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(Plus all the volunteer
help we can get)

September 20, 1999

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Public Service Commission

RULE: Amendments, Series 26, Rules & Regulations for the Government of Cable Television

DATE FILED AS AN EMERGENCY RULE: August 12, 1999

DECISION NO. 14-99

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

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OFFICE OF THE SECRETARY OF STATE

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EMERGENCY RULE DECISION (ERD 14-99)

AGENCY: Public Service Commission
RULE: Amendments, Series 26, Rules & Regulations for the Government of Cable Television

FILED AS AN EMERGENCY RULE: August 12, 1999

- par. 1 The Public Service Commission (PSC) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The PSC filed this emergency rule with supporting documents with the Secretary of State August 12, 1999.

par. 7 It is the determination of the Secretary of State that the PSC has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §24-1-7 reads:

The commission shall prescribe such rules and regulations as may be necessary to carry out the provisions of this chapter, including rules of procedure and for taking evidence in all matters that may come before it, and enter such orders as may be just and lawful: Provided, That no such rule or regulation shall be effective unless promulgated pursuant to the provisions of sections one through ten, article three, chapter twenty-nine-a of this code: Provided, however, That no such rule or regulation shall become effective until sixty days after its final adoption or until the effective date proposed by the commission, whichever is later: Provided further, That any rules and regulations promulgated prior to the effective date of this section shall remain in full force and effect unless changed, modified or repealed in accordance herewith. The rules and regulations promulgated hereunder by the public service commission shall not be subject to the legislative rule-making review procedures established in sections eleven through fifteen, article three, chapter twenty-nine-a of this code. In the investigations, preparations and hearings of cases, the commission shall not be bound by the technical rules of pleading and evidence, but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justice to the matters before it. Meetings of the commission wherein the sole purpose is to decide or deliberate toward a decision on any matter are exempt from the requirements of article nine-a, chapter six of this code, any other provision of this code to the contrary notwithstanding. All orders of the commission shall set forth separately findings of facts and conclusions of law, which findings of fact shall make specific reference to the evidence in the record which supports such findings. The commission shall have a seal bearing the following inscription: "The Public Service Commission of West Virginia." The seal shall be affixed to all writs and authentications of copies of records, and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal.

par. 9 W. Va. Code further states in §24D-1-23:

(a) The commission has the power and jurisdiction to supervise every cable operator within this state so far as may be necessary to carry out the purposes of this chapter and to do all things which are necessary or convenient in the exercise of this power and jurisdiction.
(b) The commission may adopt rules and regulations as are necessary to implement the provisions of this article. The rules and regulations promulgated by the cable advisory board pursuant to repealed article eighteen, chapter five, and in force and in effect on the thirty-first day of December, one thousand nine hundred ninety-seven, shall remain in effect and hereby become the rules and regulations of the commission.

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

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

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

par. 10 It is the determination of the Secretary of State that the PSC has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.


par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by the PSC are as follows:

The WV Cable TV Systems Act (WVCTSA), specifically §24D-1-23(b), directed that the cable advisory board rules and regulations would become the rules and regulations of the PSC. The cable advisory board rules, in some instances, conflict with the PSC's current rules of practice and procedure, 150 CSR 1, and with the requirements set forth in the recently enacted WVCTSA, §24D-1-1 et seq. Further, the cable board rules have not adopted several forms and the FCC minimum quality of service regulations, which are necessary for the PSC regulation of cable companies. Accordingly, it is necessary to promulgate the rules on an emergency basis, in order that the PSC be properly prepared for implementing its new cable television jurisdiction.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f).

par. 15 This decision shall be cited as Emergency Rule Decision 14-99 or ERD 14-99 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Public Service Commission, and the Attorney General.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF THE SECRETARY OF STATE
MONTGOMERY, ALABAMA
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