

1 H BILL NO. 530
 2 INTRODUCED BY Menahan

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
 5 REGULATION OF PERSONS AND ORGANIZATIONS OWNING, CONTROLLING,
 6 OPERATING, AND MANAGING CABLE TELEVISION SYSTEMS; AMENDING
 7 SECTION 70-103, R.C.M. 1947, TO INCLUDE CABLE TELEVISION
 8 SYSTEMS IN THE DEFINITION OF PUBLIC UTILITY; AND AMENDING
 9 SECTION 70-119, R.C.M. 1947, TO REQUIRE HEARINGS ON
 10 COMPLAINTS AGAINST CABLE TELEVISION COMPANIES."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Short title. This act is known and may be
 14 cited as the "State Cable Television System Act".

15 Section 2. Purpose. (1) Upon investigation of the
 16 public interest associated with cable television, the
 17 legislature has determined the following:

18 (a) While cable television serves in part as an
 19 extension of interstate broadcasting, operations involve
 20 public rights-of-way and vital business and community
 21 service and, therefore, are of state concern.

22 (b) While operations must be subject to state
 23 regulation, they also must be protected from undue restraint
 24 so as to assure construction of cable systems with optimum
 25 technology and maximum penetration in this state as rapidly

1 as economically and technically feasible.

2 (c) Municipalities and the state would benefit from
 3 valuable educational and public services brought through
 4 cable television systems.

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 6 benefit if served by cable channels sufficient to meet the
 7 needs of producers and distributors of program and other
 8 communication content services.

9 (e) Many municipalities lack the necessary resources
 10 and expertise to plan for and secure these benefits and to
 11 protect subscribers and other parties to the public
 12 interest.

13 (2) It is hereby declared to be the policy of this
 14 state to provide fair regulation of cable television
 15 companies in the interest of the public, to promote
 16 adequate, economical, and efficient cable television system
 17 service to citizens and residents of this state, to provide
 18 just and reasonable rates and charges for cable television
 19 system services without unjust discrimination, undue
 20 preferences or advantages, or unfair or destructive
 21 competitive practices, to encourage and promote harmony
 22 between cable television companies and their subscribers, to
 23 cooperate with other states and with the federal government
 24 in promoting and coordinating efforts to effectively
 25 regulate cable television companies in the public interest.

1 and to these ends, to vest authority in the public service
2 commission to regulate cable television companies generally
3 and their rates, services, and operations, in the manner and
4 in accordance with the policies set forth in this act.

5 Section 3. Definitions. As used in this act, the
6 following definitions apply:

7 (1) "Cable television company" means a person owning,
8 controlling, operating, or basing a cable television system
9 within the state. The definition does not include a
10 telephone, telegraph, or electric utility regulated by the
11 public service commission in a case where it merely leases
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13 communication channels for the redistribution of television
14 signals to or toward subscribers of the television company.

15 (2) "Cable television system" means a system which
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17 television stations and redistributes the signals to
18 subscribing members of the public for a fixed or periodic
19 fee by wire, cable, microwave, or other means, whether such
20 means are owned or leased. The definition does not include:

- 21 (a) a system which serves fewer than 50 subscribers;
22 (b) a system which serves only the residents of one or
23 more apartment complexes under common ownership, control, or
24 management and commercial establishments located on the
25 premises of the apartment complex.

1 (3) "Regular cable television service" means the
2 distribution of broadcast television and radio signals and
3 installation, disconnection, and reconnection of the
4 facilities required for the distribution.

5 (4) "Expanded cable television service" means any
6 communications service in addition to regular cable
7 television service provided by the cable television company
8 either directly or as a carrier for their subsidiaries,
9 affiliates, or any other person engaged in communications
10 service, including but not limited to pay TV, burglar alarm
11 service, data or other electronic transmission services,
12 facsimile reproduction services, meter reading services, and
13 home shopping services.

14 (5) "Commission" means the public service commission
15 provided for in 82A-1702.

16 (6) The word "facility" includes all real property,
17 antenna, poles, wires, cables, conduits, amplifiers,
18 instruments, appliances, fixtures, and other personal
19 property used by a cable television company in providing
20 service to its subscribers.

21 (7) "Gross operating revenue" means all compensation
22 received directly or indirectly by a cable television
23 company from its operations within the state, including but
24 not limited to sums received from subscribers or users in
25 payment for programs received, transmitted, or both,

1 advertising and carrier service revenue, and any other
 2 moneys that constitute income in accordance with the system
 3 of accounts approved by the commission. Gross annual
 4 receipts do not include any taxes on services furnished by a
 5 cable television company imposed directly on any subscriber
 6 or user by any municipality, state, or other governmental
 7 unit and collected by the company for such governmental
 8 unit.

9 Section 4. Certificate — application — exceptions.

10 (1) No person or organization may begin the construction,
 11 extension, or operation of a cable television system or
 12 acquire ownership or control thereof without first obtaining
 13 from the commission a certificate that the present or future
 14 public convenience and necessity require or will require
 15 such construction, extension, operation, or acquisition.

16 (2) The commission may by rule exempt a cable
 17 television company from the above certificate requirement in
 18 a case where:

19 (a) its temporary acts or operations do not require
 20 the issuance of a certificate in the public interest; or

21 (b) its extensions of or additions to its cable
 22 television system are within its certified territory or an
 23 adjacent uncertified territory and such extensions or
 24 additions will promote the prompt availability of such
 25 service to prospective subscribers and at the same time

1 prevent unnecessary and uneconomic duplication of cable
 2 television facilities as between two or more persons or
 3 organizations.

4 (3) The application shall contain the following
 5 information:

6 (a) the name and address of the applicant and, if the
 7 applicant is a corporation, the names and addresses of all
 8 officers and directors of the corporation;

9 (b) an outline of the general construction and
 10 operating plans of the applicant;

11 (c) a schedule of rates and charges for regular cable
 12 television service;

13 (d) a proposed schedule for the construction of the
 14 system and the commencement of the service or, if the system
 15 is already in operation, a full and complete description,
 16 including maps and plans, of the system;

17 (e) a statement of the policy of the applicant
 18 concerning the extension of the system within the certified
 19 territory;

20 (f) such information as may be required to determine
 21 the legal, character, financial, technical, and other
 22 qualifications of the applicant.

23 (4) The application shall be accompanied by an
 24 application fee of \$100.

25 Section 5. Notice, hearing, issuance, and terms. (1)

1 Upon the filing of an application and the payment of the fee
 2 prescribed, the commission shall fix the time and place for
 3 a hearing thereon, which time shall be within 30 days of
 4 such application, and cause notice thereof to be given to
 5 the chief executive officer of any municipality, to any
 6 telephone or telegraph utility or cable television company
 7 in the affected territory, to the consumer council, created
 8 in 70-703, and to such other parties in interest as the
 9 commission may consider necessary. The commission shall also
 10 cause notice of the application to be published at least 14
 11 days prior to the hearing in some newspaper of general
 12 circulation in the affected territory.

13 (2) After such hearing, the commission may issue to
 14 the applicant a certificate of public convenience and
 15 necessity in a form to be prescribed by it or may refuse to
 16 issue the same or may issue it for only partial exercise of
 17 the privilege sought or may attach to the exercise of the
 18 right granted by the certificate terms, limitations, and
 19 conditions which it considers the public interest may
 20 require. The certificate shall include a description of the
 21 territory in which the cable television system is to be
 22 constructed, extended, operated, or acquired.

23 (3) The certificate may not be exclusive, and the
 24 commission reserves the right to grant similar certificates
 25 to any other person. The certificate may be granted for a

1 term not to exceed 15 years and may be renewed for an
 2 additional term not to exceed a 15-year period following a
 3 public hearing called for the purpose of considering
 4 renewal.

5 (4) In determining whether a certificate may be
 6 issued, the commission shall take into consideration, among
 7 other things, the public need for the proposed service or
 8 acquisition, the suitability of the applicant, the financial
 9 responsibility of the applicant, and the ability of the
 10 applicant to perform efficiently the service for which
 11 authority is requested.

12 (5) Any certificate issued may, after hearing, be
 13 revoked, suspended, or altered for repeated violations of
 14 any of the provisions of this act or rules adopted pursuant
 15 thereto.

16 Section 6. Bond. Each cable television company under
 17 the provisions of this act shall, at the time of receiving
 18 the certificate and before it takes effect, enter into with
 19 sufficient sureties, a bond with the commission in the penal
 20 sum of \$10,000 conditioned upon the faithful and due
 21 observance of all laws of the state may be in force or may
 22 thereafter be passed respecting such a certificate or
 23 company.

24 Section 7. Indemnification of state and political
 25 subdivisions. A cable television company certified under

1 this act shall at all times indemnify the state and all
 2 political subdivisions, in whole or in part, within the
 3 certified territory from all claims, actions, suits,
 4 liability, loss, expense, or damages of every kind and
 5 description (herein collectively referred to as "claims"),
 6 including investigation costs, court costs, and attorney's
 7 fees, which may accrue to or be suffered or claimed by any
 8 person arising out of the negligence of the cable television
 9 company in the ownership, construction, repair, replacement,
 10 maintenance, and operation of the cable television system.
 11 The state or political subdivision shall give the cable
 12 television company prompt written notice of any such claims
 13 filed against it.

14 Section 8. Certification of cable television companies
 15 operating on effective date of act. The commission shall
 16 issue a certificate of public convenience and necessity to
 17 any cable television company lawfully engaged in the
 18 construction, extension, or operation of its cable
 19 television system on the effective date of this act, for the
 20 construction, extension, or operation then being conducted,
 21 without requiring proof that public convenience and
 22 necessity will be served by such construction, extension, or
 23 operation and without further proceedings if application for
 24 such certificate is filed with the commission within 90 days
 25 after such date. The application shall contain the

1 information and shall be accompanied by the fee prescribed
 2 in [section 4]. The construction, extension, or operation of
 3 such a cable television system may be lawfully continued
 4 pending the filing of such an application and the
 5 determination of same unless the commission orders
 6 otherwise. An application for such a certificate which is
 7 untimely shall be determined in accordance with the
 8 procedure prescribed in [section 4], and such certificate
 9 shall be issued or refused accordingly.

10 Section 9. Transfer of certificate. No such
 11 certificate of public convenience and necessity may be
 12 transferred, assigned, or encumbered unless such transaction
 13 is first approved by the commission.

14 Section 10. Rates. (1) The initial rates, charges, and
 15 classifications for regular cable television service shall
 16 be approved by the commission provided that in the case of
 17 multiple dwelling units, hotels, motels, hospitals,
 18 television shops, and retail television sales, where all
 19 service is billed to one customer, the monthly service and
 20 connection charges may be determined by negotiations between
 21 the cable television company and such customer. Rates for
 22 expanded cable television service need no initial approval
 23 but must be filed with the commission, and subsections (2),
 24 (3), and (4) apply.

25 (2) The cable television company may at any time and

1 from time to time change its rates and charges so as to
 2 ensure a fair return on its investment; provided that the
 3 company is required to give the commission written notice of
 4 any proposed rate or charge change, such notice to be given
 5 at least 60 days prior to the proposed effective date of
 6 such rate increase. The commission may hold public
 7 proceedings at which proceedings the cable television
 8 company has a right to be heard and to present evidence. The
 9 company shall cooperate fully with the commission in
 10 connection with such public proceedings and, upon request,
 11 shall supply to the commission all data as may reasonably be
 12 required by the commission for determining the fairness of
 13 the proposed rates and charges.

14 (3) The pendency of such proceedings may not prevent
 15 the proposed rate and charge change from going into effect
 16 as scheduled, but if the commission determines within 90
 17 days after the proposed effective date that a different
 18 schedule of rates and charges than that proposed by the
 19 cable television company is proper, such different schedule
 20 shall be in effect from the effective date of such charge
 21 and, if lowered by the commission, the difference between
 22 the rates and charges charged by the company and those
 23 approved by the commission shall be refunded to the
 24 subscriber with interest at 8% a year.

25 (4) The commission, in the exercise of its power to

1 determine the fairness of rates, charges, and
 2 classifications, shall consider as a fair rate that which
 3 would enable the cable television company, under honest,
 4 economic, and efficient management, to render the service
 5 and derive a reasonable profit. In addition, no rate may be
 6 discriminatory.

7 Section 11. Duties of cable television companies. (1)
 8 Each cable television company (and any other person and
 9 organization providing any service, equipment, or facilities
 10 thereto) shall provide safe and adequate service, equipment,
 11 and facilities for the operation of its cable television
 12 system.

13 (2) No cable television company may demand or receive
 14 a greater or less or different compensation for providing
 15 cable television service than the rates and charges
 16 specified in the schedule in effect at the time.

17 (3) Any company receiving a certificate under the
 18 terms of this act shall accomplish significant construction
 19 within 1 year after receiving certification from the federal
 20 communication commission and shall thereafter equitably and
 21 reasonably extend energized trunk cable within the certified
 22 territory as provided in the construction schedule set forth
 23 in the application for a license. Extensions of any system
 24 within the certified territory shall be made by the company
 25 in accord with the policy set forth in the application for a

1 certificate.

2 (4) Every cable television company and other person
3 and organization shall obey and comply with every rule and
4 regulation and order adopted by the commission under the
5 provisions of this act.

6 Section 12. Complaints — filing and reports. (1) The
7 cable television company shall maintain a business office
8 within the certified territory which subscribers may
9 telephone during regular business hours without incurring
10 added message or toll charges. Should a subscriber have a
11 complaint regarding the quality of cable television service,
12 equipment malfunction, or similar matters, the subscriber
13 may file his complaint with the local business office. The
14 subscriber may also file complaints as to the operation,
15 rates, charges, or classifications of any cable television
16 system with the commission or with the consumer counsel.

17 (2) The consumer counsel and the commission shall be
18 notified by cable television companies on forms prescribed
19 by the commission, not less than every 3 months, of the
20 complaints received during the reporting period and the
21 manner in which they have been met, including the time
22 required to make necessary repairs.

23 Section 13. Service. No company holding a certificate
24 under this [act] may abandon or curtail any service subject
25 to the jurisdiction of the commission or abandon all or any

1 part of its facilities if it would thereby effect the
2 abandonment, curtailment, or impairment of the service,
3 without obtaining approval of the commission, after notice
4 and hearing, and upon a finding by the commission that the
5 abandonment or curtailment is consistent with the public
6 interest.

7 Section 14. Section 70-119, R.C.M. 1947, is amended to
8 read as follows:

9 "70-119. Complaints against public utility —
10 hearing. Upon a complaint made against any public utility by
11 any mercantile, agricultural, or manufacturing society or
12 club, or by any body politic or municipal organization, or
13 association or associations, the same being interested, or
14 by any person or persons, firm or firms, corporation or
15 corporations, provided such persons, firms, or corporations
16 are directly affected thereby that any of the rates, tolls,
17 charges, or schedule, or any joint rate or rates, are in any
18 way unreasonable or unjustly discriminatory, or that any
19 regulations, measurements, practices, or act whatsoever
20 affecting or relating to the production, transmission, or
21 delivery or furnishing of heat, light, water, or power, or
22 any service in connection therewith, or the conveyance of
23 any telegraph or telephone message, or any service in
24 connection therewith, or any redistribution of signals of a
25 cable television system or any service connected therewith.

1 is in any respect unreasonable, insufficient, or unjustly
 2 discriminatory, or that any service is inadequate, the
 3 commission shall proceed, with or without notice, to make
 4 such investigation as it may deem necessary. But no order
 5 affecting such rates, tolls, charges, schedules,
 6 regulations, measurements, practice or act complained of,
 7 shall be entered without a formal hearing, except the
 8 commission may issue an order to provide service to a
 9 residential consumer pending a hearing on a complaint by
 10 such consumer or by the consumer counsel on behalf of such
 11 consumer against a public utility, providing that the
 12 hearing is held within twenty (20) days unless further
 13 delayed by consent of all parties.

14 The commission shall give the public utility and the
 15 complainant or complainants at least ten days' notice of the
 16 time when and the place where such hearing will be held, at
 17 which hearing both the complainant and the public utility
 18 shall have the right to appear by counsel or otherwise, and
 19 be fully heard. Either party shall be entitled to an order
 20 by the commission for the appearance of witnesses or the
 21 production of books, papers, and documents containing
 22 material testimony. Witnesses appearing upon the order of
 23 the commission shall be entitled to the same fees and
 24 mileage as witnesses in civil cases in the courts of the
 25 state, and the same shall be paid out of the state treasury

1 in the same manner as other claims against the state are
 2 paid; but no fees or mileage shall be allowed, unless the
 3 chairman of the commission shall certify to the correctness
 4 of the claim."

5 Section 15. Section 70-103, R.C.M. 1947, is amended to
 6 read as follows:

7 "70-103. "Public utility" defined. (1) The term
 8 "public utility," within the meaning of this ~~act~~ title,
 9 shall embrace every corporation, both public and private,
 10 company, individual, association of individuals, their
 11 lessees, trustees or receivers appointed by any court
 12 whatsoever, that now or hereafter may own, operate, or
 13 control any plant or equipment, or any part of a plant or
 14 equipment, within the state, for the production, delivery,
 15 or furnishing for or to other persons, firms, associations,
 16 or corporations, private or municipal, heat, street-railway
 17 service, light, power in any form or by any agency, water
 18 for business, manufacturing, household use, or sewerage
 19 service, whether within the limits of municipalities, towns
 20 and villages, or elsewhere, cable television service or
 21 telegraph or telephone service; and the public service
 22 commission is hereby invested with full power of
 23 supervision, regulation, and control of such utilities,
 24 subject to the provisions of ~~this act~~ the law to the
 25 contrary, and to the exclusion of the jurisdiction,

1 regulation, and control of such utilities by any
2 municipality, town, or village."

3 Section 16. There is a new R.C.M. section that reads
4 as follows:

5 Pole attachments. Whenever the commission finds that
6 public convenience and necessity require the use by a public
7 utility of the wires, cables, conduits, poles, or other
8 equipment, or any part thereof, on, over, or under any
9 highway belonging to another public utility and that the use
10 will not result in irreparable injury to the owner or other
11 users of the equipment or in any substantial detriment to
12 the service, and that such public utilities have failed to
13 agree upon the use or the terms and conditions or
14 compensation for the use, the commission may order that the
15 use be permitted and prescribe a reasonable compensation and
16 reasonable terms and conditions for the joint use. If the
17 use is ordered, the public utility to whom the use is
18 permitted is liable to the owner or other users of such
19 equipment for damage as may result to the property of the
20 owner or other users thereof. The words "public utility" as
21 used in this section include a cable television company and
22 any public utility subject to the jurisdiction of the
23 commission.

24 Section 17. There is a new R.C.M. section that reads
25 as follows:

1 Municipal fees, taxes, or charges. Nothing in this act
2 may be construed to limit the power of any municipality to
3 impose upon any cable television company a fee, tax, or
4 charge, provided that any such fee, tax, or charge when
5 added to the amount payable to the commission does not
6 exceed the maximum amount permitted by applicable federal
7 law or rules.

8 Section 18. There is a new R.C.M. section that reads
9 as follows:

10 Judicial review. Within 30 days after the service of an
11 order or decision reflecting any action of the commission
12 which is ripe for judicial review, any party aggrieved
13 thereby may appeal to a court of competent jurisdiction for
14 the purpose of having the reasonableness or lawfulness of
15 such action inquired into and determined. Such appeal shall
16 be tried according to the rules governing other civil cases
17 to the extent practicable.

18 Section 19. There is a new R.C.M. section that reads
19 as follows:

20 Civil penalty. Any person or the officer, agent, or
21 employee of any organization who willfully violates any
22 provision of this act or of any rule or order adopted
23 thereunder may be fined no more than \$250 for each
24 occurrence.

25 Section 20. Severability. If a part of this act is

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1 invalid, all valid parts that are severable from the invalid
2 part remain in effect. If a part of this act is invalid in
3 one or more of its applications, the part remains in effect
4 in all valid applications that are severable from the
5 invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 280-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 28, 19 77, there is hereby submitted a Fiscal Note for House Bill 530 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to include cable television systems as a public utility.

ASSUMPTIONS:

1. There are approximately 15 cable television companies in Montana.
2. All existing and future rate tariff schedules for cable TV companies will have to be analyzed for compliance.
3. To insure that construction, extension and operation of Cable TV companies is provided as a public convenience, a complete staff analysis must include engineering data from a communications engineer and a rate analyst.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Revenue		
15 companies X \$100	<u>\$ 1,500</u>	<u>\$ 0</u>
Less: Expenditures		
Personal services	31,515	32,932
Operating expenses	4,480	4,480
Equipment	<u>2,400</u>	<u>0</u>
Total expenditures	<u>38,395</u>	<u>37,412</u>
Total additional cost of proposed legislation	<u>\$36,895</u>	<u>\$37,412</u>

Richard L. Drury for
BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 2-3-77

Business and Industry

Without recommendation

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