1 et seq.

—1.3. Filing Date. -- June 11, 1999.

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

—1.5. Construction -- This rule shall be liberally construed to effectuate the purposes of the underlying statutory enactments.

—1.6. Severability -- If any provision of any section, subsection, sentence, phrase, clause or provision of this rule shall be held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not effect the application of such section, subsection, sentence, phrase, clause or provision of this rule to any other person or circumstance and, to that end, each and every section, subsection, sentence, phrase, clause, or provision of this rule shall be severable from every other section, subsection, sentence, phrase, clause, or provision.

§150-28-2. Definitions:

—2.1. Act shall mean the West Virginia Cable Television Systems Act.

—2.2. "Answer" shall mean that response to the complaint which is filed by the respondent in conformity with these rules.

—2.3. "Complaint" shall mean that written statement which contains the requisite elements set forth in W. Va. Code §24D-1-1 et seq.

—2.4. "Consent order" shall mean a final order of the Public Service Commission which is entered into by the parties with their consent.

—2.5. "Findings" shall mean the presiding officer's findings of fact and law, together with any proposed order and statement of rationale set forth in his decision.

—2.6. "Motion" shall mean any application by either party for an order.

—2.7. "Order" shall mean any order of the presiding officer, and "final order" shall mean the final dispositive order of the Commission whether such order is adjudicated or entered by consent.

—2.8. "Party" or "parties" shall mean the parties to the case, including any respondent, and any intervenor.

~~— 2.9. "Pleading" shall include any complaint, answer, motion, or other document filed in a contested case.~~

~~— 2.10. "Presiding officer" shall mean that designate of the Public Service Commission who is assigned to hear any evidence in any contested case; to make decisions in any contested case; and sign any orders in any contested case; the term includes any hearing examiner appointed or designated by the Commission.~~

~~— 2.11. "Respondent" shall mean any cable operator who is alleged to have engaged in conduct violative of the act, the rules thereunder, the pertinent franchise agreement, or is otherwise engaged in conduct which the Commission has authority to proscribe by order.~~

§150-28-3. Institution of Contested Cases:

~~— 3.1. A contested case shall commence upon the filing of a formal request in the form of a verified complaint with the Public Service Commission. The complaint shall contain the name(s) of the respondent(s); a short statement of facts supporting the complaint, a statement of the laws, rules, or franchise terms purported to be violated, or cite to law giving the Commission the authority to proscribe the conduct by an order, and the signature of the complainant or his or her counsel. In addition, the complainant must set forth the affirmative relief which he or she desires.~~

~~— 3.2. The complaint shall be numbered upon filing with the appropriate officer designated by the Public Service Commission for that purpose. Such numbers shall be in consecutive order commencing with the last two digits of the calendar year in which the contested case was commenced.~~

~~— 3.3. The complainant shall upon filing supply the Commission with the identities and, if known, the addresses of the persons to be served. The Commission upon receiving the filing shall promptly complete and serve upon respondent(s) a Notice designating a date not less than thirty (30) days after service by which any respondent must answer, along with a statement that a failure to answer the~~

~~attached complaint may result in a default order being entered, and the name and address of the complainant or his or her counsel upon whom such respondent shall make his answer.~~

~~— 3.4. If any person fails to answer the complaint within thirty (30) days, or otherwise inhibits the proceedings, the presiding officer may upon motion by complainant or complainant's counsel deem that a decision by default shall be entered either with or without additional evidence, depending upon the matter, in conformity with the provisions of Rule 55 of the West Virginia Rules of Civil Procedure.~~

§150-28-4. Answer in Contested Cases:

~~— 4.1. Within thirty (30) days after being served, a respondent shall file an answer with the Commission and the complainant or complainant's counsel unless an agreement has been reached with complainant's counsel or the presiding officer, after considering a motion, grants additional time to answer the complaint. The answer shall contain admissions of or denials of facts as alleged within the complaint. However, if after reasonable investigation, respondent determines that he or she has no knowledge of the facts as presented in the complaint, the respondent may answer accordingly. The answer shall be signed by the respondent or authorized officer or counsel thereof, be sworn to, and contain the signature and address of the attorney of record if such may be the case. In addition, the respondent may set forth any affirmative defenses or other defenses to the complaint if he may so desire.~~

~~— 4.2. In addition to or in lieu of any answer, a respondent may make any motion to dismiss, motion for more definite statement, or motion to strike. However, if the presiding officer postpones ruling on such motions or deny such motions, the respondent shall answer the complaint within ten (10) days after denial of such motion, or written notice from the presiding officer of such postponement.~~

~~— 4.3. Motions to dismiss shall include motions based upon (1) lack of subject matter jurisdiction; (2) lack of personal jurisdiction; (3) failure to state~~

a claim upon which relief may be granted: (4) res judicata; or (5) other motions available under Rule 12 of the West Virginia Rules of Civil Procedure. The presiding officer must rule on these motions before any final order can be entered by the Commission, and may hold a preliminary hearing and issue a finding on any such motion prior to the hearing of the case-in-chief.

§150-28-5. Service of Complaint.

—The complaint in any contested case may be served upon any respondent in a manner consistent with W. Va. Code §29A-7-2 or Rule 4 of the West Virginia Rules of Civil Procedure as existing at the time of institution of the action. As a general rule of practice the Commission shall first attempt to make service by certified mail, return receipt requested.

§150-28-6. Style of Contested Case to be on Each Pleading.

—Each pleading in any action shall contain a caption setting forth the agency before whom the action is commenced, the caption of the case as presented in the complaint, a case number as assigned by the officer designated by the Public Service Commission to maintain the record, and a designation of the type of pleading which is presented. Commission employees may add such captions when they are not properly included by a party or petitioner.

§150-28-7. Filing of Pleadings in Contested Cases.

—7.1. The original of any complaint, answer, motion, pleading, affidavit, or other matter shall be filed with the Executive Secretary of the Commission, unless otherwise directed.

—7.2. Each original item, other than the complaint, filed with the Executive Secretary of the Commission or other person designated to receive such filings shall contain a certificate of service certifying that a true copy of the item had been served upon the party or the party's counsel, the date of such service, the manner of service, and the signature of the party or the party's counsel

obtaining such service. The complaint, together with the required notice, shall be served by the Commission upon the respondent.

—7.3. When service of pleadings other than a complaint is obtained by any method other than personal delivery, three (3) additional days shall be allowed for delivery by that means.

§150-28-8. Amendment of Complaint or Answer.

—8.1. A party may amend a pleading once as a matter of right at any time before a responsive pleading is served. If the pleading is one to which no responsive pleading is permitted, a party may amend it at any time within twenty (20) days after it is served. Otherwise a party may only amend a pleading after motion and hearing pursuant to Rule 10 below. Permission to amend shall be freely given so long as it permits presentation of the merits of the action, the adverse party is not prejudiced by the sudden assertion of the amended pleading, and the adverse party is given sufficient time to meet the issue.

—8.2. Any amendments to any complaint or answer shall relate back to the original date of institution of proceedings unless such relation back prejudices the rights of the other party to the action or the law otherwise will not permit such relation back.

—8.3. When any amended complaint is properly allowed, filed and served the respondent shall answer such complaint within ten days, or within the time remaining for answer to the original pleading, whichever is longer.

§150-28-9. Scheduling Conference.

—Not earlier than thirty days after the issues have been joined, the presiding officer may set a scheduling conference to set forth critical dates and times for certain proceedings and to set a tentative hearing date. The dates and times shall not be altered unless good cause is shown by the party seeking adjustment.

§150-28-10. Motion Practice:

~~10.1. Any person who files a motion to dismiss, a motion for more definite statement, motion to strike, or any other motion shall deliver to the presiding officer, the officer designated to maintain the record, and to all other parties who may be affected a copy of the motion and a memorandum in support of such motion which sets forth the factual and legal basis of such motion. Failure to provide a memorandum in support of the motion may result the denial of such motion without hearing.~~

~~10.2. Any person who may be affected by a motion by another party should file a response to such motion within fourteen (14) days after service of such motion by filing a memorandum setting forth such party's legal and factual position. Any failure to file a response or memorandum may be deemed a waiver of right to oppose such motion and may result in the entry of the motion as prayed.~~

~~10.3. The presiding officer may rule on such motions with or without hearing. Setting a hearing on such motions shall be in the discretion of the presiding officer.~~

§150-28-11. Discovery:

~~11.1. Discovery in contested cases shall be conducted in the manner as provided for within the West Virginia Rules of Civil Procedure except as otherwise stated herein. The time periods for discovery as contained in the West Virginia Rules of Civil Procedure shall be shortened as follows:~~

~~11.1.1. To the extent that discovery requests are made in conjunction with the complaint or prior to the filing of a responsive pleading, the party shall have a period of forty-five (45) days to respond, and~~

~~11.1.2. To the extent that general discovery requests are made otherwise, the time periods shall be shortened to fifteen (15) days rather than the thirty (30) days as provided for in the West Virginia Rules of Civil Procedure.~~

~~11.1.3. Notwithstanding the prior positions, the presiding officer shall be empowered to shorten or enlarge time limitations upon a showing of good cause.~~

~~11.2. No respondent shall fail to respond to discovery on the basis of a pending motion to dismiss, motion to strike, or motion for more definite statement filed in response to a complaint unless a motion to quash the discovery or a motion for a protective order against the discovery has been filed.~~

~~11.3. No person may utilize a deposition upon written or oral questions in any proceeding as a substitute for actual testimony unless the presiding officer approves after motion.~~

~~11.4. Any party who fails to comply with discovery requests may be subject to an order of the presiding officer compelling discovery or, after such an order has been granted, sanctions which may include, but may not be limited to the following:~~

~~11.4.1. Dismissal of the action or entry of default judgment;~~

~~11.4.2. An order prohibiting the use of such evidence in the proceeding;~~

~~11.4.3. An order requiring the offending party to reimburse the aggrieved party for costs and expenses, including attorney fees if permitted under state law; or~~

~~11.4.4. Any other relief which may be just and proper under the circumstances.~~

§150-28-12. Issuance of Subpoena by Public Service Commission:

~~12.1. Any party in any contested case may seek a subpoena to compel the presence of any person or to compel the production of any evidence. The party requesting such a subpoena shall provide a written statement to the person designated by the Public Service Commission to maintain the record setting forth the number of subpoenas requested, the types of each subpoena requested, the date and~~

location at which the person who is subject to the subpoena shall appear, and the name and address of such person if the party desires the Public Service Commission to make service.

~~12.2. Any party other than the Public Service Commission shall provide, upon request of a subpoena, a separate check payable to the person who is subject to the subpoena in an amount to reimburse such person who is subject to the subpoena for his or her expenses in an amount not greater than that amount which may be paid to witnesses in actions in the courts of this state, or alternatively, a sworn statement obligating the party to such payment.~~

§150-28-13. Prehearing Conference.

~~13.1. The presiding officer may conduct a prehearing conference before a hearing in any contested case. At such hearing, the presiding officer may require the parties to brief him regarding the evidence and law concerning all relevant issues, rule on outstanding motions, and set forth other matters which may be necessary to dispose of prior to hearing.~~

~~13.2. The presiding officer may require briefs or memoranda from the parties setting forth any matters which the hearing officer deems relevant.~~

§150-28-14. Order by Default or Summary Judgment.

~~14.1. Any person who fails to answer any complaint may be subject to an order by default in accordance with the provisions of Rule 55 of the West Virginia Rules of Civil Procedure. A copy of the final order issued by the Commission shall be served upon the defaulting party and shall be final ten (10) days after such service.~~

~~14.2. After the issues have been joined and discovery has closed, the parties may file motions for summary judgment setting forth by affidavit, law, and evidence the reasons summary judgment must be granted. Grant of a summary judgment shall be reviewed by the Commission for issuance as a final order. The presiding officer and Commission~~

shall be guided by the provisions of Rule 56 of the West Virginia Rules of Civil Procedure in making their determination.

~~14.3. If summary judgment fails to resolve all issues, the presiding officer shall conduct a hearing and, after hearing evidence and argument, shall issue his findings, which findings shall include a decision as to all remaining issues to the complaint. Within ten (10) days after the entry of such findings and decision, the parties may file exceptions and ask for reconsideration. The presiding officer may schedule oral argument regarding the motion for reconsideration, may rule on the briefs filed in support of the motion, or may deny such motion and affirm the findings and decision. Such findings, including the decision therein, shall be certified to the Commission for final order upon ten days after its issuance or, if reconsideration is requested, immediately upon denial of reconsideration.~~

~~14.4. The presiding officer may set forth and recommend in his findings, and the Commission may require in its final order, restitution to consumers who have been adversely affected by the actions of the respondent, provided the respondent received notice that such restitution was being sought.~~

§150-28-15. Intervention.

~~15.1. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.~~

~~15.2. Upon timely application anyone may be permitted to intervene in an action: (1) when a state of this state confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or~~

~~executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or may pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the presiding officer shall consider whether the intervention will unduly delay or prejudice and adjudication of the right of the original parties.~~

~~— 15.3. Intervention under sections 15.1 and 15.2 shall be by motion filed pursuant to sections 7 and 10 of this rule.~~

~~150-28-16. Entry of Findings and Final Order.~~

~~— 16.1. Within fourteen (14) days of any hearing on a motion, the presiding officer shall issue his decision granting or denying the motion and set forth his findings supporting the decision.~~

~~— 16.2. Within thirty (30) days of the close of the hearing on the merits of the case, the presiding officer shall issue and report in writing his findings to the Commission and the parties thereto. The findings shall state the various findings of fact and conclusions of law relied upon by the presiding officer and set forth a proposed order together with the reasons for the decision.~~

~~— 16.3. Within forty-five (45) days the Commission shall adopt, reject, or modify the proposed order by issuance of a final order, which final order shall be in conformity with W. Va. Code §29A-5-3, or alternatively shall, by order, set aside the proposed order and schedule a hearing on the matter before the full Commission.~~

~~§150-28-17. Arbitration Alternative.~~

~~— 17.1. Parties may agree to waive their right to a hearing, and instead elect to submit the matter to binding arbitration.~~

~~— 17.2. Appeal to the Commission from the arbitration decision must be made within thirty (30) days of the decision. The Commission in its discretion may choose to grant or deny an appeal petition.~~

**TITLE 150
PROCEDURAL RULE
PUBLIC SERVICE COMMISSION**

**SERIES 29
RATE REGULATION 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 187CSR4 effective from August 28, 1993.

§150-29-1. General:

~~1.1. Scope. -- This procedural rule establishes the procedures necessary for the Public Service Commission to obtain certification from the Federal Communications Commission pursuant to 47 U.S.C. §543 and fulfill its mandate under W. Va. Code §24D-1-1 et seq. to regulate rates to the extent permitted by federal law.~~

~~1.2. Authority. -- W. Va. Code §24D-1-1 et seq.~~

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

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

§150-29-2. §150-26-15. Rate Regulation.

~~2.1. 15.1. The Public Service Commission (hereinafter the "Commission") is authorized by W. Va. Code §24D-1-1 et seq. to regulate rates and charges of cable television systems to the extent allowed by federal law. The Congress of the United States established a national policy concerning cable communications. (P.L. 98-549 as codified at 47 U.S.C. §521 et seq.) Subsequently, Congress amended this national policy to allow limited regulation of rates and charges by franchising authorities including the Commission. (P.L. 102-305) However, the Commission must become certified with the Federal Communications Commission (hereinafter "FCC") before the Commission may undertake regulation of rates and~~

charges. (47 U.S.C. §543) Part of the certification criteria is the requirement that the Commission adopt regulations consistent with the FCC's regulations regarding rates subject to regulation under 47 U.S.C. §543 and that the Commission adopt regulations regarding rate regulations proceedings which provide a reasonable opportunity for the consideration of the views of interested parties.

§150-29-3. Definitions:

~~3.1. For the purposes of this Rule:~~

~~3.1.1. The term "interested party" (or "parties") means any person who will be directly affected by a request for an increase in rates or charges submitted to the Commission for approval.~~

~~3.3.2. The term "person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity including any franchising authority.~~

§150-29-4. Regulations of rates and charges.

~~4.1. 15.2 The Commission will follow the rate regulations now or in the future promulgated by the FCC and all rate regulation proceedings shall be in accord with such FCC regulations. All parties to any rate regulation proceeding before the Commission should make reference to and consult the appropriate FCC regulations.~~

~~§150-29-5. Consideration of the views of interested parties:~~

~~5-1~~ 15.3 Any interested party shall be allowed to present his/her/its views regarding any request ~~tar~~ for cable rate approval to the Commission for consideration. Any interested party may make a written submission by hand delivery or by United States' ~~mail~~ mail, return receipt requested, which must be received at the Commission's offices no later than ten (10) calendar days prior to the first date the Commission is required to act on any request for cable rate approval. If the Commission invokes its authority to extend the time allowed for consideration of any request, no written submission may be filed during the extension period. In addition to or in lieu of a written submission, any interested party may appear before the Commission at any meeting at which any request for cable rate approval is to be considered. As the Commission is not required by federal law to hold a hearing on any request for cable rate approval, any interested party desiring to speak at a hearing, if one is held, shall notify the Executive Secretary of the Commission of such intent no later than the last business day before any such hearing is to be held. When any request for cable rate approval is filed with the Commission any interested party may ~~file~~ file with the Executive Secretary a contingent statement of intent to make an appearance at any hearing. The interested party shall provide the Executive Secretary such information as the Executive Secretary may deem necessary for purposes of giving notice (telephonically, if possible, and/or by United States mail return receipt requested if feasible) of any hearing which may be scheduled pursuant to such request for cable rate approval. In the event a hearing is scheduled, the Executive Secretary shall give any interested party which has filed a contingent notice of intent such reasonable notice of the hearing as may be possible.

**TITLE 150
PROCEDURAL RULE
PUBLIC SERVICE COMMISSION**

**SERIES 30
FORM AND SERVICE OF NOTICE UNDER W. VA. CODE §24D-1-1 et seq.**

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 187CSR5 effective from March 5, 1994.

§187-6-1. General.

~~1.1. Scope. -- This procedural regulation establishes the form of notice and procedures for the service of notice required under W. Va. Code §24D-1-1 et seq. whenever a cable operator proposes to install cable television service or facilities upon the property of a landlord.~~

~~1.2. Authority. -- W. Va. Code §24D-1-1 et seq.~~

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

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

§187-6-2. 150-26-16. Form of Notice: Notice of Requirements When Cable Operator Proposes to Install Cable Television Service or Facilities Upon Property of Landlord.

2-1. 16.1. The notice required under W. Va. Code §24D-1-1 §24D-2-7 et seq. when required to be in written form shall contain the following:

2-1.a. 16.1.1. The name and address of the landlord:

2-1.b. 16.1.2. The name and address of the cable operator:

2-1.c. 16.1.3. A citation to the West Virginia Tenants' Rights to Cable Services Act, Cable Television Systems Act, W. Va. Code §24D-1-1 et seq.

~~2-1.d. 16.1.4. A description of the facilities and equipment to be installed upon the property:~~
and

~~2-1.e. 16.1.5. A short description of the property upon which the installation is to be made: and~~

~~2-1.f. 16.1.6. The approximate date of installation.~~

2-2. 16.2. The requirements of section 16.1. will be deemed to be met when the required notice is in a form in substantial compliance to ~~exhibit A attached hereto:~~ Form No. 4.

§187-6-3. Service of Notice.

3-1. 16.3. Whenever written notice of installation is required to be served on a tenant, landlord, or authorized agent the following shall be deemed to be proof that service of the written notice has been made:

3-1.a. 16.3.1. A statement signed by the person upon whom the notice is to be served which indicates the date the notice was served; or

3-1.b. 16.3.2. A statement signed by a credible person, over the age of eighteen (18), that the written notice was personally delivered by such person to the person upon whom it is to be served or that person's authorized agent and showing the date service of the notice is accomplished; or

3-1.c. 16.3.3. The return receipt of delivery by certified mail showing acceptance by the person

upon whom the notice is to be served or that person's authorized agent.

~~TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION~~

~~SERIES 31
CALCULATION AND COLLECTION
OF LATE FEES~~

~~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 187CSR6 effective from June 30, 1997.~~

~~§150-31-1. 150-26-17. General - Calculation and Collection of Late Fees~~

~~1.1. Scope. -- This legislative rule sets forth the methods to be used by cable operators in calculating and collecting late fees from subscribers.~~

~~1.2. Authority. -- W. Va. Code §24D-1-1 et seq.~~

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

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

~~§150-31-2. Definitions:~~

~~2.1. For the purpose of this rule, the terms "late fee" or "late fees" include any fee, assessment or charge levied by a cable operator for the purpose of recovering the costs of billing and processing balances unpaid by the scheduled due date of a delinquent subscriber's monthly bill.~~

~~§150-31-3. Method of Calculation:~~

~~3.1. 17.1. Cable operators electing to charge late fees may charge a fixed fee of not more than two dollars (\$2.00) on the unpaid balance after the scheduled due date.~~

~~§150-31-4. Method of Notification:~~

~~4.1. 17.2. Cable operators must provide written notice to cable subscribers of the operator's late fee policy prior to charging any late fees. One of the following methods shall be used:~~

~~4.1.a. 17.2.1. For companies with monthly, bi-monthly or quarterly billing periods, notice shall be printed on or supplied with each billing statement detailing the scheduled due date and the amount of or percentage rate of any possible late fee; or~~

~~4.1.b. 17.2.2. For companies with annual or coupon book billing systems, a written notice must be supplied to each subscriber at least annually detailing the due date and amount or percentage rate of any possible late fee. This information may be included with any notice required by W. Va. Code §24D-1-1 et seq. or by federal law to be delivered to subscribers.~~

~~§150-31-5. Prohibition of Duplicate Collection:~~

~~5.1. 17.3. A cable operator may collect a late charge only once on any individual billing statement for a billing period, however long it remains unpaid.~~

~~§150-31-6. Requirement of Reasonable Notice:~~

~~6.1. 17.4. A cable operator may not impose a late fee unless the scheduled due date of a payment is at least twenty days following the date the bill or statement for such payment is mailed to the subscriber by placing the same, postage prepaid, in the United States mail.~~

~~§150-26-18. Notices to be Mailed and Filed by Cable Operators.~~

~~18.1. Annually, every cable operator shall mail to each of its subscribers a notice which informs subscribers how to communicate their views and~~

complaints to the cable operator and to the Commission. (See Form No. 5). Every cable operator must file with the Commission a certification form that the notice was sent to its subscribers. (See Form No. 6).

§150-26-19. Annual Report

19.1. Annually, every cable operator shall file an annual report with the Commission. (See Form No. 7). Upon written request and for good cause shown, the Commission may approve or disapprove, through its Executive Secretary, a reasonable extension of time to file the financial and statistical (or annual) report. Such application is to be made before the expiration of the time for filing the report.

§150-26-20. - Technical Standards

20.1. The Commission of West Virginia adopts by reference the Federal Communications Commission's rules on technical standards in effect as of the effective date of these rules.

FORM NO. 1 AND INSTRUCTIONS

**APPLICATION OR PROPOSAL FOR GRANT OR
RENEWAL OF A CABLE FRANCHISE**

A. Introduction

The purpose of this application or proposal ("application") form is to comply with the provisions of the West Virginia Cable Television Systems Act, West Virginia Code §24D-1-1 et seq. (1999), and the Cable Communications Policy Act of 1984 ("Cable Act"). This document contains or refers to information and instructions relating to the preparation and filing of the application; the conditions and provisions regarding the operation and maintenance of the cable communications system; and the procedure to be used in evaluating the application. Appended are forms indicating information which must be provided by the Applicant.

A term used in this document shall have the same meaning as the term is defined in W.Va. Code §24D-1-1 et seq.

Applicant should carefully read the following instructions, since they contain various data and specifications which must be used in the preparation of its application. This document consists of: (1) the General Instructions; (2) the Information Requirements; (3) Applicant's Affidavit; and (4) Forms A, B, C, D, E, F, G, H, and I.

No application or proposal for renewal or grant of a cable franchise may not be accepted by a Franchising Authority unless it follows the required format and provides all information requested herein.

THE FRANCHISING AUTHORITY RESERVES THE RIGHT TO REQUIRE APPLICANT TO SUBMIT TO THE FRANCHISING AUTHORITY FURTHER AND MORE DETAILED INFORMATION THAT IS CALLED FOR BY THESE INSTRUCTIONS, OR THAT MAY BE INCLUDED IN ANY APPLICATION, ABOUT ANY MATTERS CONCERNING WHICH THE FRANCHISING AUTHORITY MAY INQUIRE.

B. Filing of Application

Three (3) copies of Applicant's application, together with all accompanying enclosures, shall be submitted in sealed envelopes or cartons with the caption: "CABLE FRANCHISE APPLICATION" addressed to the appropriate Franchising Authority as determined by the Public Service Commission of West Virginia (hereinafter "Commission"). If the Commission is not the Franchising Authority, then the Applicant shall also file one copy of the completed application with the Commission addressed to: Public Service Commission of West Virginia, P. O. Box 812, Charleston, WV 25323.

150 CSR 26

The application must be accompanied by a filing fee of Two Hundred Fifty Dollars (\$250). The filing fee shall be by check made payable to the Franchising Authority.

C. Authorization

At the time of application, Applicant shall disclose to the Franchising Authority, in writing, the names, addresses and occupations of all persons who are authorized to represent or act on behalf of the Applicant in those matters pertaining to the application. For each person so authorized, Applicant shall state the limits, if any, of the authority of the individual to make representations or act on behalf of Applicant with respect to matters pertaining to the application. The requirement to make such disclosure shall continue until the Franchising Authority shall have accepted or rejected Applicant's application or until Applicant withdraws its application.

D. Liability of Parent Entities

Applicant should clearly state what other corporations, entities, or persons, if any, are intended to be jointly and severally liable for the obligations of Applicant.

The limitations on the joint and several liability of any corporation, person or entity, if any is proposed, shall be clearly and expressly set forth within the application.

E. Use of Application Forms

The application forms have been designed to elicit pertinent data that will be used in evaluating the application. Applicant should provide answers to questions sequentially. If the answer to a particular question is no, or "not applicable," so state. Responses shall include the question numbers and shall incorporate a sufficient portion of the questions to make clear the topic being addressed. Failure to respond to every question or to provide requested information may result in the application being considered unacceptable. A response of "not applicable" may be appropriate to specific questions. ("N/A" means "not applicable.")

Applicant should supply answers on the enclosed forms where furnished or on replicas thereof wherever possible. If additional space is needed, the Applicant should show, at the top of each page of the proposal, the form and/or question number which applies to the first question being addressed on that page. The pages should be numbered, for example, "A-1, A-2, etc." for the responses to Form A, and similar numbering for other sections.

Applicant is requested to use 8 ½" by 11" pages and to avoid oversized pages which cannot be copied easily. Tabulations, such as pro forma sheets, may be reduced to 8 ½" by 11" as long as they remain legible. Tabular summaries should be used wherever possible. Where the forms specify a set of column headings to be used in a tabular response, all headings must be used even if some columns are to be blank or are not applicable.

150 CSR 26

F. Franchise Documents

The documents constituting a franchise shall be W.Va. Code §24D-1-1 et seq.; all rules in effect as promulgated by the Commission; the application together with any amendments thereof which are authorized under section H of these instructions; and the franchise agreement.

G. Clarification of Franchise Documents

In the event that Applicant has questions as to any terms, conditions or provision of this application or the meaning or interpretation thereof, it may request information or clarification by submitting such request in writing to: Public Service Commission of West Virginia, P. O. Box 812, Charleston, WV 25323.

Applicant, by submitting its application, shall have represented the facts that it agrees that it has no unanswered questions with respect to the application form, and that it has no basis for withdrawal or modification of this application on the basis of misunderstanding.

H. Amendment to Application

Corrections of inadvertent errors, if timely received, will be considered. Additional or clarifying information or data may be requested by the Franchising Authority, if, in its judgment such information or data will aid it in analysis of the application.

If ambiguities or inconsistencies are found by the Franchising Authority in the application during the evaluation period, the Franchising Authority may request and upon such request the Applicant shall be required to submit a clarification. Such Clarifications will become part of the application as if they had been submitted with the original application material.

I. Submission of Data on Other Systems

Information may be solicited from other communities in which any entity related to Applicant operates cable television systems to determine the quality of its performance in those communities. By submitting an application, Applicant will grant the Franchising Authority or its representatives the right to contact personnel or examine the facilities of such systems. By submitting an application, Applicant consents to both the solicitation of such information by the Franchising Authority and the disclosure of such information by the comparable Franchising Authority where such entities operate.

J. Application Cost

The funds expended by Applicant in preparation of its application, shall be at Applicant's own risk and cost.

150 CSR 26

K. Consideration of Application

Consideration of the application shall be governed by the West Virginia Cable Television Systems Act, W.Va. Code §24D-1-1 et seq., applicable rules, and the Cable Communications Policy Act of 1984, 47 U.S.C. §521 et seq.

II. INFORMATION REQUIREMENTS

A. Financial Statements and Responsibility

The application must include a statement of Applicant's financial condition, financial responsibility and resources, including a financial statement reviewed or audited by an independent public accountant for the most recent fiscal year, and for the last quarter an unaudited statement and a financial statement of any parent organization. The rendering of the financial statements should be in such form as will clearly reveal the extent of the Applicant's cable operations, including investment in cable facilities, revenues from all sources, expenses of operations, and the accounting policies used in the preparation of the statements including those related to income taxes, parent advances, charge backs, and allocations.

B. History and Experience

The application must include a narrative account of Applicant's history and experience to demonstrate its ability to furnish efficient and dependable service to the public.

The narrative account should include a description of the background and experience of the senior personnel who will manage the operation of the cable system.

C. Description of Proposed System

Applicant must include a description of the cable system proposed to be operated and/or installed, including such detail as may permit a proper evaluation of the merits of the application. The description shall include discussions if appropriate, of how service will be converted from any existing facility to any new facility, the potential use of fiber optics in trunk lines and the distribution systems; and the potential use of addressable taps.

Please break down this analysis into several parts, beginning with a projection of demands upon the cable system over the intended term of the franchise. Demand analysis should include discussion of anticipated changes in number of consumers, consumer wants and needs, nature and range of services to be provided, technological advancements, etc. From the demand analysis should flow a discussion of the proposed upgrade or upgrades over the length of the desired term, and then ultimately, an impact analysis of these upgrades on pro forma financial projections during

150 CSR 26

each year of this period (please refer to Form D).

If Applicant proposes a system with a capacity of less than 450 MHZ, it must explain in detail the basis for the belief that such a system will meet future needs and interests or that a more elaborate system with greater capacity is not reasonable in light of costs.

D. Economies of Scale

Describe the potential market for cable services within the franchise area. Applicant shall state whether it believes that the provision of cable service in the franchise area will enjoy any real or potential economies of scale and/or scope, and whether the public is better served by the award of one, multiple, or area specific franchises. The Applicant shall provide any documentation or other information which supports its views.

E. Technology Change and West Virginia Telecommunications Infrastructure

Since the Franchising Authority may renew a franchise for a period of up to twenty (20) years or grant a new franchise for fifteen years (15), Applicant should describe with particularity how it believes: (1) the technical provision of cable service is likely to change over the period of the franchise; and (2) the demand for cable service in the franchise area is likely to change over that same period (for example, the capability of accommodating High Definition Television, two-way telecommunications to the home, internet access, data transmission, etc.).

F. Access Structure

Please indicate the elements of a preferred structure for access, a discussion of other alternative structures considered, and the reasons why the proposed structure is preferred.

G. Substantial Compliance

For renewal applications, a demonstration is required that Applicant has substantially complied with the material terms of any existing franchise orders issued by the Franchising Authority and with applicable law.

H. Innovations

Please describe any innovations during the last ten years which Applicant has undertaken. These innovations may include technological or consumer service upgrades.

150 CSR 26

Applicant's Affidavit

This application is submitted by the undersigned who has been duly authorized to make the representations herein on behalf of the Applicant.

Applicant understands that this application will be part of the Franchise Documents, enforceable against Applicant, in the event a franchise is granted as a consequence of this Application.

Applicant recognizes that all representations made in this application are binding upon it and that inaccuracy of or failure to adhere to any such representations may result in revocation of any franchise that may be granted as a consequence of this application.

Consent is hereby given to the Franchising Authority to make inquiry into the legal, character, technical, financial and other qualifications of Applicant and/or any controlling entities by contacting any persons or organizations named herein as references, or by any other appropriate means.

The Applicant certifies and guarantees that the responses are within the financial capabilities of the proposed system as demonstrated on the pro forma statement of Form D, and further guarantees to deliver a cable communications system which is consistent with the responses contained within this application.

The signature hereto declares that the entire contents of this application are true and correct to the best of the undersigned's knowledge, information and belief.

Firm Name: _____

Affiant's Signature: _____

Official Position: _____

Subscribed and sworn or affirmed to before me this _____ day of _____,
19____.

My commission expires _____.

Notary Public, State of _____
(If signed outside West Virginia seal must be affixed.)

150 CSR 26

Form A

A.1. Ownership and Control Information

Provide the following information:

(A) Complete name and address of Applicant.

(B) Complete name and address of the person to whom communications from the franchising authority should be sent.

(C) Applicant's business office address.

(D) Name and address of chief executive officer of Applicant.

(E) If the Applicant is a corporation, a statement of ownership, detailing the corporate organization of the Applicant, including the state of incorporation, the names and addresses of the officers, directors, and major stockholders (owning 10 percent or more of Applicant's stock), and the number of shares of stock held by each. Attach a copy evidencing registration to do business from West Virginia Secretary of State.

(F) If the Applicant is a partnership, a statement of ownership, including the names, addresses and social security numbers or tax identification numbers of all of the general partners and limited partners, if any, and the percent of interest each has in the partnership.

(G) If the Applicant is an individual, a statement of ownership, including the name, address and social security number of Applicant.

(H) If Applicant is owned, in whole or in part, by a corporation or corporations, furnish the name, address and employer identification number for each corporation owning one (1) percent or more of the stock in the Applicant.

(I) If any of the corporate stock in the Applicant is held for any other person who is the beneficial owner of the stock, list the name, address and social security number of the person who votes the stock and his or her official capacity.

(J) List all of the intercompany relationships the Applicant has, including parent, subsidiary and affiliated companies.

(K) The most recent Form 10-K, if any, for the Applicant and all related or controlling entities of Applicant.

150 CSR 26

Form B

CHARACTER QUALIFICATIONS

Please provide the following information about Applicant and any controlling entities (hereinafter collectively referred to as "Applicant"). Please identify all controlling entities for which information is provided.

B.1. For the ten-year period immediately preceding the filing of the application, please provide the following information as to Applicant:

a. Has any court or administrative entity entered any judgment, finding, decree or order which determined that Applicant engaged in any activity that involved:

(I) unfair or deceptive trade practices, perjury, fraud, dishonesty, organized crime or racketeering; or

(ii) violation of applicable federal, state, or local cable communications law or rules; or

(iii) violation of cable franchise provisions; or

(iv) violation of the rules, regulations, codes of conduct, or ethics of a self-regulatory trade or professional organization?

If so, please describe each such judgment, order or decree and provide a copy thereof.

b. Has Applicant or any of its officers, directors, or management employees been convicted of any felony criminal offense which involved perjury, misrepresentation, fraud, theft, or bribery? If so, please provide full information concerning each such conviction.

B.2. Has any cable television franchise held by Applicant, its parent corporation, or subsidiary of its parent corporation, been suspended or revoked? If so, please state the relevant circumstances for each such suspension or revocation.

150 CSR 26

Form C

CABLE HOLDINGS OWNED BY APPLICANT

C.1. Existing Cable Franchise Interest

List any interest the applicant, or any corporation, company or person mentioned in response to items A.1.(A) through and including A.1.(I) previously, has in other cable television systems (or in a franchise for a system which has not yet been built), AM, FM, or television broadcast licenses or permits, newspapers, communications common carriers or manufacturers of cable television equipment, including the name(s) and address(es) of each such operation and the name of the chief executive officer of the franchising authority in which each such cable television system, if any, is located. Furnish the same information with respect to all pending applications for cable television franchises in other jurisdictions.

Form D

FINANCIAL RESOURCES

Please describe in detail the financing plan for any construction and the continuing operation of the Applicant's cable system. Documentation of the debt of financing is to be provided by a funding organization. If the funding is to be provided through any parent, then the ability to obtain financing and sources of the parent must be documented including financial statements of the parent. Proof of financial capability shall include the following:

D.1. Source of Financing

(A) Furnish a documented plan for financing the proposed system, which shall indicate specifically every significant anticipated source of capital and any and all limitations and/or conditions with respect to the availability of the indicated sources of capital, including both debt and equity.

(B) Furnish a statement of financial projections, and including as a minimum, names of creditors holding any indebtedness of the applicant at time of filing this application, the amount, percentage of outstanding indebtedness and the terms of indebtedness; a pro forma schedule setting forth a profit and loss statement for a five-year period, a statement showing total sources of funds and uses of funds; a balance sheet of assets and liabilities for the same five-year period; a schedule of projected subscribers, subscriber revenues and non-subscriber revenues for the same five-year period; a schedule setting forth direct operating expenses for the same five-year period; and a schedule of capital expenditures for the same five-year period.

D.2. Contact in Outside Audit Firm

For Applicant, any parent company, and the principals, provide the name, title, address and telephone number of an appropriate contact person in each outside audit firm utilized within the past five years.

D.3. Financial Statement

Submit a financial statement for the Applicant reviewed or audited by an independent public accountant for the most recent fiscal year, and for the last quarter an audited statement, and a financial statement for the relevant parent organization, if any, audited by an independent public accountant for the most recent fiscal year.

150 CSR 26

Form E

ANTICIPATED CONSTRUCTION PRACTICES

- E.1. Furnish a timetable for completion of construction of the proposed system, which timetable shall assure uniform availability of service throughout the designated service area.
- E.2. Construction Completion - Provide a complete list of all facilities to be constructed, their function and general description, and their estimated date of completion.
- E.3. Construction Complaint Resolution - Describe practices for complaint resolution during any construction.
- E.4. Construction Maps - Attach copies of relevant topographical maps designating current service area boundaries and proposed service area boundaries over the next five years. Please highlight roads paralleling the cable service area.

150 CSR 26

Form F

CHANNEL CAPACITY AND SYSTEM DESIGN

- F.1. Furnish a statement of channel capacity, including the total number of channels in the proposed system, the total number of channels to be activated immediately, and the number of designated public, educational or governmental channels.
- F.2. Furnish a statement of the television and radio broadcast signals to be carried, together with a description of programming and other services to be offered, including access, interconnect and institutional services, if not shown on Form G.
- F.3. Furnish a description of the proposed system design and planned operation, including at least the following:
- (A) The general area for location of headend(s) and antenna(s), if known, furnish map coordinates;
 - (B) The extent and type of interactive services to be offered on both the residential and institutional industrial networks, together with a schedule for their activation or projected availability from particular points;
 - (C) The extent and type of automated services to be provided;
 - (D) The location of origination points and origination facilities;
 - (E) The number of channels to be activated immediately for public access and institutional uses; the facilities, equipment, and staff to be made available for such uses and a schedule of charges for facilities, personnel and utilization of such channels and services (such schedule of charges shall be included in the proposed tariff);
 - (F) The provisions for expansion of channel capacity and other upgrading of the technical capabilities of the system as technological improvements become available;
 - (G) The general system design, the type of system, the distribution system, two-way capability and the method of interconnection with other systems in West Virginia; and
 - (H) The extent and purpose(s) to which the Company proposes to use microwave technology, and the name and address of the Company representative responsible for obtaining necessary FCC approval(s).

150 CSR 26

F.4. Emergency Alert System

Describe your existing and/or proposed Emergency Alert System including make and model numbers of equipment. Indicate whether system will override all audio and video channels or only audio channels. Also indicate how and from where the system will be activated.

F.5. Subscriber Converter Availability

Please explain your present and future policies concerning availability of converters for subscribers as well as any costs to subscribers for such converters.

F.6. Closed Captioning Devices

In regard to closed captioning or other services for the hearing impaired, what, if any, services have been and will be made available? If any such provisions are made, please indicate type and availability of equipment to be utilized.

F.7. Service Level Isolation

(A) Pay Cable Isolation - Describe design specifications for the delivery of pay cable television, including methods of security (e.g., negative-option or positive-option traps, sync suppression, addressable converters, etc.).

(B) Tier Isolation - If more than one basic service tier is to be provided, describe how lower tier subscribers will be isolated from receiving upper tier programming.

(C) Scrambling System - While no proprietary data is required, state for each scrambling system used whether demodulation and remodulation must occur at headends, hubs, or subscriber equipment, and provide a brief analysis of the source of any interference or distortion anticipated due to this process.

F.8. Statewide Interconnection - Describe what efforts may be undertaken to interconnect the Applicant's cable system with other cable systems in the State. Include such information as:

(A) Technical means of interconnection;

(B) Band width capacity of interconnection systems;

(C) Name and location of cable systems proposed to interconnect;

(D) Proposed activation dates of interconnect;

150 CSR 26

- (E) Identification of total interconnect cost and how such cost will be shared among cable systems;
- (F) Administrative coordination between cable systems, including any existing agreement to interconnect;
- (G) Programming coordination between institutions, program suppliers, and access users; and
- (H) Other information as necessary.

F.9. System Maintenance - Describe procedures for routine preventive maintenance, including type and frequency of system inspection and testing, number and qualifications of technical staff, and the test equipment to be provided. A clear summary of the maintenance procedures is desired, rather than lengthy maintenance manuals.

SIGNAL CARRIAGE AND CHANNEL ALLOCATIONS

G.1. Video Signal Carriage and Channel Allocations

(A) Complete pages 3 through 6 of Form G.1 for each system effected by this franchise.

(B) In G.1 column 2 list the broadcast channel number of each broadcast station carried or to be carried by the cable system.

(C) In G.1 column 3 list the station call letters or the name of the service that is carried on the cable channel in G.1 column 1.

(D) In G.1 column 4 list the city and state of origin of any broadcast services carried by the system.

(E) In G.1 column 5 identify the method of reception of the signal transmitted on the cable channel using the following abbreviations:

OA - off air

SAT - satellite

MIC - microwave

FO - fiber optics

TEL - telephone line

LO - local origination -

(F) In G.1 column 6 identify the network affiliation of each broadcast station carried. If this channel is designated for PEG access indicate type of access here, even if the channel is currently used for another purpose.

(G) In G.1 column 7 indicate the tier level of the channel or service using the following abbreviations. Basic service should be the minimum level of service available for reception of cable service.

B - basic service

EB - expanded basic (# if more than one level)

P - pay tv service

PPV - pay per view service

(H) In G.1 column 8 indicate if the channel is used 24 hours per day; list start and stop times if part time or occasional if not used on a daily basis.

(I) In G.1 column 9 indicate the date that the channel or service became or will become available.

G.2. Audio Signal Carriage

Complete form G.2 for each specialized audio service utilized by the system. If the system receives and transmits broadband FM radio, indicate (FMBAND) in column 1. If audio service is sold as one or more services or package, indicate in column 6 as "FM" (broadband or package), "B" if included with basic service, or "Audio #" for each service or package sold as a separate service. Use column 7 for further descriptions of the audio services listed on the form.

150 CSR 26

Form H

DELINEATION OF RESOURCES COMMITTED TO PUBLIC,
EDUCATIONAL, AND GOVERNMENTAL ACCESS AND
LOCAL PROGRAMMING OR ENTITIES

- H.1. Furnish a statement of terms and conditions under which service is to be provided to educational, charitable, governmental and other entities.
- H.2. Furnish a statement of policies for public, educational and governmental access origination programming.
- H.3. Furnish a statement (or chart) indicating the availability of access studio, editing equipment and portable equipment, Sunday through Saturday.
- H.4. Furnish a statement explaining your public access training course program.
- H.5. Furnish a statement (or chart) indicating your access production coordinator's duties and the hours these duties will be performed during the week.
- H.6. Furnish a statement indicating your Company's local origination programming policy, including the number of hours per week, types of productions and staff available for such programming.

150 CSR 26

Form I

CUSTOMER SERVICE AND RATES

- I.1. Describe in detail standards for customer service. Specifically, address standards and procedures for installation, billing, collection, handling of complaints, repairs, discontinuing or changing service, telephone and other services. Describe how the Applicant plans to provide repair service within 24 hours of customers' service complaints.
- I.2. Provide a summary for the last five years of all rates charged for each level or tier of service including pay service.
- I.3. List the proposed rates, if any, to be charged including rates for each service tier as appropriate and charges for installation, cancellations, connection, change of service, upgrade, downgrade, reconnect, late charges, bad check charges, and other services.
- I.4. Provide information on proposed rates, charges or deposits for studio and equipment usage, as well as any charges to subscribers for converters or scramblers.
- I.5. Identify the location of each business office to be maintained by Applicant to service the franchise area and describe its business hours; further set forth Applicant's proposed number of telephone lines, number of toll-free telephone lines, and number of staff to be assigned to each office to handle consumer complaints.
- I.6. Furnish a statement (or a sample) of your proposed monthly bill to subscribers, including a statement as to the frequency with which a fully itemized bill is sent out.
- I.7. Furnish a statement concerning your disconnect policy as to subscribers who are delinquent in paying their monthly service charges, and include any collection fee which may be imposed.
- I.8. Furnish a statement indicating what the Company's educational or awareness programs will be to: a) inform potential subscribers that cable television subscriber bills are payable "in advance," and b) what the credit policy is for interrupted service.
- I.9. Furnish a statement of the applicant's line extension policy, and identify where in the service area it will be implemented.

150 CSR 26

If this transaction involves a transfer, the local franchise authority may request a sales price of the cable system limited to the price paid for the headend, distribution system, real estate and appurtenances which are required to operate and deliver a signal to the franchised community. This information will be held in confidence and treated proprietarily.

**FORM NO. 2 AND INSTRUCTIONS
CABLE FRANCHISE CONTRACT GUIDELINES**

Channel Capacity

1.1 Each cable operator shall set forth the maximum number of television channels capable of being provided by the system it is utilizing or plans to utilize in the future.

1.2 Each cable operator shall set forth the number of television channels to be initially activated and providing programming to subscribers.

1.2.a If the cable operator stated in its franchise application that it plans to upgrade its channel capacity or augment the number of channels to be activated and providing programming to subscribers, then it shall separately set forth the total number of channels to be provided in the future, and estimate the date when the full compliment of channels will be activated.

Basic Service Tier

2.1 Cable operators shall set forth the number of television channels to be provided as part of the "basic service tier." If such basic channels include stations primarily dedicated to offering home shopping services or stations which provide payment to the cable operator for its carriage, then the number of such channels should be disclosed.

2.2 Cable operator shall provide its required public, educational, and governmental channels as part of the "basic service tier."

2.3 Cable operators shall provide local free broadcast television stations generally receivable off-the-air in the franchise area as part of the "basic service tier," unless commercially unreasonable terms are set by such stations for their retransmission.

2.4 Cable operators shall maintain the overall level of quality television programming of its "basic service tier" as set forth and expressed in its franchise application, provided rate increases for such programming can be passed along to subscribers without making it commercially nonviable.

Nonexclusive Franchise Agreement

3.1 Franchising authorities must, as required by West Virginia Code § 24D-1-8(d), make the cable franchise agreement nonexclusive--meaning that other cable operators may be authorized by the franchising authority to operate within the franchise area. Such condition of nonexclusivity should be plainly stated in the contract.

Nonexclusive Retransmission of Free Broadcast Television

4.1 Each cable operator shall specifically make nonexclusive its agreements for the right to retransmit locally available free broadcast television.

Construction Standards and Schedule

5.1 Each cable operator shall pay for the costs of restoring pavements, sidewalks, lawns, roadways or other surfacing disturbed by the cable operator's construction or repair of its equipment or lines. Each cable operator shall consult with the West Virginia Department of Highways regarding any such disturbance to property or rights-of-way under the Department's jurisdiction and control. Each cable operator should notify Miss Utility of West Virginia at 1-800-245-4848 prior to beginning construction which could cause damage to underground facilities.

5.2 Each cable operator shall pay for the costs of relocating its equipment or lines upon reasonable notice by the franchising authority or West Virginia Department of Highways in the exercise of their lawful authority to change the grade or location of any public street, alley, way or place which causes a need for such relocation.

5.3 Each cable operator shall place its lines, equipment, or other fixtures in such a manner as to not interfere with any gas, electric, communications, fire alarms, sewer or water lines, fixtures and equipment; nor interfere with the usual travel on public streets, alleys, ways and places, and the use of same for gas, electric, communications, fire alarms, sewer and water lines, fixtures and equipment.

5.4 Each cable operator shall ensure that in the use of its easements the safety, functioning and appearance of the property is not adversely affected.

5.5 Each cable operator shall, together with its subscribers, bear all the costs of installing, constructing, operating or removing cable facilities.

5.6 Each cable operator shall justly compensate owners of property for any damages caused by installing, constructing, operating or removing its cable facilities.

5.7 Cable operators shall set forth specific dates by which particular geographic areas will be able to obtain cable service; and the dates by which such areas will be able to obtain enhanced or upgraded cable service, if such an enhancement or upgrade is provided for in its cable franchise application.

5.8 Cable operators shall set forth their line extension policy by specifically stating the number of homes passed per mile which will trigger an extension. Unless agreed otherwise, such policy shall be in conformity with the cable operator's franchise application.

General Service and Operations

6.1 Each cable operator shall maintain facilities and equipment to be used for the transmission of information pertaining to public emergencies, law enforcement, fire protection, rescue services or other public safety messages. Such facilities and equipment shall have the capability to interrupt all activated channels if and when necessary.

6.2 Each cable operator shall maintain the signal and viewing quality of its channels to a level commercially accepted within the industry.

6.3 Each cable operator shall provide its services in a manner so as not to interfere with the television viewing or reception of over-the-air television stations by persons in the franchise area.

6.4 Each cable operator shall maintain its lines, rights-of-way and equipment in a good and safe condition; and comply with any technical standards as may be established by the Federal Communications Commission.

Interrupted and Service Repair

7.1 Each cable operator shall, for the purpose of restoring interrupted service and improving substandard service, be able to receive toll-free calls from the franchise area 24 hours a day, seven days a week; and should have one or more qualified persons as may be necessary to repair and restore the cable service to its subscribers.

7.2 Each cable operator shall, upon the request of subscriber, provide for a credit or refund to any subscriber whose service is interrupted for more than 24 hours continuously or more than 24 hours within a thirty day period. Such interrupted service policy shall conform with WVA. Code §§ 24D-1-15, 24D-1-16, and all other applicable state law.

Service Offices

8.1 Each cable operator is required to establish and operate a business office in or near the service area or as otherwise may be approved by the Public Service Commission or the local franchising authority. Such business office shall be open during normal business hours. In addition, the cable operator should establish and operate sufficient telephone lines, including a toll-free number or any other free or local calling option, as approved by the Commission, staffed by a customer service representative during normal business hours.

Subscriber Complaints

9.1 Each cable operator must keep a record or log for registering and resolving all subscriber complaints. Records shall be maintained as to each complaint stating: a) Date, time, and nature of the complaint; b) Name and address of complainant; c) Investigation of the

150 CSR 26

complaint; and d) Manner and time of resolution of the complaint. Such records are to be made available to the franchising authority and the West Virginia Public Service Commission upon request, subject to the subscriber privacy provisions of federal law contained in 47 U.S.C. § 551.

9.2 Each cable operator shall annually provide to its subscribers in writing, a notice informing them: a) How to contact the operator, the franchising authority, and the Commission with their views and complaints; b) Of the authority of the Commission to receive and act upon cable complaints; and c) How they can obtain a pro rata credit or refund for service interruptions.

9.2.a Cable operators shall each year certify to the franchising authority that this written notice requirement was properly distributed to its subscribers.

Indemnification

10.1 Each cable operator shall indemnify and hold harmless the franchise authority for liability for any damage or injury caused by the actions or omissions of the cable operator. The cable operator shall obtain and keep during the franchise period a public liability insurance policy and property damage insurance policy in an amount agreed to by the franchise authority.

10.1.a Certificates of insurance shall be filed with the Clerk of the County Commission or other person designated by the franchise authority prior to the exercise of any rights under the franchise agreement.

10.1.b Upon written notice from the state, county and/or municipality the cable operator will, at its own expense, defend any action or proceeding against these entities or boards, agencies, and individuals thereof, for injury or damages caused by activities of the cable operator in the installation, operation, or maintenance of its cable system.

Franchise Fees

11.1 Franchise authorities shall state the franchise fee on an annual basis as the greater of a sum certain or a percentage of the cable operators gross receipts. In no event shall the franchise fee be greater than that allowed by federal law.

11.2 Franchise authorities must provide, as required by WVA. Code §§ 24D-1-20, 24D-1-25 and the rules promulgated thereunder, that the annual fees and document fees imposed upon cable operators by the Commission are part of the franchise fee; and that to the extent that these Commission imposed fees result in the franchise fee being in excess of that permitted under federal law, then the payment of the annual fee required in 150 CSR shall be deducted from and credited as an offset to any franchise fee amount to be paid to the franchising authority.

(Note: Federal law presently limits the total franchise fee to 5% of the cable franchise's gross receipts per year. 47 U.S.C. § 542(b)).

11.3 Franchise authorities should require a review of the franchise fee amount every three years during the franchise period, and provide that the franchise fee amount may be changed or its method of calculation adjusted by the franchise authority at those times.

Rates and Charges

12.1 Each cable operator shall file a schedule of its current rates and a schedule of its terms and conditions of service for each tier of cable service with the franchise authority and the Commission.

12.2 The Commission shall regulate rates charged by the cable operator to the extent permitted under federal law to ensure that rates are just and reasonable both to the public and the cable operator and are not discriminatory. Such rates charged to its subscribers shall be equal and uniform throughout the franchise area for the same services, provided that this provision does not prohibit promotional or group rates when such rates are offered throughout the franchise area.

12.3 Each cable operator shall provide its subscribers with written notice of any addition of channels or other causes resulting in a change in rates 30 days before such rate change is imposed. Subscribers must be given the opportunity to cancel their service within these thirty days without penalty or accrual of the planned new charges. Such notice shall be provided to the Commission and the franchise authority at least sixty (60) days prior to the effective date of the change.

12.4 Each cable operator shall specify the dollar amount of any connection fee, reconnection fee, or unwarranted service technician visit charge. In addition, the cable operator should specify the dollar amount or method of calculating any late charge for past unpaid amounts--such late charges to be in conformity with the limits to consumer credit late charges under West Virginia Code § 46A-3-113 and 150 CSR 26.17.

12.4.a Cable operators shall set forth with particularity their policies as to the imposition of such charges and fees specified in section 12.4 above. Alteration of these policies, the amounts, or method of calculation may occur only upon agreement with the franchising authority, unless otherwise preempted by federal or state law.

Removal Costs at Termination of Franchise

13.1 Franchise authorities shall require that upon termination of the franchise for any reason, the cable operator or its successors will at its own expense properly remove all fixtures, lines, or equipment erected, installed or deposited by the cable operator.

Suspension and Revocation of Franchise

14.1 Franchise authorities shall provide that following reasonable notice, public hearing, and opportunity to cure, the franchise agreement may be revoked, altered or suspended for:

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

b) The cable operator's repeated failure to maintain signal quality under the standards prescribed by the Commission;

c) The cable operator's unreasonable delay in construction, operation or extension of cable service; unless such delay was caused by factors rendering adherence commercially impractical;

d) The cable operator's material violation of the terms of its cable franchise agreement;

e) The cable operator's failure to substantively comply with the West Virginia Cable Television Systems Act or the rules, regulations or orders prescribed by the Commission;

f) The cable operator's substantial violation of its filed schedule of terms and conditions of service; and

g) The cable operator's engaging in any unfair or deceptive act or practice;

h) The cable operator's sale, lease, assignment or other transfer of its cable franchise without consent of the franchising authority.

14.2 In lieu of or in addition to revocation or suspension, the franchise authority may fine the cable operator not less than \$50 or more than \$5000 for each violation. Each day's continuance of a violation may be treated as a separate violation.

Renewal

15.1 Franchise authorities shall provide that the franchise may be renewed for a period of five to twenty years upon the approval of the franchise authority, provided the parties follow the procedure set forth by the Commission under the West Virginia Cable Television Systems Act and rules promulgated thereunder.

Transfers

16.1 Franchise authorities shall provide that the assignment or transfer of the rights or control of the cable system may not be made, unless such transfer or assignment is approved by the franchise authority and is made pursuant to and in accordance with the provisions of the West

Virginia Cable Television Systems Act and the rules promulgated thereunder.

Non-Discrimination

17.1 Each cable operator should specifically agree that it will not discriminate in any employment matter or any other matter on the basis of age, race, religion, sex, physical handicap or country of natural origin.

Access to Records and Facilities

18.1 Each cable operator shall agree to give the franchise authority and Commission the right during normal business hours to inspect all lines, equipment, fixtures, or facilities owned or operated by the cable operator that are utilized or planned to be utilized to provide cable service within the franchise area.

18.2 Each cable operator shall, subject to the subscriber privacy provisions of the Cable Communications Act of 1984, applicable federal law, and excepting proprietary and confidential information contained in individual programming contracts when rates are not regulated, agree to give the franchise authority and Commission the right during normal business hours to inspect all records, documents, reports, contracts, agreements, or other materials maintained by or under the control of the cable operator relating to providing cable service within the franchise area.

Cancellation of the Franchise

19.1 Franchise authorities should grant the cable operator the right to cancel the franchise agreement only when the operation of the cable system is prohibited by law.

19.2 Franchise authorities should provide that following reasonable notice, public hearing, and opportunity to cure the franchise agreement will be canceled at the option of the franchise authority if the cable operator neglects, refuses, or fails to perform or observe any of the material conditions set forth in the franchise agreement, including the timely payment of franchise fees when due.

19.2.a Cancellation by the franchise authority is without prejudice to any other remedies that the franchise authority may have.

Savings Clause

20.1 Franchise authorities should provide that if any term or provision of the agreement is held void or invalid, each holding will not affect any other terms or provisions to the extent such void or invalid terms or provisions can be severed from the agreement.

20.2 Franchise authorities should provide that cable operators will abide by, and the franchise agreement comply with all applicable state and federal laws.

AGREEMENT

CABLE TELEVISION FRANCHISE IN (CITY/COUNTY NAME), WEST VIRGINIA

Agreement made this ____ day of _____, 19 ____, by and between the **(CITY/COUNTY) OF (AUTHORITY NAME), WEST VIRGINIA**, hereinafter referred to as the "(City/County)", party of the first part, and **(NAME OF CABLE COMPANY)**, a (State) (corporation, partnership, etc.), hereinafter referred to as the "Company", party of the second part.

WHEREAS, the Company wishes to conduct a community antenna television system (CATV) to furnish all types of services usually furnished or which can be furnished by such a system in the (all /certain) areas of the (City/County Name), West Virginia, through distribution and transmission equipment, cables, and/or wires, other transmission equipment or other means, commonly called a CATV system; and

WHEREAS, the CATV system will be attached to poles or constructed underground and its cables, wires or other equipment would cross over or exist under the streets, sidewalks, public lands, highways and right-of-way in the (City/County), and

WHEREAS, the Company has requested of the (City/County) that it be granted a nonexclusive franchise to operate a CATV system within (City/County Name), West Virginia, and the (City/County), after giving public notices and holding public hearings as required by West Virginia Code § 24D-1-7 and the rules thereunder, has agreed to grant to the Company, a nonexclusive franchise to operate a CATV system within (City/County Name), West Virginia, pursuant to the following terms and conditions.

WITNESSETH: That for and in consideration of the mutual covenants herein contained the parties do hereby agree as follows:

(1) GRANT OF AUTHORITY: The (City/County) grants to the Company the nonexclusive

right and privilege, within (all/certain) areas of (City/County Name), West Virginia, as described in Attachment A hereto, to construct, maintain, and operate in, or, over and under the present and future public streets, alleys, rights-of-way and public places within the (City/County), such as towers, poles, lines, cables, wiring and all related equipment for the purpose of receiving, amplifying and distributing television, radio, audio, video or any other telecommunications signal or service within said (City/County) and to inhabitants hereof. The Company shall have further right to enter into arrangements for the attachment onto or use of facilities owned or operated by public utilities operating within the (City/County). The Company shall provide to the (City/County), upon request, copies of all such agreements between the Company and any public utility operating within the (City/County) for the use by the Company of any facilities owned or operated by said public utilities.

(2) TERMS OF AGREEMENT: The nonexclusive franchise granted herein shall be for a term of fifteen (15) years, commencing on the ____ day of _____, _____, and terminating at midnight on the ____ day of _____, _____.

(3) CONDITIONS OF STREET AND ROAD OCCUPANCY AND SYSTEM CONSTRUCTION:

(a) Use: All transmission and distribution structures, lines and equipment erected by the Company within the (City/County) shall be located as to cause minimum interference with other proper use of the public streets, alleys, ways and places located within the (City/County), and as to cause a minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said public streets, alleys, ways, or places. The use of public highways and other public places shall be subject to:

(1) All applicable state statutes, municipal ordinances and all applicable rules and orders of the West Virginia Public Service Commission governing the construction, maintenance and removal of overhead and underground facilities of public utilities;

(2) For (county highways/city streets), all applicable rules adopted by the governing body of the (City/County) in which the (highways/streets) are situated; and

(3) For state or federal-aid highways, all public welfare rules adopted by the West Virginia Department of Transportation, Highways Division.

(b) Restoration: In cases of any disturbance of pavements, sidewalks, lawns, roadways, or other surfacing, the Company shall, at its own expense and in a manner approved by the (City/County), replace and restore such places or disturbed to as good a condition as before said work was commenced. The Company shall also be required to consult with the Highways Division regarding any disturbance of pavement, roadway or other rights-of-way as may be under the jurisdiction and control of the Highways Division.

(c) Relocation: In the event that at any time during the period of this agreement, the (City/County) or the Highways Division shall lawfully elect to change the grade or location of any public street, alley, way, or place, the Company, upon reasonable notice by the (City/County) or the Highways Division, as the case may be, shall remove, re-lay and re-locate its equipment at its own expense. All such alterations shall be subject to the approval of the (City/County) and the Highways Division.

(d) Placement of Fixtures: The Company shall not place any fixtures or equipment where the same shall interfere with any gas, electric, communications, fire alarms, sewer or water lines, fixtures or equipment, and the location by the Company of its lines and equipment shall be in such manner as to not interfere with the usual travel on said public streets, alleys, ways, and places, and the use of the same for gas, electric, communications, fire alarms, sewer and water lines, fixtures and equipment.

(e) Easements: In the use of easements dedicated to compatible uses, the Company shall ensure:

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

(2) That the cost of the installation, construction, or operation of facilities is borne by the Company or subscribers, or a combination of both; and

(3) That the owner of the property is justly compensated by the Company for any damages caused by the installation, construction, operation or removal of facilities by the Company, its employees or contractors.

(4) SERVICES TO BE PROVIDED BY THE COMPANY:

(a) Services shall be made available to all inhabitants of the (City/County) who reside in the area described in Attachment A who desire such service within _____ (____) months of the date of their request, provided that the following conditions have been met:

(1) The location is "serviceable". A location is serviceable when:

(A) The inhabitant is located in an area where it is economically feasible to provide such service, and such area is unserved by another cable system. Such condition of economic feasibility is met where an average of _____ (____) residences are passed per mile of cable line laid; calculated from the existing cable system owned by the Company to the end of the proposed service extension; or

(B) The distance from existing distribution lines to the home or building is not more than _____ feet ("maximum drop length");

(2) Inhabitant complies with the Company's regulations governing the conduct of its business; and

(3) The Company is able to obtain any private rights-of-way required to extend its facilities at a reasonable cost.

(b) The company shall provide and maintain basic service for one single standard outlet upon request to any school or institution of higher education, fire station, and public library located within the service area, and within a reasonable distance of an existing distribution line of the Company. The recipients of service under this paragraph shall not be charged for basic cable service; provided however, that the service is not to be delivered to a residence.

(c) The company shall provide the (City/County), upon appropriate authorization (and payment), facilities and equipment for transmission of information relating to law enforcement, fire protection, rescue services or all other public emergencies as may be necessary or desirable for the safety and welfare of the citizens of the (City/County) to the Office of the County Emergency Services or as directed by the (City/County). The facilities to be provided include access to one PEG channel without charge for the transmission of information relating to law enforcement, fire protection, rescue services, or other public safety messages. The Company shall comply with the regulations of the Federal Communications Commission (FCC) for the operation of the Emergency Alert System as set forth under 47 C.F.R. Section 11.

(d) The Company shall offer to all customers within the (City/County) service of signal and viewing quality that is in compliance with all FCC technical standards.

(e) The Company shall conduct its business with its subscribers in accordance with all FCC Customer Service Standards.

(f) The Company shall designate at least ten percent of all its channels for public, educational or governmental (PEG) use, provided, however, that the company shall not be required to designate more than 3 such channels for such public, educational or governmental use. At least one such designated channel is to be carried as part of the basic service tier. The company shall abide by all rules and procedures adopted by the (City/County) as franchise authority for activation of designated PEG channels currently in use for non-PEG purposes.

(g) The maximum number of channels the system(s) will initially be capable of providing is _____. The number of channels to be initially activated to provide programming to subscribers is _____.

(h) The number of channels to be initially offered as part of the basic tier of service is _____.

(I) The Company agrees that it will not abandon areas presently served by this cable system(s) without the agreement of the (City/County), unless such areas and residents therein are being served by another cable system, or unless unreasonable costs are imposed for the continued use of a private right-of-way necessary for providing service to such areas.

(5) CONDITION OF EQUIPMENT: The Company shall maintain all of its lines, rights-of-way and equipment in good and safe condition and shall at all times construct and maintain its fixtures of equipment in compliance with the requirements of the National Electrical Safety Code and the National Electrical Code.

(6) PROCEDURES FOR RESTORING INTERRUPTED SERVICE AND IMPROVING SUBSTANDARD SERVICE:

(a) The Company, for the purpose of restoring interrupted service and improving substandard service, shall be able to receive calls twenty-four hours a day, seven days a week, and shall have one or more qualified persons as may be necessary to repair the cable system.

(b) The Company shall restore interrupted service not later than twenty-four hours after being notified by a subscriber that service has been interrupted, unless (1) service cannot be restored until another company repairs facilities owned by such company and leased to, or required for the operation of, the cable service, (2) the interruption was caused by an act of nature or (3) the Company is unable to restore service within twenty-four hours due to extenuating circumstances. In the event of such extenuating circumstances, the company shall restore service as soon as feasible and then submit a written notice to the Public Service Commission of West Virginia indicating that service has been restored and explaining the nature of the extenuating circumstances.

(7) CREDIT OR REFUND FOR INTERRUPTED SERVICE:

(a) If cable service to a subscriber is interrupted for more than twenty-four continuous hours for any reason such subscriber shall, upon request, receive a credit or refund within 60 days from the Company in an amount that represents the proportionate share of such service not received in a billing period, provided that such interruption was not caused by the subscriber.

(b) The Company shall comply with any viewing time reliability standards for cable operators established by the Public Service Commission of West Virginia.

(8) OFFICE OPERATING REQUIREMENTS; OFFICE HOURS: The Company shall operate a business office in or near the service area, or as otherwise approved by the franchising authority or by the Public Service Commission of West Virginia. The office shall be open during normal business hours. The Company shall operate sufficient telephone lines, including a publicly and locally listed toll-free number or any other free calling option, staffed by a company customer service representative during normal business hours.

(9) NOTICE TO SUBSCRIBERS REGARDING QUALITY OF SERVICE AND BILLING:

- (a) Annually the Company shall mail to each of its subscribers a notice which:
- (1) Informs subscribers how to communicate their views and complaints to the cable operator and to the Public Service Commission of West Virginia
 - (2) States the responsibility of the Public Service Commission to receive and

act on consumer complaints other than channel selection, programming and rates, concerning the operation of a cable system; and

(3) States the policy regarding the method by which subscribers may request pro rata credit as described in section seven of this agreement.

(4) States the policy regarding billing practices, late fees, and other service charges.

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

(10) RECORDING OF SUBSCRIBER COMPLAINTS:

(a) The Company shall keep a record or log of all complaints received regarding quality of service, rates, programming, equipment malfunctions, billing procedure, employee relations with customers and similar matters as may be prescribed by the Public Service Commission of West Virginia. The records shall be maintained for a period of two years.

(b) The record or log shall contain the following information on each complaint received:

- (1) Date, time, nature of complaint;
- (2) Name, address, telephone number of complainant;
- (3) Investigation of complaint; and
- (4) Manner and time of resolution of complaint.

(c) Consistent with the subscriber privacy provisions contained in 47 U.S.C. section 551 or as otherwise provided by federal law, every cable operator shall make the logs or records, or both, of such complaints available to any authorized agent of the Public Service Commission of West Virginia and the franchising authority, upon request during normal business hours for on-site review.

(11) INDEMNIFICATION BY THE COMPANY OF THE (CITY/COUNTY):

(a) The Company, its successors and assigns, shall indemnify and hold harmless the

(City/County) from any liability whatsoever for any damage or injury caused to any person or property by the actions or omissions of the Company on account of the franchise granted by this agreement. The Company shall take out and maintain during the term of this agreement general liability insurance with the following minimum coverage limits:

- (1) _____ Dollars (\$ _____) per occurrence.
- (2) _____ Dollars (\$ _____) aggregate.
- (3) _____ Dollars (\$ _____) automobile liability per occurrence.

Where the insurance provides separately for personal injury and property damage, the combined limits of the two coverages shall be no less than the per occurrence and aggregate limits set forth above. The Company shall protect the (City/County) from claims for said damages arising out of the exercise of rights and privileges and operations under this agreement. Prior to the exercise of any rights under this agreement, Certificates of Insurance shall be filed and deposited with the Clerk of the (City/County).

(b) Upon receipt of notice in writing from the state, county and/or municipality, the Company shall, at its own expense, defend any action or proceeding against the state, county and/or municipality in which it is claimed that personal injury or property damage was caused by activities or omissions of the Company in the installation, operation or maintenance of its cable system.

(12) **FRANCHISE FEE:** In consideration the granting of this franchise by the (City/County) to the Company, said grantee shall be liable to pay to the (City/County) a franchise fee as follows:

(a) The sum of \$ _____ shall be paid by the Company to the (City/County) upon the execution of this agreement by the Company. (Such sum to be treated as a franchise fee or portion thereof.)

(b) Commencing on _____, and on the same day of each (year, quarter, month) thereafter during the term of this agreement, the Company shall pay to the (City/County) the greater of \$ _____ or _____% of the gross revenue derived from the operation of the cable system during the preceding (year, quarter, month). If the above agreed to sum certain exceeds the limit permissible under law, the maximum amount so allowed will be paid.

(c) The amount of the franchise fee to be paid to the (City/County) shall be reviewable upon the third, sixth, ninth and twelfth anniversary dates of the date of the granting of the franchise, and upon such date the (City/County) shall have the right to change the amount and method of calculating the franchise fee; provided however, that such changes are in conformity with federal and state law.

(d) The imposition and collection of any franchise fee under this agreement shall not affect the collection of the annual fee or document fees by the West Virginia Public Service Commission as set forth in West Virginia Code §§ 24D-1-20 and 24D-1-25 and rules thereunder. Further, the franchise fee set forth in this agreement together with any state annual fee, document fee, or other fee considered under federal law to be a franchise fee shall never exceed the maximum amount prescribed by federal or state law.

(e) Nothing contained herein shall prevent the Company from collecting any or all such franchise fee as an addition to its regular charges, by listing them as a separate line on its invoiced to the customer.

(13) NON-LIABILITY OF (CITY/COUNTY): The (City/County) shall not be liable for interrupting the Company's service caused by employees of the (City/County) in the proper performance of their duties.

(14) RATES:

(a) The Company shall file with the (City/County) and keep current a schedule of its rates charged, or where no such rates are yet charged then its initially proposed rates, for each tier or cable service. The rates charged to all subscribers for the same service shall be equal and uniform throughout each cable system; excepting that this does not prohibit promotional or group rates when such rates are offered throughout the franchise area.

(b) The Company shall inform the (City/County) of the charge for any connection fee, any reconnection fee, and any fee for an unwarranted service technician visit. In addition, the Company agrees that it will bill monthly and calculate any late payment charge in conformity with 150 CSR 26.17 regardless of whether credit has been extended. Such fees will be levied as follows:

150 CSR 26

(1) A connection fee will be charged when

(2) A reconnection fee will be charged when

(3) An unwarranted service visit charge will be made when

(4) A late payment fee will be charged when

(c) To the extent permitted by federal law, the Public Service Commission of West Virginia shall regulate basic cable service rates to ensure that they are just and reasonable both to the public and to the cable operator and are not unduly discriminatory.

(d) The Company shall not raise rates or add new channels and increase charges to subscribers without first providing 30 days written notice to subscribers, and providing its subscribers the option to cancel service without penalty within that 30 day period.

(15) REMOVAL OF PROPERTY AT TERMINATION OF AGREEMENT: In the event this franchise agreement is terminated for any reason, or if the Company, or its successors, cease to exercise its rights and privileges pursuant to the terms of this agreement , then, in such event, all poles, lines, cables, wiring and other apparatus erected, installed or deposited by the Company or its successors within the (City/County) shall be properly removed at the Company's own expense unless otherwise agreed to by the parties. Further, unless otherwise agreed to, property not removed within six months of termination will be considered abandoned and the Company shall be

liable for the cost of removal.

(16) REVOCATION, ALTERATION, OR SUSPENSION OF CABLE FRANCHISE:
PENALTIES:

(a) This cable franchise may be revoked, altered or suspended by the (City/County) following reasonable notice and public hearing for the following reasons:

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

(2) For repeated failure to maintain signal quality under the standards prescribed by the Public Service Commission of West Virginia;

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

(4) Except when commercially impracticable, for unreasonable delay in construction or operation, as well as for unreasonable withholding of the extension of cable service to any person in the franchise service area;

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

(6) For failure to substantially comply with WVA. Code § 24D-1-1 et seq. or any rules, regulations or orders prescribed by the Public Service Commission of West Virginia;

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

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

(b) In lieu of, or in addition to, the relief provided by subsections (a) or (b) hereof, the (City/County) may fine a cable operator, for each violation under the provisions of this section, in an amount not less than fifty dollars nor more than five thousand dollars for each violation. Each day's continuance of a violation may be treated as a separate violation.

(17) RENEWAL OF CABLE FRANCHISE: This cable franchise may be renewed by the (City/County) upon approval of the Company's application or proposal therefor and in accordance with the provisions of state and federal law. The form of the application or proposal

shall be prescribed by the Public Service Commission of West Virginia. The application or proposal shall be the same fee prescribed for franchise applications, and the periods of renewal shall be not less than five nor more than twenty years each, unless otherwise prescribed by state or federal law. The (City/County) shall require of the applicant full disclosure, including the proposed plans and schedule of expenditures for or in support of the use of public, educational or governmental access facilities.

(18) ASSIGNMENT OR TRANSFER OF CABLE FRANCHISE: This franchise including the rights, privileges and obligations thereof may not be assigned, sold, leased, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including a transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval of the (City/County). The form of application for transfer shall be prescribed by the Public Service Commission of West Virginia.

(19) NON-DISCRIMINATION: As a condition to receiving a franchise from the (City/County), the Company covenants and agrees that it shall not discriminate in any employment matter or any other matter against any person on account of age, race, religion, sex, physical handicap or country of natural origin.

(20) REVIEW OF EQUIPMENT AND RECORDS:

(a) Throughout the term of this agreement the (City/County) shall have the right, during normal business hours, to inspect all lines, equipment, fixtures and facilities owned or operated by the Company pursuant to the terms of this agreement. The (City/County) shall also have the right, during normal business hours, to inspect all records and reports maintained by the Company and either under the control or direction of the Company or any of its agents, employees or affiliates, wherever said agreements, contracts, records and reports may be located; subject to the subscriber privacy provisions of the Cable Communications Act of 1984, applicable federal law, and excepting proprietary and confidential information contained in programming contracts when rates are not regulated. With the exception of salaries and wages of employees of the Company, which shall be paid by the Company, all expenses incurred in conducting such

inspections and reviews of the equipment and records of the Company shall be at the expense of the (City/County).

(b) The Company shall file with the (City/County), upon request, copies of all reports of its financial technical and operational condition and its ownership required by state or federal law. The reports, as required to be filed with federal and state agencies and authorities shall be kept on file open to the public.

(c) The (City/County) or its designated agent(s) shall have access to all books of account and records of the company, its affiliates, parent(s) or subsidiary(ies) through which expenses or revenues may flow. Such access shall be for the purpose of ascertaining the accuracy of any and all reports, accounts or payments due or made to the (City/County), or for purposes deemed necessary by the Public Service Commission of West Virginia.

(21) CANCELLATION

(a) The Company shall have the right to annul and rescind this agreement only in the event that the operation of the system herein provided for is prohibited by law.

(b) This franchise is granted upon the express condition that if the Company shall neglect, refuse or fail to do, perform or observe any of the material conditions, agreements, provisions, in terms, as set forth herein, including, but not limited to the timely payment of the franchise fee as fixed and assessed in accordance with this agreement, and such neglect, failure or default shall continue for a period of thirty (30) days after written notice thereof shall have been given to the Company, then, and in such event, the (City/County) shall have the right, and does hereby reserve the right, at its option, after reasonable notice and public hearing, to terminate all of the rights and privileges granted herein, and any additions to or amendments hereof, unless such performance of the provisions is being contested before a Court of competent jurisdiction by the Company, and declare the same at an end, without prejudice to any remedies the (City/County) may have.

(22) MISCELLANEOUS:

(a) If any provision of this agreement or the application thereof to any person, firm or corporation is held invalid by any Court of competent jurisdiction, such invalidity shall not affect

150 CSR 26

other provisions or applications of this agreement and to this end the provision of this agreement are declared to be severable.

(b) This agreement shall be interpreted according to the laws of the State of West Virginia.

(c) The franchise grantee agrees to abide by all applicable state and federal laws, rules, and regulations.

(23) **NOTICE:** All notices and other communications hereunder shall be in writing and shall be deemed to have been given on the date of actual delivery if mailed, first class, registered or certified mail, return receipt requested, postage prepaid to the following respective addresses:

To the (City/County):

To the Company:

IN WITNESS WHEREOF, the parties hereto have caused their respective Officials to set their hands, their secretaries to attest, and their seals to be affixed hereto.

FORM NO. 3
ENDORSEMENT OF TRANSFER OF CABLE
TELEVISION FRANCHISE AGREEMENT

On the _____ day of _____, 19____, _____
(name of applicant company)

cable system applied for approval to obtain through transfer the Cable Television Franchise Agreement previously granted by the _____ to
(franchise authority)

_____ cable system and dated the _____ day
(the purchased cable company)

of _____, 19____. After due consideration, the application of

_____ cable system to have transferred to it the Cable
(name of applicant company)

Television Franchise of _____ was approved by
(the purchased cable company)

_____ on the _____ day of _____, 19____. And
(franchising authority)

pursuant to that approval _____ cable system is substituted for
(name of applicant company)

_____ cable system in all respects and
(purchased cable company)

_____ cable system is bound by all the terms, conditions,
(name of applicant company)

and restrictions contained in that Cable Television Franchise Agreement which shall remain in full force and effect until expiration or otherwise amended or altered as allowed by law.

(Franchising Authority)

By _____
(Authorized Officer)

150 CSR 26

**FORM NO. 6
NOTICE**

As a subscriber of _____, you have several important rights. This notice describes how to resolve cable television problems, how to apply for credit and how to contact the Public Service Commission of West Virginia.

COMPLAINTS

If you have a cable television problem contact our office by calling _____. In every case we will attempt to answer your question promptly or we will schedule a service call. If, however, we are unable to resolve your complaint to your satisfaction, you may contact the Public Service Commission, in writing, at the following address or by calling their toll-free number:

Public Service Commission of West Virginia
P.O. Box 812
Charleston, WV 25323

Toll Free Telephone: 1-800-344-5113

Please note the Public Service Commission is responsible for regulating basic cable rates and associated equipment, and customer service standards.

Your written complaint to the Commission must include the name and address of the cable operator, a clear and concise statement of the facts involved and the remedy sought. The Commission has developed a Complaint Form for your use which will be provided upon request.

In the event the Commission cannot, informally, resolve your complaint to the satisfaction of all parties, you are entitled to file a request for a formal hearing before the Commission.

The Commission will act upon all unresolved cable television problems other than those dealing with programming and channel selection. The Commission will also consider rate level complaints when a rate increase case is being processed by the Commission.

The Federal Communications Commission (FCC) is responsible for regulating rates for all other programming services. If you wish to file a complaint regarding cable programming services, please contact:

Federal Communications Commission
Cable Services Bureau
445 12th Street, S.W., Room 3-C 830
Washington, D.C. 20554

Phone: 202-418-7200

CREDIT FOR SERVICE INTERRUPTIONS

You are entitled to a pro-rata credit if cable service is interrupted for more than twenty-four continuous hours. The credit will be calculated based upon the proportionate share of the service not received in the applicable billing period, provided the interruption is due to a failure of the facilities of the cable television operator. When service interruption in excess of 24 hours occur, contact our office promptly with pertinent facts regarding the outage.

150 CSR 26

_____	_____
_____	_____
_____	_____
_____	_____

Schedule E
Line Extension Policy

35. Homes Per Mile Required

36. Maximum Drop Length

Schedule F
Customer Service Information

37. Physical Address of Nearest Business Office

38. Business Office Hours

39. Ordering & Billing Toll-Free Telephone Number

40. Number of Ordering & Billing Lines

41. Total Subs Accessing This Number

42. Staff Dedicated To This Activity

43. Ordering & Billing Telephone Hours

Fill out this section if Billing and Repair are operated separately

44. Repair Toll-Free Telephone Number

45. Number of Repair Lines

46. Total Subs Accessing This Number

47. Staff Dedicated to This Activity

48. Repair Telephone Hours

49. Method of Taking After Hours Calls

50. # Techs & Installers Serving This Area

51. Subscribers/Technician Average (Include other systems if applicable)

150 CSR 26

52. Billing System Used (Statement/Coupon)

Schedule G
Access Channel Information

53. Number of PEG Channels in Use

54. Number of Leased Access Channels in Use

55. Describe the facilities made available for access channel users

56. Describe methods used to make citizens aware of availability of access channel facilities

Schedule H
Emergency Broadcast System Information

57. Currently Operating an Emergency Override System?

If yes, answer the following:

58. Does It Blank Video?

59. Can You Generate Alpha/Numeric Messages On All Channels?

60. Can You Generate An Audio Message On All Channels?

61. Can The Override System Be Accessed By Telephone?

If the answer on line 62 is no, answer the following:

62. Are you planning to add an Emergency Override System?

63. Do you carry the National Weather Service on your system?

If so, answer the following:

64. Do You Carry NWS Video Crawl?

65. Do You Carry NWS (NOAA) Audio?

66. Do You Carry The Weather Channel With A Weather Star?

Schedule I
Ownership Information

150 CSR 26

- 67. FEIN or Social Security Number
- 68. West Virginia ID Number
- 69. Type of Business (Corp., Partn., Propr.)
- 70. If Corp. or Partnership, Charter State Date
- 71. List names of company officers, directors and/or general partners

- 72. List names of limited partners owning 10% or more of partnership interest

Schedule J
Basic Service Information For This Franchise Area

- 73. Number of Subscribers To Basic Service
- 74. Current Basic Service Rate
- 75. Number of Channels on Basic Service Tier
- 76. Do You Offer Discounts For Groups Such As Elderly or Low Income?
- 77. If yes, what is the discount and how does one qualify?

List the current rates charged for the following rental equipment along with the number of subscribers renting each item.

- | | | |
|----------------------------|---------------|---------------|
| 78. <u>Converter</u> | <u>Charge</u> | <u># Subs</u> |
| 79. <u>Other Converter</u> | <u>Charge</u> | <u># Subs</u> |

150 CSR 26

- 80. Remote Charge # Subs

- 81. Other Remote Charge # Subs

- 82. Other Basic-Related Equipment Charge # Subs

- 83. What Is Your HSC Charge If Established?

- 84. Do you use the HSC or a fixed rate for installation/service charges?
If you use a fixed rate for installation and service charges, please fill out the chart below.

- 85. Unwired Home Installation Charge

- 86. Reconnection Charge

- 87. Additional Connection Installation at Time of Initial Installation

- 88. Additional Connection Installation after Initial Installation

- 89. Cable Programming Service Tier Upgrade

- 90. Cable Programming Service Tier Downgrade

Schedule K
Cable Programming Service Tiers For This Franchise Area

91. Complete the table below for each cable programming service tier.

Description/Tier Name	Rate	# Chan	# Subs

ATTACH A COMPLETE CHANNEL LINEUP TO THE BACK OF THIS FORM!

- 92. Total Channels on Tiers Subject to Regulation

- 93. Total Satellite Channels on Tiers Subject to Regulation

- 94. Total Non-Broadcast Channels on Tiers Subject to Regulation

Schedule L
Other Charges

95. Complete the table below for each pay per channel service offered.

150 CSR 26

Schedule M
Profit and Loss Statement

REVENUES

- 101. Basic Service Revenue
- 102. Cable Programming Service Revenue
- 103. Installation & Service Revenue
- 104. Equipment Rental Revenue
- 105. Premium Service Revenue
- 106. Pay Per View Revenue
- 107. Advertising Revenue
- 108. Other Revenue
- 109. TOTAL OPERATING REVENUES

EXPENSES AND TAXES

- 110. Salaries, Wages & Employee Benefits
- 111. Pole Rentals # Rented
- 112. Basic Service Programming Expense
- 113. Cable Programming Service Programming Expense
- 114. Other Programming Expenses
- 115. Franchise Fees
- 116. Copyright Fees
- 117. Interest Expense
- 118. Depreciation
- 119. Amortization
- 120. Federal Taxes
- 121. State Taxes
- 122. Local Taxes

150 CSR 26

- 123. All Other Expenses
- 124. TOTAL EXPENSES & TAXES
- 125. NET PROFIT (LOSS)
- TANGIBLE PROPERTY OWNED (AT COST)
- 126. Land & Buildings
- 127. Leasehold Improvements
- 128. Tower & Headend
- 129. Trunk & Feeder
- 130. Subscriber Devices
- 131. Local Origination Equipment
- 132. Test & Vehicle Maintenance Equipment
- 133. Vehicles
- 134. Other Tangible Property
- 135. TOTAL TANGIBLE PROPERTY

Schedule N
Legal Status

136. Is your company currently involved in any litigation involving the validity of your franchise, or any other legal proceeding that could hinder your ability to operate this system? If so, explain in the space below.

Schedule O
Certification

I certify that, to the best of my knowledge, the information supplied on this form is true and

150 CSR 26

correct.

Authorized Signature	Date
Print or Type Name and Title of Person Signing This Form	