

STATE OF WEST VIRGINIA

PRELIMINARY PERFORMANCE REVIEW OF THE

CABLE TELEVISION ADVISORY BOARD

The CTAB has only recently provided the municipalities with procedures relating to the uniform franchising system

The Board does not determine or maintain record of the final disposition of complaints

Twenty-one County Commissions have not franchised all cable operators in their jurisdiction

The CTAB enforced FCC Order providing \$1,017,376 in overcharge refunds

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November 18, 1996

The Honorable A. Keith Wagner
State Senate
Box 446
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The Honorable Joe Martin
House of Delegates
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Gentlemen:

Pursuant to the West Virginia Sunset Law, we are transmitting the preliminary performance review of the **West Virginia Cable Television Advisory Board**, which we will report to the Joint Committee on Government Operations, Monday, November 18, 1996. The issues covered are "*The CTAB has only recently provided the municipalities of the state with a comprehensive mail-out of the standards and procedures relating to the uniform statewide franchising system; The Board does not determine or maintain record of the final disposition of complaints; Twenty-one county commissions have not franchised all of the cable operators servicing their jurisdiction; and As a certified rate regulating authority, the CTAB successfully enforced FCC decisions lowering the average basic tier rate and providing overcharge refunds totaling \$1,017,376 for 164,434 West Virginia cable subscribers.*" The agency response will be distributed at the meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Antonio E. Jones".

Antonio E. Jones

AEJ/wsc

Enclosure

Joint Committee on Government and Finance

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Executive Summary

The Cable Television Advisory Board (CTAB) was created to establish uniform procedures for franchising cable operators and assist and advise local governments in implementing these procedures, to investigate and resolve complaints regarding cable service, and to function as the authority responsible for enforcing federal rate regulations on cable television.

Issue Area 1: The CTAB has only recently provided the municipalities of the state with a comprehensive mail-out of the standards and procedures relating to the uniform statewide franchising system.

The CTAB has provided the **standards and procedures** for franchising authorities to follow. However, until September 1996, the method of disseminating the standards to local governments has been insufficient. The Board worked in cooperation with the Association of Counties in 1991 to distribute the standards to county governments. However, the Municipal League indicated that it has had little dialogue with the Board, and **the Board was unable to provide concrete evidence that it has provided each municipality with the prescribed standards prior to September of this year.** A packet the audit team obtained from the Municipal League contained the phrase that it is assumed that it was sent out.

The creation of the franchise packet which was mailed to all local governments in September 1996 was a major step in rectifying this shortcoming. In the future, the Board should establish and maintain a cooperative relationship with both municipal and county government organizations such as the Association of Counties and the Municipal League.

Issue Area 2: The Board does not determine or maintain a record of the final disposition of complaints.

In §5-18-25 of the *WV Code* provides that the Board address complaints regarding the operation of cable systems. When the CTAB receives a complaint from a subscriber, a set procedure is followed. However there is one flaw in the process which hinders its overall effectiveness. **Resolution is assumed by the Board unless the Board is advised by the complainant to the contrary. This means that it is not certain that the complaints are being resolved, which in turn means that it cannot be said for certain that the Board is fulfilling its statutory obligation to resolve these complaints.**

A related concern is the fact that the Board's name and telephone number do not appear on some cable subscriber's bills to instruct the subscriber where to report complaints. The Board addressed this issue between November 1993 and April 1994, according to Board minutes. The Board received from the FCC confirmation that the Board's name should be on the bills, not the

franchising authority. However, the Board should take steps to ensure compliance by cable operators.

Issue Area 3: Twenty-one county commissions have not franchised all of the cable operators servicing their jurisdiction.

Throughout the state of West Virginia, twenty-one county governments have not completed franchises with all of the cable operators who service the area within their jurisdiction. One other county has had a franchise renewal request pending for over a year. In total there are 57 cable systems that have not been franchised. This is contrary to the West Virginia Code which states in §5-18-4a that no person shall operate a cable system without first obtaining a cable franchise from a franchising authority. The CTAB has claimed that all of the cable operators in question have submitted the proper forms to the Board to begin the franchising process. It is the county commissions themselves that are remiss in concluding the process.

Issue Area 4: As a certified rate regulating authority, the CTAB successfully enforced FCC decisions lowering the average basic tier rate and providing overcharge refunds totaling \$1,017,376 for 164,434 West Virginia cable subscribers.

The CTAB regulates rates to the degree permitted by federal law. Activities in this area have resulted in declining average basic tier rates in West Virginia over the past six years, and in obtaining refunds for overcharged West Virginia cable subscribers amounting to more than one million dollars.

There is some question concerning the ability and willingness of local governments to provide these services. Nationwide, there is a tendency for local governments not to become certified to regulate rates. It is therefore likely that West Virginia would have many areas in which cable operators were unregulated if an agency such as the CTAB were not in place. In addition, if the Board, or another such entity certified by the FCC to regulate rates did not exist, the refunds and rate rollbacks would not have occurred.

The PERD audit team identified some merit in continuing the Board, and identified some possible negative effects if the Board were terminated. Based on assessment of costs and benefits of the CTAB, it was concluded that the Board should be continued.

Review Objective, Scope and Methodology

This preliminary review of the West Virginia Cable Television Advisory Board (CTAB) was conducted in accordance with the West Virginia "Sunset Law," Chapter 4, Article 10, Section 11 of the West Virginia Code of 1931, as amended. The primary functions of the CTAB are to establish uniform procedures for franchising cable operators and assist and advise local governments in implementing these procedures, to investigate and resolve complaints regarding cable service, and to function as the authority responsible for enforcing federal rate regulations on cable television.

The objective of this review was to evaluate the necessity for the existence of the CTAB. This being established, the secondary objective was to determine what, if any, policy or procedural shortcomings inhibited the CTAB from accomplishing its mission. The scope of the audit included the three major functions of the Board, as previously mentioned. The period covered by the review was from the creation of the Board in 1990 to the present.

The methodology of the review included interviews with Board members and staff, interviews with Federal Communications Commission (FCC) employees, telephone discussions with officials of eleven county and municipal governments, telephone discussions with cable operators, review of minutes of Board meetings and direct observation of CTAB activities. Legal research involving both state and federal law and regulations was also included.

This review followed the Generally Accepted Government Auditing Standards.

Introduction & Background

According to the West Virginia Sunset Law, performance evaluations should determine the answers to a set of questions. The questions that most apply to this audit are:

1. Was the agency created to resolve a problem or provide a service?
2. Has the problem been resolved or the service provided?
3. To what extent would there be significant and discernible adverse effects if the agency were abolished?

This report will address these questions in an attempt to provide an accurate assessment of the effectiveness and continued necessity of the Board.

Services that the Board is to provide

The Cable Television Advisory Board was created in 1990 to provide three major types of services. These services are listed below:

- Service #1)* Establish uniform standards for the issuance, renewal, and transfer of cable television franchises and provide advice and technical assistance to local governments for the implementation of these standards.
- Service #2)* Investigate and resolve complaints concerning cable service.
- Service #3)* Establish and regulate just, reasonable and nondiscriminatory rates and charges for the provision of cable service.

Have these services been provided?

The CTAB has provided the **standards and procedures** for franchising authorities to follow. However, until September 1996, the method of disseminating the standards to local governments has been insufficient. Primarily, the Board did not disseminate these standards and procedures to municipal governments. The dissemination of the standards and procedures is important toward establishing the mandate of a statewide uniform practice for franchising cable operators. This is discussed in detail in Issue Area 1.

With respect to service number two, the CTAB has established a complaint resolution process, but the process does not provide evidence that complaints have been resolved, as required by law. This is discussed in Issue Area 2.

The CTAB regulates rates to the degree permitted by federal law. Activities in this area have resulted in declining average basic tier rates in West Virginia over the past six years, and in

obtaining refunds for overcharged West Virginia cable subscribers amounting to more than one million dollars. This is discussed in Issue Area 4.

The Cable Television Advisory Board is providing the three above mentioned services to the citizens of West Virginia, but with mixed effectiveness. It is true that without the existence of the Board, local governments could assume these duties. As discussed in Issue Area 4, there is some question concerning the ability of smaller communities to provide these services. If these services are not provided, the possibility exists that (1) complaints regarding poor cable service would go unresolved, and (2) rate regulations may not be enforced sufficiently.

The PERD audit team identified some merit in continuing the Board, and identified some possible negative effects if the Board were terminated. Based on assessment of costs and benefits of the CTAB, it was concluded that the Board should be continued.

Issue Area 1: The CTAB has only recently provided the municipalities of the state with a comprehensive mail-out of the standards and procedures relating to the uniform statewide franchising system.

West Virginia State Code states in §5-18-4a, "No person shall operate a cable system without first obtaining a cable franchise from a franchising authority." The franchising authority is the local municipality or county government unless the governmental entity elects to transfer this authority to the CTAB.¹ A franchise is a contract between the local government and the cable operator concerning the provision of cable service to the community. The Board is required to prescribe uniform standards and procedures on how the local franchise authorities are to issue, renew or transfer franchises. The local franchise authority is required by law (§5-18-8) to follow these standards and procedures. Some of the standards and procedures that the Board is required to establish are stated below in general terms:

- 1) Standards for the filing of all franchise applications, the holding of public hearings upon reasonable notice to the public, making franchise applications and related documents available for examination by the public, and other standards to assure maximum public participation and competition.
- 2) The minimum standards which should be included in each franchise agreement, including maximum initial and renewal terms of the agreement, minimum channel capacity, and other standards to protect the public interest.
- 3) The minimum standards for franchise authorities to use in determining the technical and financial ability of cable operators and other qualifications.
- 4) The minimum standards for the construction and operation of cable systems.
- 5) Standards for the prohibition or limitation of concentration of control over mass media and communication companies.
- 6) The minimum specifications for equipment, service and safety of cable.

In order to provide specific standards and procedures for local governments to follow in granting franchises, the Board promulgated rules which address the provisions in the code. Although the statute and rules are an important part of developing a statewide uniform procedure for local governments to follow, it is important to disseminate these standards to the local franchise authorities to fully achieve a statewide uniform system for franchising cable operators. Every cable operator has filed an application with the Board, and in 1991, the Board notified every cable operator and franchise authority in the state of their responsibility to have franchise agreements in place. These efforts are important in making each party aware of their franchising responsibility. However, the question remains, do local governments know the standard procedures for franchising which they are required by law to follow?

In September of 1996, a handbook was prepared and mailed out to all local franchising

¹ Two county governments, Gilmer and Doddridge, have elected to transfer their authority to the Board.

authorities. The handbook provides franchising authorities with the cable statute, and the regulations specifying the standard procedures to follow in granting a franchise. The handbook also contains a franchise application, and a model franchise agreement which illustrates some of the prescribed standards that franchise authorities should require of cable operators.

This is the first such handbook that the Board has provided to local governments. **Before this time, the Board's dissemination of the standards was mixed.** The Board worked in cooperation with the Association of Counties in 1991 to distribute the standards to county governments. The Association of Counties provided a packet that was mailed out to all county commissioners in 1990. This packet contained the rules governing the franchise process and explanations of these rules and a model franchise agreement that the counties could use as a guide to produce their own agreements. However, no such evidence could be obtained from the Board or the Municipal League that such a detailed packet was definitely disseminated to the municipalities. The Municipal League indicated that it has had little dialogue with the Board, and **the Board was unable to provide concrete evidence that it has provided each municipality with the prescribed standards prior to September of this year.** A packet the audit team obtained from the Municipal League contained the phrase that it is assumed that it was sent out. Some municipalities may know the standard procedures through their efforts of acquiring the information or requesting assistance from the Board. The Board may know if some of the standards are followed by local governments through its observation of franchise agreements which are on file at the CTAB offices. However, the franchise agreement does not include all of the standards. For example, the Board cannot know from the franchise documents if all local governments held public hearings properly.

Conclusion

The CTAB has promulgated the rules governing franchising. Until September 1996, however, dissemination of the information regarding the process was incomplete. **The creation of the franchise packet which was mailed to all local governments in September 1996 was a major step in rectifying this shortcoming.** In the future, the Board should establish and maintain a cooperative relationship with both municipal and county government organizations such as the Association of Counties and the Municipal League. Issues affecting these governments regarding cable franchising and regulation should be discussed and information disseminated through these cooperative relationships.

Recommendation 1

The Cable Television Advisory Board should increase its efforts to communicate and cooperate with local governments regarding standard procedures for franchising cable operators by issuing updates of developments and procedures to both municipalities and counties. Cooperation with the Association of Counties and the Municipal League should be a part of this process.

Issue Area 2: The Board does not determine or maintain a record of the final disposition of complaints.

In §5-18-25 of the *WV Code* provides that the Board address complaints regarding the operation of cable systems. These complaints from subscribers must be made in writing and filed with the Board. The code states, *"The Board shall take up such complaints with the cable operator in an endeavor to bring about satisfaction of the complaint without formal hearing. The Board shall resolve all complaints, if possible, informally."* If no satisfactory resolution is reached, the complainant may file for a formal hearing before the Board. A hearing may result in a fine or civil penalty for the operator if it is found that any violation of rule or code provisions for the operation of a cable system occurred. As will be discussed below, this method lacks a final step which defines the ultimate disposition of the complaint.

Types of complaints vary, but may be grouped into two categories. The first category would be television signal **reception complaints**. An example of this type of complaint would be that certain channels are received poorly, or snowy pictures, etc. The second type would be **service related**. Examples of this type include unwarranted discontinuation of service, inability to contact the operator, inaccurate accounting of billing or similar occurrences. The following table illustrates the breakdown of complaints since 1994.

Table 1					
Types of Complaints Received by the CTAB					
Year	Reception Complaints	Poor Service accessibility	Timeliness of Service Complaints	Billing error Complaints	Totals
1994	127	37	43	51	258
1995	102	36	15	24	177
1996*	27	3	3	3	36
Totals	256	76	61	61	471

*Figures through August

In these three years there was a total of 471 complaints from 233 individual subscribers. Some subscribers voiced multiple complaints about different types of problems.

CTAB staff is responsible for following up each complaint. A full time investigator handles complaints that require investigation, especially those that do not fall under Series Three procedures. (That is, those complaints that are related to matters other than quality of service. Specifically this includes rates and channel selection complaints.) Although some travel is

sometimes involved, as much as possible the investigator attempts to reduce costs by handling the situations through phone and mail. This may include asking other subscribers in the vicinity if they are experiencing the same problems as the complainant. The investigator reports monthly to the Board members concerning the complaints received in the previous month.

When the CTAB receives a complaint from a subscriber, a set procedure is followed. A first letter is sent to the operator asking that they respond to the complainant, and a letter is sent to the complainant advising that the operator has been contacted by the Board. If no response from either complainant or cable operator is received, a second letter is sent to both. The letters to the complainant advise concerning the right to request a formal hearing if no satisfactory resolution is reached. The letter states that *"if after fifteen days you have not received a response from the company, or the response fails to resolve the matter, please contact this office and a formal hearing request form will be forwarded to you."* **Resolution is assumed by the Board unless the Board is advised by the complainant to the contrary.** As of this time, 12 formal hearings have been requested, but in each case resolution of the situation occurred without the hearing actually taking place.

This system of resolving complaints is lacking one vital aspect. The CTAB assumes that the complaint was resolved. There is no evidence that proves this to be true. The simple fact that the complainant does not contact the CTAB a second time is assumed to signify that the issue was resolved. **This means that it is not certain that the complaints are being resolved, which in turn means that it cannot be said for certain that the Board is fulfilling its statutory obligation to resolve these complaints.**

In order to assure a satisfactory closure for each complaint, a minor adjustment in the process could be made. If the CTAB were to require that the cable operator respond in writing with a detailed description of what it has done to rectify the complaint, and if the CTAB would then contact the complainant to verify that it has taken place, this problem could be solved. This would be a simple, low cost method of achieving a *record of resolution* on each case. It should be noted that in some cases the operator may not be able to address the complaint due to technological limitations. A letter stating this would be the record of resolution in such cases.

By adopting this recommendation, the CTAB could demonstrate that it is fulfilling its statutory requirement of resolving these complaints. It would also result in a higher level of assurance that the consumer is being properly protected. In addition, this would demonstrate that cable operators are not being subjected to unreasonable expectations on the existing technology.

A related concern is the fact that the Board's name and telephone number do not appear on some cable subscriber's bills to instruct the subscriber where to report complaints. The Board received complaints from local governments concerning the issue of why the franchise authority's name and telephone number appeared on subscriber's bill instead of the Board's name. The Board addressed this issue between November 1993 and April 1994, according to Board minutes. The Board received from the FCC confirmation that the Board's name should be on the bills, not the franchising authority. The April 1994 CTAB meeting minutes indicate that the Board intended to inform all cable operators to list the Board's name on subscribers' bills instead of the

franchising authority.

This is a logical decision since the Board is required by state law to resolve complaints concerning cable television. It is also appropriate to implement this policy so that subscribers know the proper authority to contact with complaints. The Board did inform cable operators through a general order that the Board's name, mailing address and telephone number be provided by cable operators on monthly subscriber bills, along with a notation that questions or inquiries on matters related to the regulation of rates for basic service be directed to the Board.

Although the Board took appropriate action, there are still some cable operators that have not complied with the Board's general order. The Association of Counties received complaints from at least two counties about the county commission's name being on subscriber's bill, which causes the county commission to receive service complaints from subscribers. The audit team also has a copy of a cable bill from a cable operator in the city of Parkersburg, which still lists the city instead of the CTAB as the contact for complaints on the subscriber's bill. The total number of cable operators who have not complied with the general order is unknown. The Board should address this issue again.

Recommendation 2

The CTAB should require cable operators to reply to the Board's letter notifying them of complaints. This response should include acknowledgment of receiving the complaint, the action that the operator has taken to rectify the problem, or an explanation as to why the problem cannot be solved with existing technology. The CTAB should then contact the complainant to verify that the cable operator has resolved the problem or explain to the consumer why the problem cannot be resolved.

Recommendation 3

The PERD recommends that the Cable Television Advisory Board inform all cable operators that the Board's name, address and telephone number be listed on the monthly subscriber bills. It is also recommended that the Board monitor the compliance of the Board's renewed order to ensure that this policy is completely implemented by cable operators.

Recommendation 4

The Board should consider changes in the Code of State Rules governing cable operators which would require that the CTAB name, address and telephone number be placed on the cable bill. These rule changes should be submitted for approval during the 1998 legislative session, since it is now beyond the deadline for filing rules for the 1997 session. In the event that a city or county government does wish to be listed on the bill as well, this should not be prohibited.

Issue Area 3: Twenty-one county commissions have not franchised all of the cable operators servicing their jurisdiction.

Throughout the state of West Virginia, twenty-one county governments have not completed franchises with all of the cable operators who service the area within their jurisdiction². One other county has had a franchise renewal request pending for over a year. In total there are 57 cable systems that have not been franchised. (Appendix C provides the list of these counties.) In many of these counties, franchises exist with some operators, but there remains at least one cable operator in each of these counties that is operating without a franchise. This is contrary to the West Virginia Code which states in §5-18-4a that no person shall operate a cable system without first obtaining a cable franchise from a franchising authority.

The result of this failure to franchise is that these 57 cable systems are operating illegally. However, the CTAB has claimed that all of the cable operators in question have submitted the proper forms to the Board to begin the franchising process. It is the county commissions themselves that are remiss in concluding the process. The CTAB has also stated that in some of these instances, the cable operator has paid the franchising fee to the county, yet still is not receiving the franchise from the county. The Board did make contact to all franchise authorities in 1991, informing them of the need to franchise. Whether this constitutes a written request for the decision to grant franchises or transfer the authority to the Board is uncertain.

WVC§5-18-4e states that "*If a county commission elects not to act as the franchise authority, the Board shall become the franchise authority.*" The law further stipulates that this election must be formally communicated to the Board before the Board may assume the duties of franchise authority. A final provision states that "*such election shall be promptly made upon written request of the board or the cable operator.*" There is no definition of the word "promptly," and no provision for recourse when the action is not "prompt."

The franchise agreement itself is important both to the operator and to consumers. The operator has problems in negotiating loans for upgrading services when there is no franchise. Loan institutions are reluctant to deal with cable operators who have no legal status. For the consumer, a franchise agreement provides protection against sudden and arbitrary cessation of service. Franchise agreements include a definition of the area to be served, guaranteeing service to those areas included in the agreement for many years. Frequently they may include a proviso allowing for the operator to withdraw from sparsely populated areas if the density drops below a certain number of households per mile. Most of the population of the franchise area would benefit, however, from a guarantee of service.

Franchise agreements also give some leverage to local officials when dealing with service problems. A franchise agreement may include stipulations concerning office hours and phone

²One county has a renegotiation pending since 1995. This would make the total twenty-two if included in the figure.

access, making certain that subscribers may obtain satisfaction when they have problems with service. It also may include a wider variety of available channels, guarantees of same-day or one-day service on complaints, and many other consumer protection related issues. **In short, a franchise agreement is not only mandated, but it is also in the best interests of all parties concerned.**

There are some possible reasons that a local government may refrain from granting franchises. One reason could be the fact that the process requires a \$250 fee, which some county commissioners might misunderstand as being a fee that is passed on to the subscriber. This fee is not allowed to be passed on to subscribers, however. In addition, the county commission has the authority to waive the fee if it so desires. Therefore, fear of generating a fee for constituents is unfounded.

Another possible reason could be a lack of adequate resources. Telephone conversations with local government officials indicated that a rural county or small town may find it difficult to find someone with the technical or legal expertise to oversee the franchise process. However, the CTAB has model franchise agreements available that would eliminate many technical and legal difficulties.

Although there could be legitimate reasons why a local government may wish not to grant franchises itself, these reasons do not explain the fact that the non-franchising counties have not elected to allow the Board to franchise for them. Two county commissions have transferred their franchising authority to the Board. The twenty-one that have unfranchised cable operators in their jurisdiction have not.

As previously stated, the failure to grant franchises results in cable systems operating without franchises, which is contrary to law. It has the further result of failing to protect the consumer from arbitrary decisions by the operator concerning provision of service. Finally, it makes obtaining loans for upgrading service problematic for operators, which in turn can deny greater opportunity for cable service to the consumer.

The way the current law is worded leaves little option for the CTAB. The Board could possibly exercise its authority and shut down those cable operators without franchises, but that would be unfair to the consumer, who would lose cable indefinitely, and to the cable operator if he or she has followed the proper procedure and is simply not being franchised by the county government.

Recommendation 5

The Legislature should consider adding to §5-18-4e the provision that within a certain period (for instance, six months) after a cable operator has filed for a franchise agreement the local franchising authority must grant the franchise, or negotiate in good faith any issues that prevent the granting of the franchise. If after the passage of this period neither of these has occurred, the authority to franchise that particular operator in that particular county will by default devolve upon the Cable Television Advisory Board.

Issue Area 4: As a certified rate regulating authority, the CTAB successfully enforced FCC decisions lowering the average basic tier rate and providing overcharge refunds totaling \$1,017,376 for 164,434 West Virginia cable subscribers.

The FCC issued a rate rollback in 1993 because it found that cable operators who were not subject to effective competition were charging on average 10% higher rates than those cable operators who were subject to effective competition. This figure was subsequently raised to 17%. Those franchising authorities who were certified by the FCC to regulate rates then enforced the FCC rollback order by reviewing basic tier rates using Form 393 and later Form 1200, which were prepared by the FCC³. If it was determined that a cable operator was charging rates above the FCC benchmark of \$1.24 per channel, a refund to subscribers was ordered by the CTAB. This refund was paid to the subscribers by the cable operators, generally through service credits.

To date, reviews such as these have resulted in a total of \$1,017,376 being refunded to cable subscribers around the state. The number of subscribers receiving these refunds was 164,434. It should be noted that, according to FCC sources, these reviews and refunds could not have occurred if there had not been a certified regulatory agency in place in West Virginia, at either the state or local level, unless an individual subscriber filed a complaint with the FCC. This refund also represents a measure of how much rates have been reduced in each of the years following the refund order. Therefore, this benefit has been experienced by West Virginia cable subscribers for the last two years.

The CTAB regulates rates to the degree permitted by federal law. While the FCC is responsible for determining the regulations on rates, it has no enforcement arm of its own. FCC rate regulations are enforced by local governments or centralized state agencies with statewide authority for regulating rates. These entities must apply to the FCC to become certified to enforce FCC rate regulations. WVC §5-18-16 endows the Board with sole authority to regulate rates in the state. Only seven other states have a central statewide authority similar to the CTAB. The CTAB was certified by the FCC in October 1993.

The CTAB regulates rates by reviewing requests from cable operators for approval of proposed rate increases. The investigator and/or the executive secretary review each request to ensure that the forms are correct, and that the monetary figures reflect an adequate justification for the rate increase that is requested and that all of the FCC guidelines are met. Adherence to the FCC's rate ceiling of \$1.24 per channel is of primary concern, but the CTAB may also negotiate with the operator to lower the requested increase or to offer additional services to justify the increase. The duty of the Board is to ensure that the new rate is in accordance with FCC regulations and to try to assure that the consumer will receive the maximum value for the monthly rate. Different forms are required for large cable operators than for small operators. The large operators' forms for basic tier rate increases are also reviewed by a subcommittee of the Board members. Table 2 illustrates the number of requests for rate increases and rate reviews that the

³ Basic Service Tier (BST) refers to the basic option for subscription and must by law include over the air (the major networks), educational and governmental channels. Other cable and satellite channels may be included at the option of the cable operator.

Board has received since 1991.

Year	Rate Increase Review	Cost of Service Review	Inflationary Increase Review	Rate Review	Totals
1991	4	0	0	0	4
1992	9	0	0	0	9
1993	5	0	0	21	26
1994	2	62	79	292*	435
1995	0	13	5***	46	64
1996**	0	13	3	0	16
Totals	20	88	87	359	554

* In 1994, Form 393 was requested by the FCC from all cable operators. This is reflected by the large number of rate reviews conducted in that year.

** These figures represent the first half of 1996.

*** After 1994, small cable operators were no longer required to submit a form for inflationary increase. They now simply file a letter announcing their intent to do so. Large operators are still required to file Form 1210. This explains the less frequent use of this form after 1994.

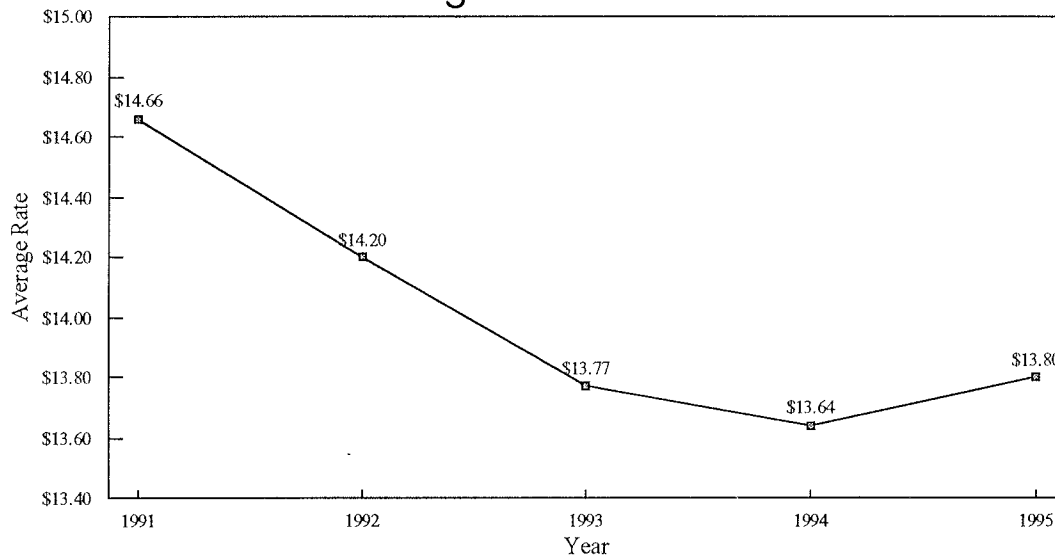
Each category in the table represents a different type of request. The first category represents a formal request to increase the rate for basic tier services using Form 1240, or its predecessors. This is submitted by large cable operators and must be approved by the Board. The second category is a request for approval of rates based on the cost of operations to the cable system. This form, 1230 for small operators and 1220 for large operators, consists of all pertinent information concerning expenses and projected income for the Board's review to justify the rate. The third category is a request to increase rates by the current level of inflation. For example, if the current inflation rate is 3%, this form (1210) would be submitted as a request to increase rates by 3%.

The fourth category is a rate review. The procedures for this review were described in the first paragraph of this issue area. This is the type of review that resulted in the refunds and rate rollbacks.

Between 1987 and 1992, when no regulation was in place, cable television rates grew by 50% to 175% in some cities throughout the country. The 1992 Cable Act restored to the FCC the authority to regulate rates of systems that are not subject to "effective competition." This term

is defined in the U.S. Code (See Appendix B). Since the introduction of rate regulations in 1992, as modified in 1996, rates per channel in West Virginia have declined. **In 1995 the average rate per basic tier channel in West Virginia was 81 cents. This was down from a high of \$1.09 in 1992, the last year before rate regulations went into effect.** The average basic cable rate has also declined as indicated in Figure 1. This suggests success by the CTAB in enforcing FCC rate regulations. It also suggests that current rates would be higher if rate regulations were not enforced.⁴

Figure 1
Average Basic Cable Rates



In 1996 the U.S. Congress passed legislation that restricts rate regulation to the first, or basic, tier of cable channels. The basic tier must include the major networks and a public, educational and government access (PEG) station. Beyond this requirement it is up to the discretion of the operator to decide what other channels to offer on the basic tier. The FCC has set a ceiling of \$1.24 per channel on the basic tier rate. Several conditions, all related to competition among cable operators or other providers of such signals, might make a franchise area exempt from these rate regulations. Only six out of the approximately 80 cable systems in West Virginia have been granted exemption by the FCC on the basis of effective competition.

The CTAB, in its role as rate regulating authority, performs services that some local governments might not otherwise provide if the Board did not exist. According to the FCC, two thirds of cable franchise areas in the country are not actively regulating rates. Information

⁴When the PERD contacted the FCC to ask for the average basic tier rate in franchise areas where the franchise authority is not certified to regulate rates, the FCC replied that this information was not available.

from the FCC indicates that approximately 33% of all cable franchise authorities in the United States have been certified by the FCC to regulate rates. This means that in 67% of the franchise areas, FCC rate regulations are not enforced. If the local authority does not become certified, cable operators are able to charge any rate without fear of restriction. It would be easy for an operator to charge more than the \$1.24 FCC imposed ceiling in these areas with impunity. The fact that only one third of all franchising authorities nationwide have been certified suggests that many local governments in West Virginia would not become certified to enforce FCC rate regulations. Some local governments might not have the resources necessary to regulate cable rates.

In addition, the CTAB has a level of expertise and resources that are suited to fulfill this obligation. The employees of the Board are already in place as knowledgeable authorities on the federal regulations concerning cable television. Many smaller communities indicated in telephone interviews that they would not have the resources to enforce rate regulations. Some larger communities, however, indicated that they could probably do so. In either case, the CTAB is providing this service currently, and at relatively little expense to the consumer. As stated before, currently the West Virginia cable subscriber pays 40 cents a year to support the CTAB. It is possible that this cost will be reduced further next year. Those citizens who do not subscribe to cable do not pay the fee, and therefore only cable subscribers support the Board. It is in effect a user fee.

In return for this annual fee, the state is served by an entity which performs functions which small local governments have indicated that they would be hard pressed to provide for their residents. Overall it is likely that regulations over many cable operators in West Virginia would be unenforced if the CTAB did not exist. FCC sources stated that in areas where no authority is certified to regulate rates, the cable operators are not prohibited from charging rates higher than the \$1.24 per channel benchmark. This benchmark applies only in an area where the local or state franchising authority is certified by the FCC.

The duty of investigating service complaints, which is discussed fully in Issue Area Two, is another function that would be difficult for smaller communities to perform on their own. Telephone interviews with local government authorities elicited some responses that indicate larger cities and more densely populated counties might prefer to handle this duty themselves, but **smaller communities and rural counties tend to rely on the Board to perform these consumer protection activities.** Cable operators indicated that the Board's existence made adherence to regulations much simpler, and that the industry is more responsive to the consumer because of the Board's oversight.

Conclusion

The Board can improve on establishing standard procedures for franchising cable operators by communicating the standards to local governments, particularly the municipalities. This has been started in September of this year. The continued participation by the Board in providing

assistance and expertise to local governments and keeping records of the franchises will also help establish uniform franchising practices.

Regarding complaint resolution, there is in place a method for addressing complaints from subscribers. However, as the second issue area explained, this has been operating without any evidence of complaints being resolved. It cannot be categorically said that these complaints have been resolved, nor can it be said that they have not. If the Board did not exist, the local governments would have to fulfill this role. According to telephone interview responses, some of the smaller communities would find it difficult to do this.

As discussed previously, there is reason to believe that many local governments would not or could not fulfill the role of rate regulator. It is further likely that if local governments did not actively function as a regulator, some areas in the state could experience rates in excess of the FCC benchmarks. It is also true that the one million dollars of refunds ordered would not have occurred without an authority in place to enforce the order. For this reason, it is possible that a negative effect in the form of higher cable television rates would result from abolition of the Board.

The final consideration should be the cost of the Board when weighed against the benefits of having the Board. The Board is financed through its own fees that it assesses annually from cable operators. These fees are passed on to subscribers. The current fee is 40 cents per year paid only by West Virginians who subscribe to cable television.

Through 1995, the total amount of fees collected by the Board was \$1,014,261. For 1996 the figure is estimated to be \$217,000 which would bring the total to \$1,231,261. This has been the total cost of the CTAB to the cable subscribers of West Virginia. As discussed in Appendix A, the Board has been operating with a surplus for five years, and is attempting to create rules which would allow it to decrease the fees.

The benefits of the Board are both monetary and nonmonetary. The monetary benefits are the \$1,017,376 in refunds that the Board has obtained for cable subscribers. Also, the refund represents the amount by which basic rates have been reduced since 1994. Therefore, the rate reduction benefit carries over for each year subsequent from 1994, which means the benefit to cable subscribers for the last two years is the refunded amount times two, or \$2,034,752. A strictly monetary analysis of cost vs. benefit is given in Table 3.

Table 3		
Monetary Benefits & Costs for the CTAB		
Benefits	Total Cost	Net Benefit
\$2,034,752	\$1,231,261	\$803,491

The non-monetary benefits impact local governments, cable operators and cable subscribers. For local governments, the benefit is that the Board assumes the duties of cable rate regulation, consumer protection and complaint resolution. In addition, local governments have an entity to approach for aide and advice with the franchising process. Though the latter benefits have shortcomings addressed in previous issue areas, implementation of PERD recommendations would enhance these benefits. A final benefit is that one organization operates at roughly \$200,000 a year. If each local government operated its own miniature cable board, the duplicative costs could be much higher, depending on how much each local government charged subscribers.

For the cable operator, the benefit is one statewide system of franchising and regulations, and a central authority to deal with on such issues. This eliminates duplication of regulatory authorities, making the system uniform and more easily accessible. Cable operators do not face multiple layers of bureaucracy if they operate in more than one city or county.

Finally, the consumer receives the benefits of being protected from being charged more than the FCC allowed rate for basic tier service and is given an entity to approach with complaints about the service that is provided. It is impossible to place a monetary value on these services, but they do constitute tangible benefits. **Therefore it is the position of the PERD that the benefits outweigh the costs, and a statewide regulatory body such as the CTAB should exist.**

However, this recommendation is based largely on the rate regulatory function of the Board. If federal law changes to the extent that no rate regulation whatsoever is allowed, then the Board will be responsible for complaint resolution and some franchising related duties. In the event that this occurs, the recommendation that the Board be continued could not be justified by cost/benefit analysis and therefore would not be made.

One final question arises: "Could cable regulation be enforced by the PSC?" The seven other states that have statewide regulatory bodies utilize their respective PSC or equivalent agency. A full study of the ability and cost effectiveness of the West Virginia PSC assuming this duty was determined to be outside the scope of the audit. However, there are some considerations concerning this question.

First, if the PSC assumes the responsibility, it will require an office and personnel to handle the duties. Therefore the existing office would likely be transferred to the PSC with no savings in cost. Second, the members of the Board represent the viewpoints of the three groups that are impacted by cable regulation: cable operators, local governments and consumers. The viewpoints of these members is an advantage that might not exist without an advisory board.

Recommendation 6

West Virginia should continue to regulate cable television through either the Cable Television Advisory Board or the PSC.

Appendix A

Membership, Budget and Staff of the Board

The Cable Television Advisory Board consists of seven members. One member on the Board represents each of the following groups; County Governments, Municipal Governments, the Public Service Commission (PSC), small cable operators (less than 5,000 subscribers), and large cable operators (more than 5,000 subscribers). The two remaining members represent the public at large. All appointments are made by the Governor with the advice and consent of the Senate. Each member of the Board not otherwise employed by the state receives fifty dollars per diem when on Board business, besides reimbursement for expenses. The Board meets once per month. Additional meetings may occur if warranted.

The members are as follows;

Lawrence Barrett	Representing small cable operators
David Howell	Representing the PSC
Sam Kapourales	Representing municipal governments
Robert Legg	Representing large cable operators
James Sago, Chairman	Representing county governments
Robert Swoope	Representing citizens
James Walker	Representing citizens

The budget of the CTAB is a special revenue account, coming from the annual fees that the Board charges each cable operator. Currently this fee is 40 cents per subscriber per year. **Over the past six years a surplus of \$228,415 has accumulated.** This was due to uncertainty by the Board in the early years concerning what operational expenses would actually occur. The original budget included an extra full time position that the Board has since eliminated, and the Board's previous budgeting for legal services was unnecessary because the Attorney General's office provided this service. Because these expenses did not occur, the first three years of operation were under budget by a cumulative \$186,405. After the first few years of operation, the Board was better able to predict its expenditures. The most recent budgets have been much closer to actual operating costs. In the past three years, the budget had a surplus of less than \$20,000 each year. **Because of the current surplus, provisions are being made to propose to the legislature a rule that would lower the annual fee to 30 cents per subscriber per year.**

Staff

The Board employs a full time staff of four. An executive secretary manages the day to day operations of the Board's activities. This position is responsible for the administration of personnel, organization of Board projects and studies, assisting in rate reviews, scheduling and announcing Board meetings, preparing agendas and relevant documents for the meetings, supervising staff, corresponding on behalf of the Board with other agencies and the public and performing other tasks for the operation of the Board.

An investigator/hearings examiner follows up all complaints from citizens which require investigation. This includes limited travel to verify certain complaints or to deal with local governments to assist in franchising agreements. Some inspections of cable systems also require travel. This employee has made an average of seven road trips per year since 1991. Documents from the State Auditor's office indicate that the total expense for the inspector's travel since November 1994 has been \$739.40.

Other duties of the investigator include keeping income ledgers, assisting with rate requests, reviewing franchise applications and agreements for Board compliance, preparing cable operator databank information, logging in annual reports from operators and keeps track of operators who are delinquent in submitting them, and assists in office tasks when necessary.

A secretary handles correspondence (including complaint letters), payroll, bills and taxes as well as general duties such as telephone answering and clerical tasks.

The final staff member is an audit clerk who maintains a data base and keeps records of the annual reports including the fees that are involved, answers the 800 telephone line, updates the FCC Regulation Book and performs various clerical tasks.

No provisions in the WVC classify the CTAB staff as civil service employees. The Board has adopted the Division of Personnel manual for employee guidelines.

Appendix B

(4) A local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

§76.906 Presumption of no effective competition.

In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.

§76.910 Franchising authority certification.

(a) A franchising authority must be certified by the commission in order to regulate the basic service tier and associated equipment of a cable system within its jurisdiction.

(b) To be certified, the franchising authority must file with the commission a written certification that:

(1) The franchising authority will adopt and administer regulations with respect to the rates for the basic service tier that are consistent with the regulations prescribed by the commission for regulation of the basic service tier;

(2) The franchising authority has the legal authority to adopt, and the personnel to administer, such regulations;

(3) Procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties; and

(4) The cable system in question is not subject to effective competition. Unless a franchising authority has actual knowledge to the contrary, the franchising authority may rely on the presumption in §76.906 that the cable operator is not subject to effective competition.

(c) The written certification described in paragraph (b) of this section shall be made by filing the FCC form designated for that purpose. The form must be filed by

(1) Registered mail, return receipt requested, or

(2) Hand-delivery to the commission and a date-stamped copy obtained. The date on the return receipt or on the date-stamped copy is the date filed.

(d) A copy of the certification form described in paragraph (c) of this section must be served on the cable operator before or on the same day it is filed with the commission.

(e) Unless the commission notifies the franchising authority otherwise, the certification will become effective 30 days after the date filed, *provided, however*, That the franchising authority may not regulate the rates of a cable system unless it:

(1) Adopts regulations:

(i) Consistent with the commission's regulations governing the basic tier; and

(ii) Providing a reasonable opportunity for consideration of the views of interested parties, within 120 days of the effective date of certification; and

(2) Notifies the cable operator that the authority has been certified and has adopted the regulations required by paragraph (e)(1) of this section.

(f) If the commission denies a franchising authority's certification, the commission will notify the franchising authority of any revisions or modifications necessary to obtain approval.

§76.911 Petition for reconsideration of certification.

(a) A cable operator (or other interested party) may challenge a franchising authority's certification by filing a petition for reconsideration. The petition may allege either of the following:

(1) The cable operator is not subject to rate regulation because effective competition exists as defined in §76.905.

(2) The franchising authority does not meet the certification standards set forth in 47 U.S.C. 543(a)(3).

(b)(1) The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition, as defined in §76.905, exists in the franchise area.

(2) For purposes of paragraph (a)(1) of this section, if the evidence establishing effective competition is not otherwise available, cable operators may request from a competitor information regarding the competitor's reach and number of subscribers. A competitor must respond to such request within 15 days. Such responses may be limited to numerical totals.

(c) Stay of rate regulation. (1) The filing of a petition for reconsideration pursuant to paragraph (a)(1) of this section will automatically stay the imposition of rate regulation pending the outcome of the reconsideration proceeding.

(2) A petitioner filing pursuant to paragraph (a)(2) of this section may request a stay of rate regulation.

(3) In any case in which a stay of rate regulation has been granted, if the petition for reconsideration is denied, the cable operator may be required to refund any rates or portion of rates above the permitted tier charge or permitted equipment charge which were collected from the date the operator implements a prospective rate reduction back in time to September 1, 1993, or one year, whichever is shorter.

(d) The filing of a petition for reconsideration alleging the presence of effective competition based on frivolous grounds is prohibited, and may be subject to forfeitures.

(e) If the commission upholds a challenge to a certification filed pursuant to paragraph (a)(2) of this section, the commission will notify the franchising authority of the revisions necessary to secure approval and provide the authority an opportunity to amend its certification however necessary to secure approval. *Provided, however*, That pending approval of certification, the commission will assume jurisdiction over basic cable service rates in that franchise area.

§76.912 Joint certification.

(a) Franchising authorities may apply for joint certification and may engage in joint regulation, including, but not limited to, joint hearings, data collection, and ratemaking. Franchising authorities jointly certified to regulate their cable system(s) may make independent rate decisions.

(b) Franchising authorities may apply for joint certification regardless of whether the authorities are served by the same cable system or by different cable systems and regardless of whether the rates in each franchising area are uniform.

§76.913 Assumption of jurisdiction by the commission.

(a) Upon denial or revocation of the franchising authority's certification, the commission will regulate rates for cable services and associated equipment of a cable system not subject to effective competition, as defined in §76.905, in a franchise area. Such regulation by the commission will continue until the franchising authority has obtained certification or recertification.

unnecessary disruption of the consumer's premises.

(k) Definitions —

(i) *Normal operating conditions* — The term "normal operating conditions" shall have the same meaning as at 47 CFR §76.309(c)(4)(ii).

Subpart N.— Cable Rate Regulation

§76.900 Temporary freeze of cable rates.

(a) The average monthly subscriber bill for services provided by cable operators subject to regulation under Section 623 of the Communications Act shall not increase above the average monthly subscriber bill determined under rates in effect on April 5, 1993, until Nov. 15, 1993.

(b) The average monthly subscriber bill shall be calculated by determining for a monthly billing cycle the sum of all billed monthly charges for all cable services subject to regulation under section 623 of the Communications Act and dividing that sum by the number of subscribers receiving any of those services. The average monthly subscriber bill determined under rates in effect on April 5, 1993, shall be calculated based on customer charges for the most recent monthly billing cycle ending prior to April 5, 1993.

§76.901 Definitions.

(a) *Basic service*. The basic service tier shall, at a minimum, include all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system) any public, educational, and governmental programming required by the franchise to be carried on the basic tier, and any additional video programming signals a service added to the basic tier by the cable operator.

(b) *Cable programming service*. Cable programming service includes any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

(1) Video programming carried on the basic service tier as defined in this section;

(2) Video programming offered on a pay-per-channel or pay-per-program basis; or

(3) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:

(i) Consists of commonly-identified video programming; and

(ii) Is not bundled with any regulated tier of service.

(c) *Small system*. A small system is a cable television system that serves 15,000 or fewer subscribers. The service area of a small system shall be determined by the number of subscribers that are served by a system's principal headend, including any other headends or microwave receive sites that are technically integrated to the principal headend.

(d) *New product tier*. A new product tier (NPT) is a cable programming service tier meeting the conditions set forth in section 76.987 of this part.

(e) *Small cable company*. A small cable company is a cable television operator that carries a total of 400,000 or fewer subscribers one or more cable systems.

§76.905 Standards for identification of cable systems subject to effective competition.

(a) Only the rates of cable systems that are not subject to effective competition may be regulated.

(b) A cable system is subject to effective competition when any one of the following conditions is met:

(1) Fewer than 30 percent of the households in its franchise area subscribe to the cable service of a cable system.

(2) The franchise area is:

(i) Served by at least two unaffiliated multichannel video programming distributors each of which offers comparable programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.

(3) A multichannel video programming distributor, operated by the franchising authority for that franchise area, offers video programming to at least 50 percent of the households in the franchise area.

(c) For purposes of paragraphs (b)(1) through (b)(3) of this section, each separately billed or billable customer will count as a household subscribing to or being offered video programming services, with the exception of multiple dwelling buildings billed as a single customer. Individual units of multiple dwelling buildings will count as separate household. The term "households" shall not include those dwellings that are used solely for seasonal, occasional or recreational use.

(d) A multichannel video program distributor, for purposes of this section, is an entity such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, a video dialtone service provider, or a satellite master antenna television service provider that makes available for purchase, by subscribers or customers, multiple channels of video programming.

(e) Service of a multichannel video programming distributor will be deemed offered:

(1) When the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and

(2) When no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise area are reasonably aware that they may purchase the services of the multichannel video programming distributor.

(f) For purposes of determining the number of households subscribing to the services of a multichannel video programming distributor other than the largest multichannel video programming distributor, under paragraph (b)(2)(ii) of this section, the number of subscribers of all multichannel video programming distributors that offer services to at least 50 percent of the households in the franchise area will be aggregated.

(g) In order to offer comparable programming within the meaning of paragraph (b)(2)(i) of this section, a competing multichannel video programming distributor must offer at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.

Appendix C

List of Counties with Unfranchised Cable Systems

County	Number of Systems unfranchised (Status and date of negotiation)
Barbour	1 (Pending 1/28/93)
Boone	5 (All pending 5/28/93)
Braxton	5 (All pending 4/20/93)
Brooke	4 (All pending 1/22/93)
Clay	1 (Pending 2/17/93)
Hampshire	3 (All pending 1/25/94)
Kanawha	9 (Some pending, others not negotiated)
Lincoln	3 (All pending, 4/21/93 and 6/30/94)
Marshall	4 (All pending, 10/92, 3/93 and 9/93)
McDowell	3 (All pending, 12/92 and 6/94)
Mercer	1 (Pending 2/93)
Monongalia	4 (All pending 4/93)
Ohio	2 (One pending 3/93, one not negotiated)
Pleasants	1 (Pending 8/92)
Preston	1 (Pending 10/92)
Raleigh	3 (All pending 2/93)
Randolph	1 (Pending 6/93)
Ritchie	2 (Pending 1/93)
Wayne	2 (Pending 3/93)
Wetzel	1 (Pending 2/93)

Wyoming 1 (Pending 10/94)

21 Counties 56 systems

* Wood County has one contract renegotiation pending since 7/95. This would bring the total to 22 Counties and 57 systems.