

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Cable Television Advisory Board TITLE NUMBER: 187

CITE AUTHORITY W. Va. Code Section 5-18-26(b)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Implementing Rule

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

William S. Steele
William S. Steele, Legal Counsel

DATE: August 1, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV Cable Television Advisory Board

LEGISLATIVE RULE TITLE: Implementing Rule

1. Authorizing statute(s) citation WV Code Section 5-18-26 and Section 5-18-28

 2. a. Date filed in State Register with Notice of Hearing: June 11, 1997

 - b. What other notice, including advertising, did you give of the hearing?
Legal advertisements in WV daily newspapers appeared on June 17, 1997

 - c. Date of Hearing(s): July 17, 1997

 - d. Attach list of persons who appeared at hearing, comments received amendments, reasons for amendments.

Attached: _____ No comments received: x _____
 - e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)
August 1, 1997

 - f. Name and phone number(s) of agency person(s) to contact for additional information:
Roy Cowan 340-0441

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:
- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Rule Title: Implementing Rule

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Reduces sizes of surplus funds at time of agency termination.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

Reduces the fee paid by citizens/subscribers to cable operators. The cable operators collect the fee and pay it to the WVCTAB.

C. Economic Impact on Citizens/Public at Large.

Reduces the cost of government and saves the public approximately \$49,553.00

Date: August 1, 1997

Signature of Agency Head or Authorized Representative:

William S. Steele

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 2, Implementing Rule--187 C.S.R. 187-2-1 et seq.

Type of Rule: X Legislative Interpretive Procedural

Agency West Virginia Cable Television Advisory Board

Address Post Office Box 812
Charleston, West Virginia 25323

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NET	HEREAFTER
ESTIMATED TOTAL COST	\$	\$ 49,553	\$ 49,553	\$ n/a	\$ n/a
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

The above estimate is based on a ten (10) cent reduction in the annual per subscriber fee paid by cable operators which funds the operating budget of the WVCTAB.

3. Objectives of these rules:

The WVCTAB is scheduled to cease operation on July 1, 1998. The WVCTAB has nearly sufficient funds on hand to meet budgeted operating expenses for that period. The reduction in the fee will benefit the public by reducing the fee paid by individual citizens to whom the cost is passed on to by cable operators and avoid the accumulation of an unnecessary surplus.

Rule Title: Implementing Rule

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Reduces sizes of surplus funds at time of agency termination.
No other economic impact.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Reduces the fee paid by citizens/subscribers to cable operators. The cable operators collect the fee and pay it to the WVCTAB.

C. Economic Impact on Citizens/Public at Large.

Reduces the over cost of government.

Date: June 11, 1997

Signature of Agency Head or Authorized Representative

Donald L. Darling

Donald L. Darling, Legal Counsel ph: 558-2021

BRIEF SUMMARY OF PROPOSED EMERGENCY
RULE AND STATEMENT OF CIRCUMSTANCES
CONSTITUTING THE EMERGENCY

This emergency rule is an amendment to the West Virginia Cable Television Advisory Board's (WVCTAB) Implementing Rule, Title 187, Series 2. More particularly the emergency rule amends 187 C.S.R. § 187-2-5 at 5.1 by reducing the amount of the annual fee paid by cable operators from thirty (30) cents to twenty (20) cents per subscriber.

The circumstances constituting the emergency require this action to prevent substantial harm to the public interest. The fee set in 187 C.S.R. § 187-2-5 is, in actuality, paid by the citizens of West Virginia who subscribe to cable television services. The fee is dedicated to fund the operation of the WVCTAB. However, the WVCTAB is scheduled to cease operations on July 1, 1998. The WVCTAB has funds on hand nearly sufficient to meet budgeted expenses for that period. Reducing the fee to the minimum allowed by statute will avoid undue expense to the public and minimize the surplus of funds held by the WVCTAB at the time of its termination.

The WVCTAB's entire operating revenue is obtained by collection of an annual fee. This fee and the associated special fund in the State Treasury is established in W. Va. Code § 5-18-28. The fee is to be set by the WVCTAB at an amount "not less than twenty cents per subscriber or such greater annual fee as may be determined by the Board." Although remitted by cable operators, the fee is actually paid by subscribers. The fee is passed through directly to subscribers and appears as a separate item on subscriber bills.

Until this year, the amount of the fee had been established by the WVCTAB through legislative rule at forty (40) cents per subscriber. This fee is contained in 187 C.S.R. § 187-2-5. The fee had remained at forty (40) cents throughout the WVCTAB's life until the approval by the 1997 legislature of an amendment to reduce the fee to thirty (30) cents. See S.B. 209 at § 64-9-4(a).

The reduction in the fee was undertaken because the WVCTAB had accumulated a substantial surplus of operating funds. At the conclusion of FY 97 on June 30, 1997, this surplus will be approximately \$230,000.00.

The 1997 legislature determined that the WVCTAB should be "sunset", i.e. terminated. See H.B. 2881 at § 4-10-5(2). The termination date is set as July 1, 1997. However, by operation of W. Va. Code § 4-10-6 the WVCTAB will continue in operation until July 1, 1998 "for the purpose of winding up its affairs." Also under W. Va. Code § 4-10-6 the WVCTAB retains all powers and duties imposed by statute, including the collection of the annual fee.

The 1997-98 budget, as set forth in H.B. 2050 approves expenditures of \$266,615.00 by the WVCTAB for the fiscal year. As noted above, the funds on hand at the beginning of the fiscal year will be approximately \$240,000.00. Thus, the need for additional revenue is limited. Any surplus goes to the general fund at the WVCTAB's final termination. See W. Va. Code § 4-10-6.

There were 495,530 cable subscribers reported in 1996. The 1997 total should be approximately the same. Using the 1996 figures, at thirty (30) cents per subscriber, the rate now set for the fee, 1997 collections will be approximately \$148,660.00. Adding funds on hand to expected revenue and subtracting authorized expenditures reveals an expected surplus of \$122,045.00.

The ten (10) cents per subscriber reduction in the fee under this emergency regulation would save the public \$49,553.00. The surplus at the time of termination would be reduced to approximately \$72,000.00. The WVCTAB believes the public is entitled to this savings. Additionally, because the fee is collected by September 1, 1997, the reduction in the fee must be accomplished through emergency regulation if substantial harm to the public interest is to be prevented. See W. Va. Code § 29A-3-15(f)(3).

PUBLIC HEARING

The following individuals attended the Public Hearing on the Proposed Rule, Series 2, on July 17, 1997:

Paul Brewer, representing WVSX-TV
Mark Polen, representing WVCTA
Ron Hutchison, representing Charleston Daily Mail
Guy White, representing TCI of WV, Inc.
Mari Sevey, Century Communications

There were no written comments submitted.

NAME

REPRESENTING

Paul Brewer
MARK POUGH
~~Tom Hutchins~~
Guy White
MARI SEVEY

WUSX-TV
WVTA
Charles R. Kelly, Jr.
TCI of West Virginia, Inc.
Century Comm.

TITLE 187
LEGISLATIVE RULE
CABLE TELEVISION ADVISORY BOARD

SERIES 2
IMPLEMENTING RULE

FILED
Aug 1 4 25 PM '97
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§187-6-1. 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.

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

1.3. Filing Date. --

1.4. Effective Date. --

§187-2-2. 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.

§187-2-3. 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.

§187-2-4. Notification of Service and Rate Changes.

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.

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.

§187-2-5. Payment of Annual Fees.

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)~~ twenty (20) 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.

§187-2-6. Payment of Filing and Document Fees.

6.1. Pursuant to W. Va. Code § 5-18-23 each and every cable franchisee which is filing an initial, renewal or transfer of franchise document is required to pay the Board 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 in each year a filing fee is not required to be paid then each and every cable franchise shall pay to the Board 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.

§187-2-7. 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.

§187-2-8. 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 and Legislative Rules, Cable Television Advisory Board, 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 within seven (7) days of the default. This notification is to give the franchise authority and the Board the opportunity to determine if the default would cause inadequate, unsafe, or unreliable service in violation of W.Va. Code §5-18-17."

§187-2-9. Violation of Rules; Penalties.

9.1. For each violation of this rule the Board 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.