

Public Service Commission

Richard E. Hitt, General Counsel



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April 20, 1999

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

Re: Cable Television Rules

Dear Judy:

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Hitt".

Richard E. Hitt
General Counsel

REH/cbd
Enclosure
rickmsc/cooper17.wpd

TITLE 150
LEGISLATIVE RULE
~~CABLE TELEVISION ADVISORY BOARD~~ P.S.C.

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 In §24D-1-23(b) the bill states: "The rules and regulations promulgated by the cable advisory board pursuant to repealed §5-18-1 and in effect on December 31, 1997, shall remain in effect and hereby become the rules and regulations of the commission."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.

6/11/99

§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 ~~§5-18-1~~ et seq., relating to public access channels, notification of service and rate changes, and payment of annual fees and document fees.

§24D-1-1

1.2. Authority. -- W. Va. Code ~~§5-18-26~~ (1990).

§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 ~~§5-18-12(f)~~ shall be imposed only upon initial franchise authorizations and franchise renewal authorizations. Existing cable franchises are exempt from those requirements.

§24D-1-1 et seq

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

§24D-1-1 et seq

4.1. Cable operators are required by W. Va. Code ~~§5-18-25(h)~~ 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 Board.

Commission

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

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§150-27-5. Payment of Annual Fees.

24D-1-1 et seq wait for rulemaking? fee is defect

5.1. Pursuant to W. Va. Code ~~§5-18-28~~ each and every cable operator is required, to pay the Board by September 1 of each year an annual fee of thirty (30) 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

if we leave this rule intact, "existing franchises" may mean those which exist on June 11, 1999

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. Payment of Filing and Document Fees.

6.1. Pursuant to W. Va. Code ~~§5-18-23~~ ^{§ 24D-1-1 et seq} each and every cable franchisee which is filing an initial, renewal or transfer of franchise document is required to pay the ~~Board~~ ^{Commission} at the time of filing the franchise document a filing fee of fifty dollars (\$50).

6.2. Pursuant to W. Va. Code ~~§5-18-23~~ ^{24D-1-1 et seq} in each year a filing fee is not required to be paid then each and every cable franchise shall pay to the ~~Board~~ ^{Commission} beginning in 1990 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 documents 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. Charges for Disconnection and Downgrades.

7.1. 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. 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. 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. The downgrade charges 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. 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 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. Notice of Potential Transfers due to Encumbrances.

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:

"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 ~~§5-18-15~~ ^{24D-1-1 et seq} and Legislative Rules, ~~Cable Television Advisory Board~~ ^{Commission}, Franchising Procedures 187 CSR 1-1."

"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 ~~West Virginia Cable Television Advisory Board~~ ^{Commission} within seven (7) days

of the default. This notification is to give the franchise authority and the ~~Board~~ ^{Commission} the opportunity to determine if the default would cause inadequate, unsafe, or unreliable service in violation of W. Va. Code ~~§5-18-17.~~ ^{§ 240-1-1 et seq}

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

9.1. For each violation of this rule the ~~Board~~ ^{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 ~~§5-18-1~~ et seq. is a separate violation. ^{§ 240-1-1}

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